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Contents

Federal Register

Vol. 72, No. 98

Tuesday, May 22, 2007

Agriculture Department
See Forest Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28696–28697
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 28697
National Institute for Occupational Safety and Health—Radiation and Worker Health Advisory Board, 28697–28698

Centers for Medicare & Medicaid Services
NOTICES
Grant and cooperative agreement awards:
Medicare—
Louisiana; Deficit Reduction Act-Hurricane Katrina healthcare related professional workforce supply, 28698
Privacy Act; computer matching programs, 28698–28700

Children and Families Administration
NOTICES
Grant and cooperative agreement awards:
Medical Institute for Sexual Health, 28700

Coast Guard
RULES
Drawbridge operations:
Connecticut, 28609–28610
Regattas and marine parades:
Escape from Fort Delaware Triathlon, 28607–28609
PROPOSED RULES
Oceanographic research vessels:
Alternative Compliance Program, 28650–28653
Regattas and marine parades:
East Coast Boat Racing Club power boat race, 28631–28633
Hampton Cup Regatta, 28634–28636

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28673–28674

Commodity Futures Trading Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28686–28687

Community Development Financial Institutions Fund
NOTICES
Grants and cooperative agreements; availability, etc.:
New Markets Tax Credit Program, 28766–28767

Defense Acquisition Regulations System
PROPOSED RULES
Acquisition regulations:
Contract closeout; systemic issues, 28654–28662
Contract financing, 28663–28664
Contract profit/fee policies, 28663
Leasing; vessels, aircraft, and combat vehicles, 28662–28663
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28688–28691

Defense Department
See Defense Acquisition Regulations System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28687–28688

Drug Enforcement Administration
RULES
List I and List II chemicals; importation and exportation:
Combat Methamphetamine Epidemic Act of 2005; temporary stay of provisions, 28601–28602

Education Department
NOTICES
Meetings:
National Mathematics Advisory Panel, 28691–28692

Energy Department
See Energy Information Administration
NOTICES
Meetings:
National Coal Council, 28692

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28692–28693

Environmental Protection Agency
RULES
Air programs:
Ambient air quality standards, national—
Exceptional events; data treatment; correction, 28612–28613
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28693–28694

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Economic impact policy; finance applications:
Russia; hot briquetted iron plant, 28694

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 28594–28601
British Aerospace, 28587–28589
Dornier Luftfahrt GmbH, 28591–28592
Pratt & Whitney Canada
Correction, 28589
Reims Aviation S.A., 28593–28594
Turbomeca, 28589–28591
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Parachute equipment and packing, 28820–28823
Class E airspace, 28622–28630
Low altitude area navigation routes, 28630–28631
NOTICES
Aeronautical land-use assurance; waivers:
Rickenbacker International Airport, OH, 28754–28755
Meetings:
RTCA, Inc., 28755

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Texas, 28617–28619
Various States, 28613–28617
NOTICES
Disaster and emergency areas:
Connecticut, 28708–28709
Kansas, 28709

Federal Maritime Commission
NOTICES
Agreements filed, etc., 28694–28695

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Drivers' hours of service; exemption applications—
American Pyrotechnics Association, 28755–28759

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control; correction, 28695
Formations, acquisitions, and mergers, 28695
Meetings:
Consumer Advisory Council, 28695–28696
Meetings; Sunshine Act, 28696

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Rio Grande cutthroat trout, 28664–28665
NOTICES
Endangered and threatened species permit applications, determinations, etc., 28709–28710

Food and Drug Administration
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
FOSRENOL, 28700–28701

Forest Service
NOTICES
Environmental statements; notice of intent:
Uinta National Forest, UT, 28666–28667
Meetings:
Roadless Area Conservation National Advisory Committee, 28667

General Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28687–28688

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Meetings:
Infant Mortality Advisory Committee, 28701
Organization, functions, and authority delegations:
Primary Health Care Bureau et al., 28701–28702

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Chen, Bill, 28674–28675

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Income taxes:
Pension plan distributions under phased retirement program upon attainment of normal retirement age, 28604–28607

International Trade Administration
NOTICES
Antidumping:
Carbon and certain alloy steel wire rod from—
Canada, 28675–28676
Hot-rolled carbon steel flat products from—
Netherlands, 28676–28678

International Trade Commission
NOTICES
Import investigations:
North American Free Trade Agreement (NAFTA)—
Modifications; probable effects, 28711–28712

Justice Department
See Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28712–28713

Labor Department
See Mine Safety and Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Labor Provisions of U.S. Free Trade Agreements National Advisory Committee, 28713–28714

Land Management Bureau
PROPOSED RULES
Minerals management:
Oil and gas leasing—
National Petroleum Reserve, AK; Federal leases, 28636–28649
NOTICES
Alaska Native claims selection:
Bering Straits Native Corp., 28710
Realty actions; sales, leases, etc.:
Wyoming, 28710–28711

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground mines—
Abandoned areas; sealing, 28796–28817

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28687–28688
Meetings:
Advisory Council Science Committee, 28714–28715

National Commission on Libraries and Information Science

NOTICES
Meetings, 28714

National Highway Traffic Safety Administration
RULES
Fuel economy standards:
Spyker Automobielen B.V.; exemption decision for 2006 and 2007 model years, 28619–28620
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Maxonlift Corp., 28759
Panoz Auto-Development Co., 28759–28763

National Institute of Standards and Technology
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Haemonetics Corp., 28678
Standards in trade workshops; technical input request, 28678–28679

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 28702–28703
Meetings:
National Cancer Institute, 28704
National Institute of Allergy and Infectious Diseases, 28704
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 28706
National Institute of Biomedical Imaging and Bioengineering, 28705
National Institute of Child Health and Human Development, 28705–28706
National Institute of Dental and Craniofacial Research, 28705
Scientific Review Center, 28706–28708

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Deep-water species, 28620–28621
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28679–28683
Reports and guidance documents; availability, etc.:
U.S. Climate Change Science Program—
Synthesis and assessment product, 28683
Scientific research permit applications, determinations, etc., 28683–28685

National Telecommunications and Information Administration

NOTICES
Meetings:
Public Safety Interoperable Communications Grant Program, 28685–28686

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 28715

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Westinghouse Electric Corp., 28715–28716
Meetings; Sunshine Act, 28716–28717
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 28717–28728
Reports and guidance documents; availability, etc.:
Operator licensing examination standards for power reactors and knowledge and abilities catalog for nuclear power plant operators; supplements, 28728–28729

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
RULES
Trademarks:
International trademark classification changes, 28610–28612

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous materials:
Special permit modification applications; list, 28764–28765
Special permit applications; list, 28765–28766

Postal Regulatory Commission
NOTICES
Meetings; Sunshine Act, 28729–28730

Presidential Documents
EXECUTIVE ORDERS
Defense and national security:
National Strategy for the Development of Security Professionals; establishment (EO 13434), 28583–28585

Rural Utilities Service
NOTICES
Environmental statements; record of decision:
Highwood Generating Station, MT, 28667–28669
Grants and cooperative agreements; availability, etc.:
Revolving Fund Program, 28669–28673

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28730–28732
Meetings; Sunshine Act, 28732
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 28732–28733
NASDAQ Stock Market LLC, 28733–28741
National Association of Securities Dealers, Inc, 28741–28752
National Securities Clearing Corp., 28752–28753

State Department
RULES
International Traffic in Arms regulations:
Somalia; defense articles and defense exports; licenses or approvals policy, 28602–28603
NOTICES
Shrimp trawl fishing; sea turtle protection guidelines; certifications, 28753–28754

Trade Representative, Office of United States
NOTICES
North American Free Trade Agreement (NAFTA):
Mexico; sweetner trade; dispute settlement proceeding, 28729

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
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 28754
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 28754

Treasury Department
See Community Development Financial Institutions Fund
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Compensation, pension, burial, and related benefits:
General provisions; reorganization and revision, 28770–28793
NOTICES
Meetings:
Structural Safety of Veterans Affairs Department Facilities Advisory Committee, 28767
Veterans Health Administration:
Physicians and dentists; annual pay ranges; correction, 28768

Separate Parts In This Issue

Part II
Veterans Affairs Department, 28770–28793

Part III
Labor Department, Mine Safety and Health Administration, 28796–28817

Part IV
Transportation Department, Federal Aviation Administration, 28820–28823

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13434 28583

14 CFR

39 (7 documents) 28587, 28589, 28591, 28593, 28594, 28597

Proposed Rules:

71 (7 documents) 28622, 29623, 28624, 28626, 28627, 28629, 28630

91 28820

105 28820

21 CFR

1313 28601

22 CFR

126 28602

26 CFR

1 28604

30 CFR

75 28796

33 CFR

100 28607

117 28609

Proposed Rules:

100 (2 documents) 28631, 28634

37 CFR

6 28610

38 CFR

Proposed Rules:

5 28770

40 CFR

50 28612

43 CFR

Proposed Rules:

3130 28636

44 CFR

65 28613

67 28617

46 CFR

Proposed Rules:

2 28650

8 28650

189 28650

48 CFR

Proposed Rules:

Ch. 2 28654

207 28662

215 28663

232 28663

49 CFR

531 28619

50 CFR

679 28620

Proposed Rules:

17 28664

Federal Register
Vol. 72, No. 98
Tuesday, May 22, 2007

Presidential Documents

Title 3—

The President

Executive Order 13434 of May 17, 2007

National Security Professional Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the national security, it is hereby ordered as follows:

Section 1. *Policy*. In order to enhance the national security of the United States, including preventing, protecting against, responding to, and recovering from natural and manmade disasters, such as acts of terrorism, it is the policy of the United States to promote the education, training, and experience of current and future professionals in national security positions (security professionals) in executive departments and agencies (agencies).

Sec. 2. *National Strategy for Professional Development*. Not later than 60 days after the date of this order, the Assistant to the President for Homeland Security and Counterterrorism (APHS/CT), in coordination with the Assistant to the President for National Security Affairs (APNSA), shall submit to the President for approval a National Strategy for the Development of Security Professionals (National Strategy). The National Strategy shall set forth a framework that will provide to security professionals access to integrated education, training, and professional experience opportunities for the purpose of enhancing their mission-related knowledge, skills, and experience and thereby improve their capability to safeguard the security of the Nation. Such opportunities shall be provided across organizations, levels of government, and incident management disciplines, as appropriate.

Sec. 3. *Executive Steering Committee*. (a) There is established the Security Professional Development Executive Steering Committee (Steering Committee), which shall facilitate the implementation of the National Strategy. Not later than 120 days after the approval of the National Strategy by the President, the Steering Committee shall submit to the APHS/CT and the APNSA an implementation plan (plan) for the National Strategy, and annually thereafter shall submit to the APHS/CT and the APNSA a status report on the implementation of the plan and any recommendations for changes to the National Strategy.

(b) The Steering Committee shall consist exclusively of the following members (or their designees who shall be full-time officers or employees of the members' respective agencies):

(i) the Director of the Office of Personnel Management, who shall serve as Chair;

(ii) the Secretary of State;

(iii) the Secretary of the Treasury;

(iv) the Secretary of Defense;

(v) the Attorney General;

(vi) the Secretary of Agriculture;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Education;

(xiii) the Secretary of Homeland Security;

(xiv) the Director of National Intelligence;

(xv) the Director of the Office of Management and Budget; and

(xvi) such other officers of the United States as the Chair of the Steering Committee may designate from time to time.

(c) The Steering Committee shall coordinate, to the maximum extent practicable, national security professional development programs and guidance issued by the heads of agencies in order to ensure an integrated approach to such programs.

(d) The Chair of the Steering Committee shall convene and preside at the meetings of the Steering Committee, set its agenda, coordinate its work, and, as appropriate to deal with particular subject matters, establish subcommittees of the Steering Committee that shall consist exclusively of members of the Steering Committee (or their designees under subsection (b) of this section), and such other full-time or permanent part-time officers or employees of the Federal Government as the Chair may designate.

Sec. 4. *Responsibilities*. The head of each agency with national security functions shall:

(a) identify and enhance existing national security professional development programs and infrastructure, and establish new programs as necessary, in order to fulfill their respective missions to educate, train, and employ security professionals consistent with the National Strategy and, to the maximum extent practicable, the plan and related guidance from the Steering Committee; and

(b) cooperate with the Steering Committee and provide such information, support, and assistance as the Chair of the Steering Committee may request from time to time.

Sec. 5. *Additional Responsibilities*. (a) Except for employees excluded by law, and subject to subsections (b), (c), and (d) of this section, the Director of the Office of Personnel Management, after consultation with the Steering Committee, shall:

(i) consistent with applicable merit-based hiring and advancement principles, lead the establishment of a national security professional development program in accordance with the National Strategy and the plan that provides for interagency and intergovernmental assignments and fellowship opportunities and provides for professional development guidelines for career advancement; and

(ii) issue to agencies rules and guidance or apply existing rules and guidance relating to the establishment of national security professional development programs to implement the National Strategy and the plan;

(b) The Secretary of Defense shall issue rules or guidance on professional development programs for Department of Defense military personnel, including interagency and intergovernmental assignments and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(c) The Secretary of State shall issue rules or guidance on national security professional development programs for the Foreign Service, including interagency and intergovernmental exchanges and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(d) The Director of National Intelligence, in coordination with the heads of agencies of which elements of the intelligence community are a part, shall issue rules or guidance on national security professional development

programs for the intelligence community, including interagency and intergovernmental assignments and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee; and

(e) The Secretary of Homeland Security shall develop a program to provide to Federal, State, local, and tribal government officials education in disaster preparedness, response, and recovery plans and authorities, and training in crisis decision-making skills, consistent with applicable presidential guidance.

Sec. 6. *General Provisions.* This order:

(a) shall be implemented consistent with applicable law and authorities of agencies, or heads of agencies, vested by law, and subject to the availability of appropriations;

(b) shall not be construed to impair or otherwise affect the authorities of any agency, instrumentality, officer, or employee of the United States under applicable law, including the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals, or the functions assigned by the President to the Director of the Office of Personnel Management; and

(c) is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

THE WHITE HOUSE,
May 17, 2007.

[FR Doc. 07–2570
Filed 5–21–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 72, No. 98

Tuesday, May 22, 2007

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27213 Directorate Identifier 2007–CE–012–AD; Amendment 39–15055; AD 2007–10–14]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This 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:

> Cracking has been found in the nose landing gear steering jack piston rod adjacent to the eye-end. This was caused by the application of excessive tightening torque applied to the eye-end whilst being assembled during component overhaul. Failure of the steering jack piston during operation will result in loss of nose wheel steering, which may lead to loss of directional control during critical phases of take-off and landing.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 26, 2007.

On June 26, 2007, the Director of the Federal Register approved the incorporation by reference of APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003, as referenced in BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, Original Issue: October 6, 2003, listed in this AD.

As of May 22, 2003 (68 FR 16195, April 3, 2003), the Director of the Federal Register approved the incorporation by reference of APPH Ltd. Service Bulletin 32–76, pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002, as referenced in BAE Systems British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002, listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The 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 AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 15, 2007 (72 FR 12133) and proposed to supersede AD 2003–07–06, Amendment 39–13102 (68 FR 16195, April 3, 2003). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Cracking has been found in the nose landing gear steering jack piston rod adjacent to the eye-end. This was caused by the application of excessive tightening torque applied to the eye-end whilst being assembled during component overhaul. Failure of the steering jack piston during operation will result in loss of nose wheel steering, which may lead to loss of directional control during critical phases of take-off and landing.
>
> The inspections and any required rectification actions detailed in BAe Systems Service Bulletin 32–JA030644 and associated APPH Service Bulletin 32–76 Revision 1 are required to be performed to ensure continued airworthiness of the aircraft.

Comments

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

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 190 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Based

on these figures, we estimate the cost of this AD to the U.S. operators to be $30,400, or $160 per product.

In addition, we estimate that any necessary follow-on actions will take about 8 work-hours and require parts costing $5,300, for a cost of $5,940 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing AD 2003–07–06, Amendment 39–13102 (68 FR 16195, April 3, 2003) and adding the following new AD:

2007–10–14 British Aerospace Regional Aircraft: Amendment 39–15055; Docket No. FAA–2007–27213; Directorate Identifier 2007–CE–012–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 26, 2007.

Affected ADs

(b) Supersedes AD 2003–07–06, Amendment 39–13102.

Applicability

(c) This AD applies to Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Cracking has been found in the nose landing gear steering jack piston rod adjacent to the eye-end. This was caused by the application of excessive tightening torque applied to the eye-end whilst being assembled during component overhaul. Failure of the steering jack piston during operation will result in loss of nose wheel steering, which may lead to loss of directional control during critical phases of take-off and landing.

The inspections and any required rectification actions detailed in BAe Systems Service Bulletin 32–JA030644 and associated APPH Service Bulletin 32–76 Revision 1 are required to be performed to ensure continued airworthiness of the aircraft.

Retained Requirements of AD 2003–07–06

(f) Unless already done, do the following actions in accordance with the procedures in APPH Ltd. Service Bulletin 32–76 (pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002), as referenced in BAE Systems British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002; or APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003, as referenced in BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003.

(1) Inspect the steering jack piston rod for cracks within the next 90 days or 200 ground-air-ground (GAG) cycles after May 22, 2003 (the effective date of AD 2003–07–06), whichever occurs first.

(2) If cracks are found, replace the cracked steering jack piston rod. Install the new steering jack piston rod using a torque setting of 175 lbf (pound force) inch or 20 Nm (Newton meters) when tightening the end fitting and stop bolt before further flight after the inspection required in paragraph (f)(1) of this AD.

(3) If no cracks are found, determine the torque setting of the steering jack piston rod end fitting and stop bolt before further flight after the inspection required in paragraph (f)(1) of this AD.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, do the following actions:

(1) Within 90 days after June 26, 2007 (the effective date of this AD), recalculate the safe life of the steering jack piston rod and re-torque the piston rod eye-end in accordance with APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003, as referenced in paragraph 2, Part 2 of BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003.

(2) If the piston rod is found unserviceable when inspected in accordance with APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003, as referenced in paragraph 2, Part 2 of BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003, before further flight remove the steering jack and replace with a serviceable unit.

(3) As of June 26, 2007 (the effective date of this AD), before a steering jack piston rod is installed, it must be inspected and the safe life determined in accordance APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003, as referenced in paragraph 2 of BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) AMOCs approved for AD 2003–07–06 are not approved for this AD.

(3) 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.

(4) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Civil Aviation Authority AD No. G–2004–0029, dated December 20, 2004; BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003; BAE Systems British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002; APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003; and APPH Ltd. Service Bulletin 32–76, pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002, for related information.

Material Incorporated by Reference

(j) You must use APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003; as referenced in BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003; and APPH Ltd. Service Bulletin 32–76, pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002; as referenced in BAE Systems British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of APPH Ltd. Service Bulletin 32–76, Revision 1, dated August 2003; as referenced in BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA030644, dated October 6, 2003, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 22, 2003 (68 FR 16195, April 3, 2003), the Director of the Federal Register approved the incorporation by reference of APPH Ltd. Service Bulletin 32–76, pages 1, 2, and 4 through 7, dated October 2002; and page 3, Erratum 1, dated November 2002, as referenced in BAE Systems British Aerospace Jetstream Mandatory Service Bulletin 32–JA020741, Original Issue: November 2, 2002.

(3) For service information identified in this AD, contact BAE Systems, Prestwick International Airport, Ayshire, KA9 2RW, Scotland; telephone: (01292) 675207; fax: (01292) 675704.

(4) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on May 9, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07–2522 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26112; Directorate Identifier 2006–NE–35–AD; Amendment 39–14837; AD 2006–24–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada (P&WC) PW535A Turbofan Engines; Correction

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2006–24–08. That AD applies to Pratt & Whitney Canada (P&WC) PW535A turbofan engines. We published that AD in the **Federal Register** on December 4, 2006 (71 FR 70284). The fuel manifold part number (P/N) 3025267–01 listed in paragraph (c) is incorrect. This document corrects that P/N. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective May 22, 2007.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New EnglandExecutive Park, Burlington, MA, 01803; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On December 4, 2006 (71 FR 70284), we published a final rule AD, FR Doc, E6–20204, in the **Federal Register**. That AD applies to P&WC PW535A turbofan engines. We need to make the following correction:

§ 39.13 [Corrected]

On page 70286, in the second column, in paragraph (c), in the fourth line, ''3025267–01'' is corrected to read ''3052627–01''.

Issued in Burlington, Massachusetts, on May 14, 2007.

Peter A. White,

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

[FR Doc. E7–9719 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD; Amendment 39–15063; AD 2007–11–06]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arrius 2F Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Turbomeca Arrius 2F turboshaft engines. That AD currently requires removing from service certain serial number (SN) fuel control units (FCUs) or replacing the constant delta pressure (delta P) diaphragm in those FCUs. This AD requires replacing all FCUs not incorporating modification Tf 55 with FCUs that incorporate modification Tf 55. This AD results from the European Aviation Safety Agency (EASA) and Turbomeca expanding the applicability to the full population of FCUs installed on Arrius 2F turboshaft engines. FCUs not incorporating modification Tf 55 are susceptible to having an improperly assembled constant delta P diaphragm. We are issuing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident.

DATES: This AD becomes effective June 26, 2007.

ADDRESSES: You can get the service information identified in this AD from

Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15.

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

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.spinney@faa.gov;* telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Turbomeca Arrius 2F turboshaft engines. We published the proposed AD in the **Federal Register** on January 17, 2007 (72 FR 1947). That action proposed to require replacing all FCUs not incorporating modification Tf 55, with FCUs that incorporate modification Tf 55.

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.

Comments

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

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 46 Arrius 2F turboshaft engines installed on helicopters of U.S. registry. We also estimate that it will take about 3 work-hours per engine to perform the FCU replacement and that the average labor rate is $80 per work-hour. Required parts will cost about $25,480 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,183,120.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14275 (70 FR 54622, September 16, 2005) and by adding a new airworthiness directive, Amendment 39–15063, to read as follows:

2007–11–06 Turbomeca: Amendment 39–15063. Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 26, 2007.

Affected ADs

(b) This AD supersedes AD 2005–19–10, Amendment 39–14275.

Applicability

(c) This AD applies to Turbomeca Arrius 2F turboshaft engines with fuel control units (FCUs) not incorporating modification Tf 55. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from the European Aviation Safety Agency (EASA) and Turbomeca expanding the applicability to the full population of FCUs installed on Arrius 2F turboshaft engines. FCUs not incorporating modification Tf 55 are susceptible to having an improperly assembled constant delta pressure (delta P) diaphragm. We are issuing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident.

Compliance

(e) You are responsible for having the actions required by this AD performed as soon as practicable after the effective date of this AD but no later than July 31, 2007, unless the actions have already been done.

(f) Replace all FCUs not incorporating modification Tf 55 with FCUs that incorporate modification Tf 55.

Alternative Methods of Compliance

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

Related Information

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.spinney@faa.gov*; telephone (781) 238–7175, fax (781) 238–7199; for more information about this AD.

(i) EASA AD No. 2006–0237, dated August 9, 2006, addresses the subject of this AD.

(j) Turbomeca Mandatory Service Bulletin No. 319 73 4055, Update No. 1, dated March 17, 2006, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on May 15, 2007.

Peter A. White,

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

[FR Doc. E7–9721 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27295 Directorate Identifier 2007–CE–013–AD; Amendment 39–15060; AD 2007–11–03]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Model 228 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

During a maintenance inspection, cracks were found on the centre section of fuselage frame 19. The investigation on the root cause is still in progress. Fuselage frame 19 supports the rear side of the main landing gear (MLG). This condition, if not corrected, could cause collapse of frame 19, leading to subsequent collapse of a MLG.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 26, 2007.

On June 26, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The 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 AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 16, 2007 (72 FR 12574). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

During a maintenance inspection, cracks were found on the centre section of fuselage frame 19. The investigation on the root cause is still in progress. Fuselage frame 19 supports the rear side of the main landing gear (MLG). This condition, if not corrected, could cause collapse of frame 19, leading to subsequent collapse of a MLG. Since an unsafe condition has been identified that may exist or develop on other aircraft of this type design, this Airworthiness Directive (AD) requires a visual inspection of the affected fuselage frame and, if discrepancies are found, reporting the results to the TC holder. This is considered to be an interim action.

Comments

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

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 19 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,120 or $480 per product.

In addition, this AD may require follow-on actions. Because each follow-on action is based on the damage found on the affected airplane, we have no way of determining the cost of those follow-on actions or the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–11–03 Dornier Luftfahrt GmbH: Amendment 39–15060; Docket No. FAA–2007–27295; Directorate Identifier 2007–CE–013–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 26, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a maintenance inspection, cracks were found on the centre section of fuselage frame 19. The investigation on the root cause is still in progress. Fuselage frame 19 supports the rear side of the main landing gear (MLG). This condition, if not corrected, could cause collapse of frame 19, leading to subsequent collapse of a MLG. Since an unsafe condition has been identified that may exist or develop on other aircraft of this type design, this Airworthiness Directive (AD) requires a visual inspection of the affected fuselage frame and, if discrepancies are found, reporting the results to the TC holder. This is considered to be an interim action.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) For all airplanes, within 25 hours time-in-service (TIS) after the effective date of this AD, visually inspect the affected fuselage frame 19 using the instructions in Dornier 228 RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006.

(2) If any crack is found during the inspection required in paragraph (f)(1) of this AD, before further flight, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; *telephone:* +49–(0)8153–30–2280; fax: +49–(0)8153–30–3030; e-mail: *customersupport.dornier228@ruag.com* for FAA-approved repair instructions and incorporate the repair on the airplane.

Note 1: This is considered interim action. The State of Design and DORNIER LUFTFAHRT GmbH are looking at a possible repetitive inspection program and/or modification program to address this condition for the long-term. In the meantime, the FAA recommends that you incorporate the above inspection into your regular maintenance program.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI requires different compliance times for airplanes operated in different conditions. The FAA is not able to enforce compliance times based on airplane operations since there is no way of determining the amount of operations in different conditions. To ensure the unsafe condition is addressed adequately and timely, we are requiring the inspection for all airplanes at 25 hours TIS.

(2) The MCAI allows flight with known cracks provided they do not exceed a certain limit. FAA policy does not allow flight with cracks in primary structure. Since the fuselage is considered primary structure, we are mandating repair before further flight after any crack is found.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Karl Schletzabaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 (44 U.S.C. 3501 *et seq.*), 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 European Aviation Safety Agency (EASA) AD No: 2007–0028, dated February 5, 2007; and Dornier 228 RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006, for related information.

Material Incorporated by Reference

(i) You must use Dornier 228 RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, D–82231 Wessling, Federal Republic of Germany; telephone: 49 8153 302280.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on May 11, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9600 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26973 Directorate Identifier 2007–CE–002–AD; Amendment 39–15061; AD 2007–11–04]

RIN 2120–AA64

Airworthiness Directives; Reims Aviation S.A. Model F406 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

This AD is issued following reports, on several aircraft, of important corrosion found on the ailerons bearings.

This condition, if left uncorrected, could result in the loss of the roll control on the airplane.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 26, 2007.

On June 26, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The 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 AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 8, 2007 (72 FR 10431). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

This AD is issued following reports, on several aircraft, of important corrosion found on the ailerons bearings.

This condition, if left uncorrected, could result in the loss of the roll control on the airplane.

Comments

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

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $100 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 parts. 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 this AD to the U.S. operators to be $2,380 or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $100, for a cost of $340 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–11–04 Reims Aviation S.A.: Amendment 39–15061; Docket No. FAA–2007–26973; Directorate Identifier 2007–CE–002–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 26, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model F406 airplanes, serial numbers F406–0001 through F406–0092, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This AD is issued following reports, on several aircraft, of important corrosion found on the ailerons bearings.

This condition, if left uncorrected, could result in the loss of the roll control on the airplane.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service or 3 months, whichever occurs first after the effective date of this AD, and thereafter repetitively during a period not to exceed 12 months, inspect the aileron brackets and bearings and perform the lubrication of the aileron bearings in accordance with Reims Aviation Industries Service Bulletin No. F406–59, dated October 24, 2005.

(2) If corrosion is found during any inspection required in paragraph (f)(1) of this AD, before further flight, replace the damaged parts in accordance with Reims Aviation Industries Service Bulletin No. F406–59, dated October 24, 2005.

Note 1: We established the repetitive inspection times of this AD so that they may coincide with annual inspections.

Note 2: We encourage you to put Reims temporary revision No. 6 into the maintenance program of the F406 airplane (chapter 5 of the maintenance manual).

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: We added repetitive inspection requirements in this AD to coincide with the maintenance requirement in the service bulletin.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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 (44 U.S.C. 3501 *et seq.*), 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 Direction générale de l'aviation civile AD No. F–2005–177, dated November 9, 2005; and Reims Aviation Industries Service Bulletin No. F406–59, dated October 24, 2005, for related information.

Material Incorporated by Reference

(i) You must use Reims Aviation Industries Service Bulletin No. F406–59, dated October 24, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Reims Aviation Industries, Aérodrome de Reims Prunay, 51360 Prunay, A l'attention du Support Client; telephone: +33 (0)3.26.48.46.53; fax: +33 (0)3.26.49.18.57.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on May 11, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9618 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28254; Directorate Identifier 2007–NM–054–AD; Amendment 39–15065; AD 2007–11–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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) that applies to all Boeing Model 727 airplanes. The existing AD requires a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit, and corrective action as necessary. The existing AD also requires repetitive inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall, and applicable corrective action; and installation of sleeving over the in-tank fuel boost pump wires as a method to protect the wiring from chafing. This new AD removes certain inspection requirements from the

existing AD. This new AD adds new repetitive inspections for damage of the electrical wire and sleeve that run to the fuel boost pump through a conduit in the fuel tank, and arcing damage of the conduit and signs of fuel leakage into the conduit; applicable investigative and corrective actions; and a new repetitive engine fuel suction feed operational test. Initiation of the new inspections terminates the requirements of the existing AD. This AD results from reports of a fuel tank explosion on a Model 727–200F airplane on the ground; and of chafed wires and a damaged power cable sleeve of a fuel boost pump that were discovered during an inspection required by an existing AD on a Model 737–300 airplane. We are issuing this AD to detect and correct chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: This AD becomes effective June 6, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 6, 2007.

On June 28, 1999 (64 FR 33394, June 23, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999.

We must receive any comments on this AD by July 23, 2007.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

You may examine the contents of the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2007–28254; the directorate identifier for this docket is 2007–NM–054-AD.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On June 15, 1999, we issued AD 99–12–52, amendment 39–11199 (64 FR 33394, June 23, 1999) (originally issued on May 24, 1999, as telegraphic AD T99–12–52). That AD applies to all Boeing Model 727 series airplanes. That AD requires a boost pump dry bay inspection to detect leakage of fuel through an arced-through conduit, and corrective action, as necessary. That AD also requires repetitive detailed inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall on Model 727 series airplanes, and applicable corrective action; and installation of sleeving over the in-tank fuel boost pump wires as a method to protect the wiring from chafing. That AD resulted from reports of severe wear of in-tank fuel boost pump wiring, and arc-through of the surrounding conduit on two Model 727 series airplanes. The actions specified in that AD are intended to prevent fuel tank explosion resulting from arc-through of the fuel boost pump wiring conduits.

Actions Since AD Was Issued

Since we issued that AD, we received a report that a fuel tank explosion occurred on a Model 727–200F airplane on the ground. Investigation revealed evidence of arcing in the metal conduit that carries power wires from the front spar through the fuel tank to the dry bay of the #1 aft fuel boost pump. In a separate incident, we received a report from Boeing that chafed power wires and a damaged power cable sleeve of a fuel boost pump were discovered during an inspection required by AD 99–12–52 on a Model 737–300 series airplane. That inspection was done at 21,000 flight hours rather than the repetitive interval of 30,000 flight hours specified by that AD. The fuel boost pump installation on certain Model 737 airplanes is almost identical to the installation on Model 727 airplanes.

Other Relevant Rulemaking

Operators should note that we are considering issuing a separate AD to address the identified unsafe condition as it relates to Model 737 airplanes.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007. The alert service bulletin describes procedures for doing new repetitive detailed inspections for damage of the electrical wire and sleeve that run to the fuel boost pump through a conduit in the fuel tank, and for arcing damage of, and signs of fuel leakage into, the conduit; doing a new engine fuel suction feed operational test; doing related investigative and corrective actions, as applicable; and sending inspection results and damaged parts to the manufacturer. Related investigative and corrective actions include replacing the wire sleeve with a new, smaller wire sleeve; replacing, with BMS 13–60T09C03G018 wire, any wire that is damaged or has any part number other than BMS 13–60T09C03G018 or BMS 13–60T12C03G018; doing leak testing of the conduit if signs of fuel are discovered on the wire or sleeve during any inspection; and repairing any damaged conduit or replacing it with a new conduit.

AD 99–12–52 refers to Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999, as the appropriate source of service information for accomplishment of the detailed inspection and related investigative/corrective actions; that requirement is new paragraph (i) in this AD. That service bulletin has since been revised. Revision 1, dated May 18, 2000, is essentially the same as the original and provides no new actions.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 99–12–52. This new AD retains certain requirements of the existing AD. This AD also requires accomplishing the actions specified in the alert service bulletin described previously, which, when initiated, terminates certain requirements.

Explanation of Changes Made to Existing AD

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

The FAA has changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this action.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–28254; Directorate Identifier 2007–NM–054–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11199 (64 FR 33394, June 23, 1999) and adding the following new airworthiness directive (AD):

2007–11–08 Boeing: Docket No. FAA–2007–28254; Directorate Identifier 2007–NM–054–AD; Amendment 39–15065.

Effective Date

(a) This AD becomes effective June 6, 2007.

Affected ADs

(b) This AD supersedes AD 99–12–52.

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727–100, 727 –100C, 727–200, and 727–200F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of a fuel tank explosion on a Model 727–200F airplane on the ground, and chafed wires and a damaged power cable sleeve of a fuel boost pump that were discovered during an inspection required by an existing AD on a Model 737–300 airplane, which has a fuel boost pump installation that is almost identical to the installation on Model 727 airplanes. We are issuing this AD to detect and correct chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

Compliance

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

Restatement of Certain Requirements of AD 99–12–52

(f) For airplanes with 50,000 or more total flight hours as of June 28, 1999 (the effective date of AD 99–12–52): Within 20 days after June 28, 1999, accomplish the requirements of paragraph (i) of this AD.

(g) For airplanes with less than 50,000 total flight hours, but more than 30,000 total flight hours, as of June 28, 1999: Within 30 days after June 28, 1999, accomplish the requirements of paragraph (i) of this AD.

(h) For airplanes with 30,000 total flight hours or less, as of June 28, 1999: Within 90 days after June 28, 1999, accomplish the requirements of paragraph (i) of this AD.

Detailed Inspection, Corrective Action, and Installation

(i) Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and

applicable corrective actions; and, except as provided in paragraph (j) of this AD, install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

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

Installation: Possible Deferral

(j) Installation of sleeving over the wire bundles, as required by paragraph (i) of this AD, may be deferred if, within 18 months or 6,000 flight hours, whichever occurs first, after accomplishment of the inspection and applicable corrective actions required by paragraph (i), the following actions are accomplished: Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999, or Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

Repetitive Inspections and Corrective Actions

(k) Repeat the detailed inspection and applicable corrective actions required by paragraphs (i) and (j) of this AD at intervals not to exceed 30,000 flight hours, until the initial inspection, applicable corrective actions, and engine fuel suction feed operational test required by paragraph (l) of this AD have been done.

New Requirements of This AD

Inspection, Test, and Related Investigative and Corrective Actions

(l) For all airplanes: Within 120 days after the effective date of this AD or 5,000 flight hours after the last inspection or corrective action done before the effective date of this AD as required by paragraph (i), (j), or (k), as applicable, of this AD, whichever occurs later, do a detailed inspection for damage of the sleeve and electrical wire of the fuel boost pump, and do an engine fuel suction feed operational test; and, before further flight, do related investigative and corrective actions, as applicable; by doing all applicable actions in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007. Repeat the detailed inspection and engine fuel suction feed operational test thereafter at intervals not to exceed 15,000 flight cycles. Accomplishment of the initial inspection, applicable corrective actions, and engine fuel suction feed operational test of this paragraph terminates the requirements of paragraphs (i), (j), and (k) of this AD.

Inspection Report and Disposition of Damaged Parts

(m) At the applicable time(s) specified in paragraph (m)(1) or (m)(2) of this AD: Submit a report of the findings (both positive and negative) of any inspection required by this AD and send any damaged parts to the manufacturer, as described in Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007. The report must include the information specified in Appendix A of the alert service bulletin. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

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

(2) For any inspection done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 99–12–52 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(o) You must use applicable Boeing service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Boeing service information	Revision level	Date
Alert Service Bulletin 727–28A0126	Original	May 24, 1999.
Alert Service Bulletin 727–28A0132	Original	February 22, 2007.
Service Bulletin 727–28A0126	1	May 18, 2000.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007; and Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 28, 1999 (64 FR 33394, June 23, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9799 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28253; Directorate Identifier 2007–NM–031–AD; Amendment 39–15064; AD 2007–11–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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) that applies to all Model 737–100, –200, –300, –400, and –500 series airplanes. The existing AD currently requires repetitive detailed inspections for damage of the electrical wire and sleeve that run through a conduit in the fuel tank to the fuel boost pump, and related investigative and corrective actions; as applicable. This new AD removes certain inspection requirements. This new AD adds repetitive detailed inspections for damage of the electrical wire and sleeve that run to the fuel boost pump through a conduit in the fuel tank, and arcing damage of the conduit and signs of fuel leakage into the conduit; replacement of the sleeve with a new, smaller-diameter sleeve; and related investigative and corrective actions, as applicable. This AD also adds airplanes to the applicability. Accomplishment of the initial new inspection and the sleeve installation terminates the requirements of the existing AD. This new AD results from a report of a fuel tank explosion on a Model 727–200F airplane on the ground, and a report of chafed wires and a damaged power cable sleeve of a fuel boost pump discovered during an inspection on a Model 737–300 airplane. We are issuing this AD to detect and correct chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: This AD becomes effective June 6, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 6, 2007.

On November 12, 1999 (64 FR 54763, October 8, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

On October 15, 1998 (63 FR 52152, September 30, 1998), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998.

On June 29, 1998 (63 FR 34271, June 24, 1998), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notice of Status Change NSC 01, dated May 7, 1998, Notice of Status Change NSC 02, dated May 8, 1998, and Notice of Status Change NSC 03, dated May 9, 1998.

We must receive any comments on this AD by July 23, 2007.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

You may examine the contents of the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2007–28253; the directorate identifier for this docket is 2007–NM–031–AD.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On September 29, 1999, we issued AD 99–21–15, amendment 39–11360 (64 FR 54763, October 8, 1999). That AD applies to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires repetitive detailed inspections for damage of the electrical wire and sleeve that run through a conduit in the fuel tank to the fuel boost pump, and related investigative and corrective actions, as applicable. That AD resulted from reports of severe wear of the fuel boost pump wiring due to chafing between the wiring and the surrounding conduit inside the fuel tank, pin-hole-sized holes in the conduit that appear to be the result of arc-through of the conduit, and exposure of the main tank boost pump wire conductor inside a conduit and signs of arcing to the wall of the conduit. The actions specified in that AD are intended to detect and correct chafing and prevent electrical arcing between the fuel boost pump electrical wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

Actions Since AD Was Issued

Since we issued that AD, we received a report that a fuel tank explosion occurred on a Model 727–200F airplane on the ground. Investigation revealed evidence of arcing in the metal conduit that carries power wires from the front spar through the fuel tank to the dry bay of the #1 aft fuel boost pump. In a separate incident, we received a report from Boeing indicating that chafed wires and a damaged power cable sleeve of a fuel boost pump were discovered during a repetitive inspection of the power cable and sleeve of a Model 737–300 airplane; that inspection was done at approximately 21,000 flight hours rather than the repetitive interval of 30,000 flight hours specified by the existing AD. The fuel boost pump installation on certain Model 737 airplanes is almost identical to the installation on Model 727 airplanes.

We have also determined that Model 737–200C series airplanes are also subject to the unsafe condition identified in AD 99–21–15.

Other Relevant Rulemaking

Operators should note that we are considering issuing a separate AD to address the identified unsafe condition as it relates to Model 727 airplanes.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–28A1263, Revision 1, dated March 19, 2007. This service bulletin differs from the service information cited in AD 99–21–15 in the following ways. The alert service bulletin describes procedures for performing new repetitive detailed inspections for damage of the electrical wire and sleeve that run to the fuel boost pump through a conduit in the fuel tank, and arcing damage of the conduit and signs of fuel leakage into the conduit; replacing the sleeve with a new, smaller-diameter sleeve; performing related investigative and corrective actions, as applicable; and reporting inspection results and returning damaged parts to the manufacturer. The repetitive interval for the detailed inspections is 15,000 flight hours (rather than 30,000 flight hours,

as required by AD 99–21–15). Related investigative and corrective actions include replacing, with BMS 13–60T09C03G018 wire, any wire that is damaged or has any part number other than BMS 13–60T09C03G018 or BMS 13–60T12C03G018; doing leak testing of the conduit if signs of fuel are discovered on the wire or sleeve during any inspection; and repairing any damaged conduit or replacing it with a new conduit.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 99–21–15. This new AD retains certain requirements of the existing AD. This AD also requires accomplishing the actions specified in the alert service bulletin described previously.

Changes to Existing AD

Instead of restating all of the corrective actions specified in AD 99–21–15, that is, paragraphs (h), (i), (j), and (k), we simplified these requirements by consolidating them into paragraph (j) in this AD. We have verified that all of the information of paragraphs (h), (i), (j), and (k) of AD 99–21–15 is contained in the service bulletin references identified in paragraph (j) of this AD.

Clarification of Applicability

The applicability of AD 99–21–15 did not specifically list Model 737–200C series airplanes. Likewise, the service information (Boeing Service Bulletin 737–28A1120, original version, Revision 1, and Revision 2) cited in that AD did not specifically identify Model 737–200C series airplanes in the effectivity, although Revision 3 did identify them. Because the unsafe condition could occur on those airplanes, this AD adds them to the applicability to ensure that the actions required by this AD are accomplished on all affected airplanes. We recognize that some of these airplanes might have already been inspected as specified in the existing AD. In order to give credit for work accomplished on these airplanes, this AD adds a compliance time for the initial inspection relative to the date of the most recent inspection done in accordance with Service Bulletin 737–28A1120.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

Explanation of Compliance Time

The compliance time for the new inspection in this AD is 120 days. Based on the large number of affected U.S.-registered airplanes and the amount of time required to accomplish the required actions, including corrective actions, we consider that this compliance time is necessary to avoid unnecessarily disrupting flight schedules.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–28253; Directorate Identifier 2007–NM–031–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11360 (64 FR 54763, October 8, 1999) and adding the following new airworthiness directive (AD):

2007–11–07 Boeing: Docket No. FAA–2007–28253; Directorate Identifier 2007–NM–031–AD; Amendment 39–15064.

Effective Date

(a) This AD becomes effective June 6, 2007.

Affected ADs

(b) This AD supersedes AD 99–21–15.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of a fuel tank explosion on a Model 727–200F airplane on the ground, and a report of chafed wires and a damaged power cable sleeve of a fuel boost pump discovered during an inspection on a Model 737–300 airplane. (The fuel boost pump installation on certain Model 737 airplanes is almost identical to the installation on Model 727 airplanes.) We are issuing this AD to detect and correct chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

Compliance

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

Restatement of Certain Requirements of AD 99–21–15

Certain Inspections Required by AD 98–11–52

(f) For Model 737–100, –200, –300, –400, and –500 series airplanes: Prior to the accumulation of 30,000 total flight hours or within 45 days after June 29, 1998 (the effective date of AD 98–11–52, amendment 39–10611, which was superseded by AD 98–19–09), whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

Inspections Required by AD 98–19–09

(g) For Model 737–100, –200, –300, –400, and –500 series airplanes that have accumulated 20,000 or more total flight hours and less than 30,000 total flight hours as of October 15, 1998 (the effective date of AD 98–19–09, amendment 39–10751, which was superseded by AD 99–21–15): Within 60 days after October 15, 1998, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring; in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

Inspections Required by AD 99–21–15

(h) For Model 737–100, –200, –300, –400, and –500 series airplanes: Remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring; at the time specified in paragraph (h)(1) or (h)(2) of this AD, as applicable. Perform these actions in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

(1) For airplanes having line numbers 1 through 3072 inclusive that have accumulated less than 20,000 total flight hours as of October 15, 1998: Inspect at the earlier of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Prior to the accumulation of 20,000 total flight hours, or within 60 days after November 12, 1999 (the effective date of AD 99–21–15), whichever occurs later.

(ii) Within 24 months after November 12, 1999.

(2) For airplanes having line numbers 3073 and subsequent: Inspect prior to the accumulation of 30,000 total flight hours.

Repetitive Intervals

(i) For Model 737–100, –200, –300, –400, and –500 series airplanes: Repeat the inspection required by paragraph (f), (g), or (h) of this AD, as applicable, at intervals not to exceed 30,000 flight hours after initial accomplishment of the applicable inspection, until the initial inspection, applicable corrective actions, and sleeve installation required by paragraph (k) of this AD have been done.

Corrective Actions

(j) If any discrepancy is found during any inspection required by paragraph (f), (g), (h), or (i) of this AD: Before further flight, repair the discrepancy in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; Revision 2, dated November 26, 1998; or Revision 3, dated April 26, 2001.

New Requirements of This AD

Inspection and Related Investigative and Corrective Actions

(k) At the applicable time specified by paragraph (k)(1) or (k)(2) of this AD: Do a detailed inspection for damage of the sleeve and electrical wire of the fuel boost pump; and, before further flight, install a new, smaller-diameter sleeve, and do related investigative and corrective actions, as applicable; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1263, Revision 1, dated March 19, 2007. Thereafter, repeat the detailed inspection at intervals not to exceed 15,000 flight cycles. Accomplishment of the initial inspection, applicable corrective actions, and sleeve installation required by this paragraph terminates the requirements of paragraphs (f), (g), (h), and (i) of this AD.

(1) For Model 737–100, –200, –300, –400, and –500 series airplanes: Within 120 days after the effective date of this AD, or within 5,000 flight hours after the last inspection or repair done as required by paragraph (f), (g), (h), or (i), as applicable, of this AD, whichever occurs later.

(2) For Model 737–200C series airplanes: Within 120 days after the effective date of this AD, or within 5,000 flight hours after the last inspection or repair done in accordance with any version of Boeing Alert Service Bulletin 737–28–1120, whichever occurs later.

Inspection Report and Disposition of Damaged Parts

(l) At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD: Submit a report of the findings (both positive and negative) of any inspection required by paragraph (k) of this AD and send any damaged parts to the manufacturer, as described in Boeing Alert Service Bulletin 737–28A1263, Revision 1, dated March 19, 2007. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

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

(2) For any inspection done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Credit for Actions Done Using Previous Service Information

(m) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 737–28A1263, dated February 19, 2007, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 99–21–15, amendment 39–11360, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(o) You must use applicable Boeing service bulletins specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin 737–28A1120, as revised by Notice of Status Change NSC 01, dated May 7, 1998, Notice of Status Change NSC 02, dated May 8, 1998, and Notice of Status Change NSC 03, dated May 9, 1998.	Original	April 24, 1998.
Boeing Alert Service Bulletin 737–28A1120	1	May 28, 1998.
Boeing Alert Service Bulletin 737–28A1120	2	November 26, 1998.
Boeing Service Bulletin 737–28A1120	3	April 26, 2001.
Boeing Alert Service Bulletin 737–28A1263	1	March 19, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1263, Revision 1, dated March 19, 2007; and Boeing Service Bulletin 737–28A1120, Revision 3, dated April 26, 2001; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On November 12, 1999 (64 FR 54763, October 8, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(3) On October 15, 1998 (63 FR 52152, September 30, 1998), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998.

(4) On June 29, 1998 (63 FR 34271, June 24, 1998), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notice of Status Change NSC 01, dated May 7, 1998, Notice of Status Change NSC 02, dated May 8, 1998, and Notice of Status Change NSC 03, dated May 9, 1998.

(5) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 2, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–9801 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1313

[Docket No. DEA–292N]

RIN 1117–AB06

Implementation of the Combat Methamphetamine Epidemic Act of 2005; Notice of Transfers Following Importation or Exportation; Temporary Stay of Certain Provisions

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim final rule with request for comment; temporary stay of provisions.

SUMMARY: On April 9, 2007, the Drug Enforcement Administration (DEA) published an Interim Final Rule with Request for Comment in the **Federal Register** (72 FR 17401) implementing the provisions of section 716 of the Combat Methamphetamine Epidemic Act of 2005 (CMEA) (21 U.S.C. 971 as amended), enacted March 9, 2006, which required additional reporting for import, export, and international transactions involving all List I and List II chemicals. Subsequent to publication of the Interim Final Rule, DEA received both written and verbal comments from the regulated industry requesting the delay of the effective date of the rulemaking to allow industry more time to fully comply with the new provisions. The rule became effective May 9, 2007. After careful consideration of the comments received, DEA is temporarily staying the provisions of the Interim Final Rule with Request for Comment published April 9, 2007, by 30 days, from May 9, 2007 to June 8, 2007.

DATES: Effective May 22, 2007, through June 7, 2007, the provisions of 21 CFR 1313.12(c)(1)(ii), 1313.13(c)(5), 1313.16, 1313.17, 1313.26, 1313.27, 1313.32(d), 1313.32(e), and 1313.35 are temporarily stayed.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). On April 9, 2007, the Drug Enforcement Administration (DEA) published an Interim Final Rule with Request for Comment (72 FR 17401) implementing section 716 of the CMEA. That section addressed the importation, exportation, and international transactions of all List I and List II chemicals. Briefly, section 716 of the CMEA (21 U.S.C. 971 as

amended) extends the current reporting requirements—as well as the current exemption for regular importers and regular customers—to post-import and post-export transactions of List I and List II chemicals. With implementation of the Interim Final Rule with Request for Comment, importers, exporters, brokers, and traders are required to notify DEA, before the transaction is to take place, of certain information regarding their downstream customers. This person is referred to as the ''transferee'' of the United States importer, exporter, broker or trader. Notification occurs on a new DEA Form 486. If the transferee changes, or the quantity of the chemical is increased after initial notification to DEA, the importer, exporter, broker or trader must file an amended DEA Form 486 with DEA. Within 30 days after the importation, exportation, or international transaction is completed, the importer, exporter, broker, or trader must send DEA a return declaration containing information regarding the transaction. The requirements of section 716 and the implementing regulations were discussed extensively in DEA's Interim Final Rule with Request for Comment published April 9, 2007. This Interim Final Rule became effective May 9, 2007.

Comments Received

Subsequent to publication of the Interim Final Rule, DEA received two written requests for a delay of the effective date of the rule, one from a national chemical association and the other from a large chemical company. Commenters indicated that more time was needed to fully comply with the provisions of the Interim Final Rule. Commenters also sought clarification regarding procedural implementation of the rule. DEA also received verbal communications from other organizations and individual registrants regarding procedural concerns and requests for clarification regarding the rule.

Temporary Stay of Provisions

After careful consideration of the concerns expressed by the regulated industry, DEA is temporarily staying certain provisions of the Interim Final Rule with Request for Comment published April 9, 2007. Specifically, DEA is temporarily staying the following provisions:

- The waiver of the 15-day advance notification requirement for importations of a listed chemical for which the importer intends to transfer the listed chemical to a person who is a regular customer of the chemical;
- The requirement that importers, exporters, brokers and traders notify DEA of the transferee of the listed chemical;
- The requirement that importers, exporters, brokers and traders amend the advance notification (DEA Form 486) if the transferee changes or the quantity of the chemical to be transferred increases; and
- The requirement that importers, exporters, brokers and traders file return declarations regarding importations, exportations, and international transactions with DEA.

These provisions are being temporarily stayed until June 8, 2007.

This temporary stay applies only to those provisions implemented by section 716 of CMEA. All other provisions regarding the importation, exportation, and international transactions involving List I and List II chemicals remain in full force and effect.

Implementation of the Interim Final Rule Published April 9, 2007

The following implementation guidance is provided pursuant to the temporary stay of 21 CFR 1313.12(c)(1)(ii), 1313.13(c)(5), 1313.16, 1313.17, 1313.26, 1313.27, 1313.32(d), 1313.32(e), and 1313.35.

Effective June 8, 2007, all United States importers, exporters, brokers and traders of List I and List II chemicals must use the revised DEA Form 486 to notify DEA of their imports, exports, and international transactions. This revised form is available on the Diversion Control Program Web site, *http://www.deadiversion.usdoj.gov.*

Persons who submit import, export, and international transaction advance notifications to DEA on the new form prior to June 8, 2007, are not required to provide a return declaration to DEA regarding those transactions.

Effective June 8, 2007, all persons previously granted regular importer status will no longer hold that status. Every import of a List I and List II chemical must be reported to DEA not later than 15 days prior to the proposed importation. This report must include the name of the person to whom the chemical is proposed to be transferred and the amount of the chemical proposed to be transferred. As DEA discussed in the April 9, 2007, Interim Final Rule, DEA will evaluate each proposed importation based not only on the chemical to be imported but on the transferee information supplied by the importer as well. This process will allow for the establishment of regular customer status by transferees of United States importers, and for establishment of regular importer status by importers importing a specific listed chemical intended for sale to a specific customer.

Effective June 8, 2007, all persons importing, exporting, and conducting international transactions involving List I and List II chemicals must provide return declarations to DEA.

Pursuant to the authority of the Attorney General to promulgate and enforce rules and regulations under the Controlled Substances Act (21 U.S.C. 871(b)), as delegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR Part 0, Appendix to Subpart R, section 7, effective May 22, 2007, through June 7, 2007, the provisions of 21 CFR 1313.12(c)(1)(ii), 1313.13(c)(5), 1313.16, 1313.17, 1313.26, 1313.27, 1313.32(d), 1313.32(e), and 1313.35 are temporarily stayed.

Dated: May 15, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 07–2551 Filed 5–18–07; 8:59 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 5801]

Amendment of the International Traffic in Arms Regulations: Policy With Respect to Somalia

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: Notice is hereby given that the Department of State is amending the International Traffic in Arms Regulations (ITAR) regarding Somalia at 22 CFR 126.1 to make it United States policy to consider on a case-by-case basis licenses, or other approvals, for exports of defense articles and defense services destined for Somalia that conform to the provisions of United Nations Security Council resolution 1744, which amends United Nations Security Council resolution 733. The United States will deny licenses, other approvals, exports or imports of defense articles and defense services destined for or originating in Somalia that do not conform to the provisions of the resolution.

EFFECTIVE DATE: This rule is effective upon publication of this **Federal Register** Notice.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

• *E-mail: DDTCResponseTeam@state.gov* with an appropriate subject line.

• *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, 12th Floor, SA–1, Washington, DC 20522–0112.

• *Fax:* 202–261–8199.

• *Hand Delivery or Courier (regular work hours only):* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTENTION: Regulatory Change, SA–1, 12th Floor, 2401 E Street, NW., Washington, DC 20037.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Ann K. Ganzer, Office of Defense Trade Controls Policy, Department of State, 12th Floor, SA–1, Washington, DC 20522–0112; Telephone 202–663–2792 or FAX 202–261–8199; e-mail: *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change.

SUPPLEMENTARY INFORMATION: On February 20, 2007, the United Nations Security Council (UNSC) adopted resolution 1744 which, *inter alia,* amends the complete embargo on weapons and military equipment imposed by UNSC resolution (UNSCR) 733 (1992). In resolution 1744, the UNSC decided that the embargo shall no longer apply to the export to Somalia of weapons and military equipment, technical training, and assistance when intended solely for either of two purposes: (1) Support for the African Union Mission to Somalia (AMISOM), an effort to establish an initial stabilization phase in Somalia, and (2) support for the purpose of helping develop security sector institutions in Somalia that further the objectives of peace, stability and reconciliation in Somalia. Proposed exports for the latter purpose will require advance notification by the United States Government to the UN Somalia Sanctions Committee and the absence of a negative decision by that Committee. In addition, exemptions from licensing requirements may not be used with respect to exports to Somalia without prior written authorization by the Directorate of Defense Trade Controls.

To implement this new policy the ITAR is amended in the following manner: the specific reference to Somalia in 126.1(a) is removed, and all relevant information pertaining to Somalia is set forth in a new paragraph (m) in Section 126.1.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

This rule does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rule does not require analysis under the Unfunded Mandates Reform Act.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Orders 12372 and 13132

It is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; Sec.1225, Pub. L. 108–375.

■ 2. Section 126.1 is amended by revising paragraph (a) to read as follows and adding paragraph (m):

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.*, Burma, China, Liberia, and Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

(m) *Somalia.* It is the policy of the United Sates to deny licenses, or other approvals, for exports or imports of defense articles and defense services destined for or originating in Somalia. A denial policy will remain for exports or imports of defense articles and defense services destined for or originating in Somalia except, on a case-by-case basis, for defense articles and defense services intended solely for:

(1) Support for the African Union Mission to Somalia (AMISOM), and

(2) Support for the purpose of helping develop security sector institutions in Somalia that further the objectives of peace, stability and reconciliation in Somalia, after advance notification of the proposed export by the United States Government to the UN Somalia Sanctions Committee and the absence of a negative decision by that committee.

Exemptions from the licensing requirement may not be used with respect to any export to Somalia unless specifically authorized in writing by the Directorate of Defense Trade Controls.

Dated: April 27, 2007.

Stephen D. Mull,

Acting Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. E7–9860 Filed 5–21–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9325]

RIN 1545–BD23

Distributions From a Pension Plan Upon Attainment of Normal Retirement Age

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 401(a) and 411(d)(6) of the Internal Revenue Code. These regulations provide rules permitting distributions to be made from a pension plan upon the attainment of normal retirement age prior to a participant's severance from employment with the employer maintaining the plan. These regulations provide the public with guidance regarding distributions from qualified pension plans and will affect administrators of, and participants in, such plans.

DATES: *Effective Date:* These regulations are effective May 22, 2007.

Applicability Dates: These regulations are generally applicable May 22, 2007. For dates of applicability, see §§ 1.401(a)–1(b)(4) and 1.411(d)–4, A–12(a).

FOR FURTHER INFORMATION CONTACT: Cathy A. Vohs at (202) 622–6090 or Janet A. Laufer at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a) sets forth the qualification requirements for a trust forming part of a stock bonus, pension, or profit-sharing plan of an employer. Several of these qualification requirements are based on a plan's normal retirement age. Section 411(a)(8) defines the term ''normal retirement age'' as the earlier of (a) the time a participant attains normal retirement age under the plan or (b) the later of the time a plan participant attains age 65 or the 5th anniversary of the time a plan participant commenced participation in the plan.

The definition of normal retirement age is important in applying the rules under section 411(b) which are designed to preclude avoidance of the minimum vesting standards through the backloading of benefits (for example, a benefit formula under which the rate of benefit accrual is increased disproportionately for employees with longer service) because those rules are based on the benefit payable at normal retirement age. Normal retirement age is also relevant for applying the rules relating to suspension of benefits under section 411(a)(3)(B) and the rules under section 411(b)(1)(H)(iii) that permit a plan to offset accruals after normal retirement age by either the actuarial value of distributions made after normal retirement age or the actuarial value of increases in the benefits due to delay in payment. Normal retirement age is also used in determining the minimum benefit for non-key employees in the case of a top-heavy defined benefit plan. See section 416(c)(1)(A) and (E). Also, the vesting requirements of sections 401(a)(7) and 411 are based upon normal retirement age.

Section 411(d)(6) generally prohibits a qualified plan from being amended to reduce a participant's accrued benefit and, for this purpose, an elimination or reduction of an early retirement benefit or a retirement-type subsidy, or an elimination of an optional form of benefit, is treated as a reduction in the accrued benefit. The Secretary has the authority under section 411(d)(6) to allow amendments that eliminate an optional form of benefit.

Section 401(a) permits three types of plans to qualify under section 401(a): Stock bonus, pension, and profit-sharing plans. Section 1.401–1(a)(2)(i) and (b)(1)(i) of the Income Tax Regulations interprets what it means to be a ''pension plan,'' and has done so since the publication of those regulations as TD 6203 (1956–2 CB 219) (see § 601.601(d)(2)(ii)(b)). These regulations (the 1956 regulations) provide that a qualified plan under section 401(a) is a program and arrangement which is established and maintained by an employer ''in the case of a pension plan, to provide for the livelihood of the employees or their beneficiaries after the retirement of such employees through the payment of benefits determined without regard to profits.'' [1] The 1956 regulations defining a qualified pension plan further provide that a pension plan must be ''a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement.''

Following the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), 93 Public Law 406 (88 Stat. 829), the regulations under section 401(a) were modified to provide that the 1956 regulations continued to apply, except as otherwise provided. See § 1.401(a)–1(b)(1)(i) and (ii). Accordingly, a pension plan is generally not permitted to pay benefits before retirement. See also Rev. Rul. 56–693 (1956–2 CB 282), as modified by Rev. Rul. 60–323 (1960–2 CB 148) (see § 601.601(d)(2)(ii)(b)).

Rev. Rul. 71–24 (1971–1 CB 114) (see § 601.601(d)(2)(ii)(*b*)) provides guidance for the treatment of benefits under a pension plan for employees who continue employment after normal retirement age. Rev. Rul. 71–24 includes an example that indicates that benefits are permitted to commence during employment after normal retirement age.

Rev. Rul. 71–147 (1971–1 CB 116) (see § 601.601(d)(2)(ii)(*b*)) provides that the normal retirement age in a pension or annuity plan is generally the lowest age specified in the plan at which the employee has the right to retire without the consent of the employer and receive retirement benefits based on the amount of the employee's service on the date of retirement at the full rate set forth in the plan (that is, without actuarial or similar reduction because of retirement before some later specified age). While ordinarily the normal retirement age under pension and annuity plans is age 65, Rev. Rul. 71–147 permitted a different age to be specified, but an age lower than 65 was permitted only if the age represented the age at which employees customarily retire in the particular company or industry, and was not a device to accelerate funding.

Following the enactment of section 411(a)(8) (defining normal retirement age as described earlier in this preamble) under ERISA, Rev. Rul. 71–147 was modified by Rev. Rul. 78–120 (1978–1 CB 117) (see § 601.601(d)(2)(ii)(*b*)). Under Rev. Rul. 78–120, for purposes of section 411, a pension plan is permitted to have a normal retirement age lower than age 65, regardless of the age at which employees customarily retire in the particular company or industry.

Section 401(a)(36), added by section 905(b) of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA '06), provides that a trust forming part of a pension plan is not treated as failing to constitute a qualified trust under section 401(a) solely because the plan provides that a distribution may be made from such trust to an employee who has attained

[1] This rule is limited to a pension plan, which is either a defined benefit plan or a defined contribution plan that is not a stock bonus or profit-sharing plan (generally referred to as a money purchase pension plan). Other rules apply to stock bonus plans and profit-sharing plans.

age 62 and who is not separated from employment at the time of such distribution. Section 401(a)(36) applies to distributions in plan years beginning after December 31, 2006.

On November 10, 2004, a notice of proposed rulemaking (REG–114726–04) under section 401 was published in the **Federal Register** (69 FR 65108) (the proposed regulations). The proposed regulations would have allowed in-service distributions after normal retirement age, but would not have permitted a normal retirement age to be set so low as to be a subterfuge to avoid qualification requirements. The proposed regulations would also have permitted in-service distributions before normal retirement age under a bona fide phased retirement program.

On March 14, 2005, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. In light of the enactment of section 401(a)(36) by PPA '06, only portions of the proposed regulations are being finalized at this time. The IRS recently issued a notice requesting comments as to whether the portions of the proposed regulations relating to in-service distributions pursuant to a bona fide phased retirement program should be finalized. See Notice 2007–8 (2007–3 IRB 276) (see § 601.601(d)(2)(ii)(*b*)). The portions of the proposed regulations relating to normal retirement age and in-service distribution upon attainment of normal retirement age are being finalized by this Treasury Decision. The significant revisions to the proposed regulations are discussed in this preamble.

Explanation of Provisions and Summary of Comments

I. Overview

This Treasury Decision modifies existing regulations, including the regulations at § 1.401(a)–1 which generally require a pension plan to be maintained primarily to provide systematically for the payment of definitely determinable benefits after retirement. These regulations provide two exceptions to this rule. First, they clarify that a pension plan is permitted to commence payment of retirement benefits to a participant after the participant has attained normal retirement age. The regulations also provide rules on how low a plan's normal retirement age is permitted to be and include a related exception to the anti-cutback rules of section 411(d)(6) to allow conforming amendments during a transitional period. Second, the regulations reflect the provisions of new section 401(a)(36).

II. Normal Retirement Age

A. In General

These regulations adopt the rule of the proposed regulations under which a pension plan (a defined benefit plan or money purchase pension plan) is permitted to pay benefits upon an employee's attainment of normal retirement age, even if the employee has not yet had a severance from employment with the employer maintaining the plan. Comments generally supported the inclusion of this rule as reflecting existing practice among some pension plans, based on an example in Rev. Rul. 71–24.

These regulations also include rules restricting a plan's normal retirement age. The proposed regulations would have provided that a plan's normal retirement age could not be set so low as to be a subterfuge to avoid the requirements of section 401(a), and, accordingly, normal retirement age could not be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce.[2] Some comments expressed concern about the specifics of this rule, including concern about how it might be applied in various circumstances, and suggested that the regulations contain a safe harbor for which there would be no need for a demonstration of the typical retirement age for the covered workforce.

These final regulations modify the proposed regulations to replace the subterfuge standard with a requirement that the normal retirement age under a plan be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. To address comments about the need for a safe harbor age, these regulations provide that a normal retirement age of at least age 62 is deemed to be not earlier than the typical retirement age for the industry in which the covered workforce is employed. Thus, a plan satisfies this safe harbor if its normal retirement age is age 62, or if its normal retirement age is the later of age 62 or another specified date, such as the later of age 62 or the fifth anniversary of plan participation. However, a plan that is subject to section 411 cannot provide for a normal retirement age that is later than the later of the time the participant attains age 65 or the fifth anniversary of the time the participant commenced participation in the plan. See section 411(a)(8)(B).

If a plan's normal retirement age is earlier than age 62, the determination of whether the age is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed is based on all of the relevant facts and circumstances. If the normal retirement age is between ages 55 and 62, then it is generally expected that a good faith determination of the typical retirement age for the industry in which the covered workforce is employed that is made by the employer (or, in the case of a multiemployer plan, made by the trustees) will be given deference, assuming that the determination is reasonable under the facts and circumstances. However, a normal retirement age that is lower than age 55 is presumed to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry of the relevant covered workforce absent facts and circumstances that demonstrate otherwise to the Commissioner.

In the case of a plan where substantially all of the participants in the plan are qualified public safety employees (within the meaning of section 72(t)(10)(B), as added by section 828 of PPA '06), a normal retirement age of age 50 or later is deemed not to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. Under section 72(t)(10)(B), a qualified public safety employee means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

B. Section 411(d)(6) Relief

These regulations include an amendment to the existing regulations under section 411(d)(6) to permit a plan to be amended during a transition period to conform to the rules concerning normal retirement age. Thus, a plan amendment that changes the normal retirement age under the plan to a later normal retirement age (pursuant to these regulations) does not violate section 411(d)(6) merely because the amendment eliminates a right to an in-service distribution prior to the amended normal retirement age.

[2] The preamble to the proposed regulations noted that, while a low normal retirement age may have a significant cost effect on a traditional defined benefit plan, this effect is not as significant for defined contribution plans or for certain hybrid defined benefit plans.

However, this rule does not provide any other relief. For example, this rule does not permit the amendment to reduce benefits in some other manner that fails to satisfy section 411(d)(6). Neither does the rule provide relief under section 411(a)(9) (requiring that the normal retirement benefit not be less than the greater of any early retirement benefit payable under the plan or the benefit under the plan commencing at normal retirement age), section 411(a)(10) (if the amendment changes the plan's vesting rules), or section 4980F (or section 204(h), the parallel provision of ERISA) (relating to amendments that reduce the rate of future benefit accrual). See also Rev. Rul. 81–210 (1981–2 CB 89) (see § 601.601(d)(2)(ii)(*b*)). An example is included to illustrate this rule.

Effective Dates

These regulations are generally applicable May 22, 2007. In the case of a governmental plan (as defined in section 414(d)), these regulations apply with respect to plan years beginning on or after January 1, 2009. In the case of a plan maintained pursuant to one or more collective bargaining agreements that have been ratified and are in effect on May 22, 2007, these regulations do not apply before the first plan year that begins after the last of the agreements terminates determined without regard to any extension thereof (or, if earlier, May 24, 2010.

A provision of a plan that results in the failure of the plan to satisfy § 1.401(a)–1(b)(2) or (3) is a disqualifying provision described in § 1.401(b)–1(b)(3)(i). Therefore, the remedial amendment period rules of § 1.401(b)–1 apply. For example, in the case of a plan with a calendar plan year that is maintained by an employer with a calendar taxable year (and the plan is not a governmental plan and is not maintained pursuant to a collective bargaining agreement), the plan's remedial amendment period with respect to § 1.401(a)–1(b)(2) and (3) ends on the date prescribed by law for the filing of the employer's income tax return (including extensions) for the 2007 taxable year.

In the case of a plan amendment that increases the plan's normal retirement age pursuant to this regulation, the amendment may also eliminate a right to an in-service distribution prior to the normal retirement age under the plan as amended without violating section 411(d)(6) if the amendment is adopted after May 22, 2007 and on or before the last day of the applicable remedial amendment period under § 1.401(b)–1 with respect to the requirements of § 1.401(a)–1(b)(2) and (3). For purposes of section 1107 of PPA '06, such an amendment is not made pursuant to PPA '06 and is not made pursuant to any regulation issued under PPA '06.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement upon small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Christopher A. Crouch (formerly of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)), Cathy A. Vohs and Janet A. Laufer of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.401(a)–1 also issued under 26 U.S.C. 401. * * *

■ **Par. 2**. Section 1.401(a)–1 is amended by:

■ 1. Revising paragraph (b)(1)(i).

■ 2. Adding paragraphs (b)(2), (b)(3), and (b)(4).

■ The additions and revision read as follows:

§ 1.401(a)–1 Post-ERISA qualified plans and qualified trusts; in general.

* * * * *

(b) * * *

(1) * * *

(i) In order for a pension plan to be a qualified plan under section 401(a), the plan must be established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to its employees over a period of years, usually for life, after retirement or attainment of normal retirement age (subject to paragraph (b)(2) of this section). A plan does not fail to satisfy this paragraph (b)(1)(i) merely because the plan provides, in accordance with section 401(a)(36), that a distribution may be made from the plan to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

* * * * *

(2) *Normal retirement age*—(i) *General rule.* The normal retirement age under a plan must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(ii) *Age 62 safe harbor.* A normal retirement age under a plan that is age 62 or later is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(iii) *Age 55 to age 62.* In the case of a normal retirement age that is not earlier than age 55 and is earlier than age 62, whether the age is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed is based on all of the relevant facts and circumstances.

(iv) *Under age 55.* A normal retirement age that is lower than age 55 is presumed to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed, unless the Commissioner determines that under the facts and circumstances the normal retirement age is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(v) *Age 50 safe harbor for qualified public safety employees.* A normal retirement age under a plan that is age 50 or later is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed if substantially all of the participants in

the plan are qualified public safety employees (within the meaning of section 72(t)(10)(B)).

(3) *Benefit distribution prior to retirement.* For purposes of paragraph (b)(1)(i) of this section, retirement does not include a mere reduction in the number of hours that an employee works. Accordingly, benefits may not be distributed prior to normal retirement age solely due to a reduction in the number of hours that an employee works.

(4) *Effective date.* Except as otherwise provided in this paragraph (b)(4), paragraphs (b)(2) and (3) of this section are effective May 22, 2007. In the case of a governmental plan (as defined in section 414(d)), paragraphs (b)(2) and (3) of this section are effective for plan years beginning on or after January 1, 2009. In the case of a plan maintained pursuant to one or more collective bargaining agreements that have been ratified and are in effect on May 22, 2007, paragraphs (b)(2) and (3) of this section do not apply before the first plan year that begins after the last of such agreements terminate determined without regard to any extension thereof (or, if earlier, May 24, 2010. See § 1.411(d)–4, A–12, for a special transition rule in the case of a plan amendment that increases a plan's normal retirement age pursuant to paragraph (b)(2) of this section.

■ **Par. 3**. Section 1.411(d)–4 is amended by adding Q&A–12 as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–12. Is there a transition period during which a plan is permitted to eliminate a right to in-service distributions in connection with an amendment to ensure that the plan's normal retirement age satisfies the requirements of § 1.401(a)–1(b)(2)?

A–12. (a) *In general.* A plan amendment that changes the normal retirement age under the plan to a later normal retirement age pursuant to § 1.401(a)–1(b)(2) does not violate section 411(d)(6) merely because it eliminates a right to an in-service distribution prior to the amended normal retirement age. However, this paragraph does not provide relief from any other applicable requirements; for example, this relief does not permit the amendment to violate section 411(a)(9) (requiring that the normal retirement benefit not be less than the greater of any early retirement benefit payable under the plan or the benefit under the plan commencing at normal retirement age), section 411(a)(10) (if the amendment changes the plan's vesting rules), section 411(d)(6) (other than elimination of the right to an in-service distribution prior to the amended normal retirement age), or section 4980F (relating to an amendment that reduces the rate of future benefit accrual). This paragraph only applies to a plan amendment that is adopted after May 22, 2007 and on or before the last day of the applicable remedial amendment period under § 1.401(b)–1 with respect to the requirements of § 1.401(a)–1(b)(2) and (3).

(b) *Example.* The following example illustrates the application of this section:

(i) *Facts.* (A) Plan A is a defined benefit plan intended to be qualified under section 401(a). Plan A is maintained by a calendar year taxpayer and has a normal retirement age that is age 45. For employees who cease employment before normal retirement age with a vested benefit, Plan A permits benefits to commence at any date after the attainment of normal retirement age through attainment of age 70½ and provides for benefits to be actuarially increased to the extent they commence after normal retirement age. For employees who continue employment after attainment of normal retirement age, Plan A provides for benefits to continue to accrue and permits benefits to commence at any time, with an actuarial increase in benefits to apply to the extent benefits do not commence after normal retirement age. Age 45 is an age that is earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

(B) On February 18, 2008, Plan A is amended, effective May 22, 2007, to change its normal retirement age to the later of age 65 or the fifth anniversary of participation in the plan. The amendment provides full vesting for any participating employee who is employed on May 21, 2007, and who terminates employment on or after attaining age 45. The amendment provides employees who cease employment before the revised normal retirement age and who are entitled to a vested benefit with the right to be able to commence benefits at any date from age 45 to age 70½. The plan amendment also revises the plan's benefit accrual formula so that the benefit for prior service (payable commencing at the revised normal retirement age or any other age after age 45) is not less than would have applied under the plan's formula before the amendment (also payable commencing at the corresponding dates), based on the benefit accrued on May 21, 2007, and provides for service thereafter to have the same rate of future benefit accrual. Thus, for any participant employed on May 21, 2007, with respect to benefits accrued for service after May 21, 2007, the amount payable under the plan (as amended) at any benefit commencement date after age 45 is the same amount that would have been payable at that benefit commencement date under the plan prior to amendment. The plan amendment also eliminates the right to an in-service distribution between age 45 and the revised normal retirement age. Plan A has been operated since May 22, 2007, in conformity with the amendment adopted on February 18, 2008.

(ii) *Conclusion.* The plan amendment does not violate section 411(d)(6). Although the amendment eliminates the right to commence benefits in-service between age 45 and the revised normal retirement age, the amendment is made before the last day of the remedial amendment period applicable to the plan under § 1.401(b)–1 with respect to the requirements of § 1.401(a)–1(b)(2) and (3), and therefore the amendment is permitted under paragraph (a) of this A–12. Further, the amendment does not result in a reduction in any benefit for service after May 22, 2007.

Thus, the amendment does not result in a reduction in any benefit for future service, and advance notice of a significant reduction in the rate of future benefit accrual is not required under section 4980F.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: May 9, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–9643 Filed 5–21–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–020]

RIN 1625–AA08

Special Local Regulations for Marine Events; Delaware River, Delaware City, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''7th Annual Escape from Fort Delaware Triathlon'', an event to be held June 9, 2007 on the waters of Delaware River at Delaware City, DE. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action will temporarily restrict vessel traffic in a portion of the Delaware River during the 7th Annual Escape from Fort Delaware Triathlon.

DATES: This rule is effective from 5:30 a.m. to 10:30 a.m. on June 9, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–07–020) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford

Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D.M. Sens, Project Manager, Compliance and Inspection Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 21, 2007, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Delaware River, Delaware City, DE in the **Federal Register** (72 FR 13221). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, area newspapers and local radio stations.

Background and Purpose

On June 9, 2007, the Escape from Fort Delaware Triathlon, Inc. will sponsor the ''7th Annual Escape from Fort Delaware Triathlon''. The swimming segment of the event will consist of approximately 500 swimmers competing across a one mile course along the Delaware River between Pea Patch Island and Delaware City, Delaware. The competition will begin at Pea Patch Island. The participants will swim across to the finish line located at the Delaware City Wharf, swimming approximately one mile, across Bulkhead Shoal Channel. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Delaware River, near Delaware City, DE.

Regulatory Evaluation

This 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 rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this regulation restricts vessel traffic from transiting a portion of the Delaware River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and radio stations so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Delaware River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 5:30 a.m. to 10:30 a.m. on June 9, 2007. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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

This 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.

Energy Effects

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this 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 concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

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 amends 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.

■ 2. Add temporary § 100.35–T05–020 to read as follows:

§ 100.35–T05–020 Delaware River, Delaware City, DE.

(a) *Regulated area.* The regulated area includes all waters of the Delaware River within 500 yards either side of a line drawn southwesterly from a point near the shoreline at Pea Patch Island, at latitude 39°35′08″ N, 075°34′18″ W, thence to latitude 39°34′43.6″ N, 075°35′13″ W, a position located near the Delaware City Wharf, Delaware City, DE. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 5:30 a.m. to 10:30 a.m. on June 9, 2007.

Dated: May 12, 2007.

Larry L. Hereth,

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

[FR Doc. E7–9777 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–047]

Drawbridge Operation Regulations; Pequonnock River, Bridgeport, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Stratford Avenue Bridge across the Pequonnock River, mile 0.1, at Bridgeport, Connecticut. Under this temporary deviation, in effect from May 29, 2007 through September 17, 2007, the Stratford Avenue Bridge may remain in the closed position, except for scheduled daily bridge openings. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from May 29, 2007 through September 17, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212)

668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Stratford Avenue Bridge, across the Pequonnock River, mile 0.1, at Bridgeport, Connecticut, has a vertical clearance in the closed position of 8 feet at mean high water and 14 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.219(b).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation to facilitate bridge deck replacement. The bridge will not be able to open while the bridge deck removal is underway and until it is rebalanced.

Under this temporary deviation the Stratford Avenue Bridge shall operate as follows:

From May 29, 2007 through July 19, 2007, Monday through Saturday, the bridge may remain in the closed position, except that, the bridge shall open on signal from 6 a.m. to 7 a.m. and from 4 p.m. to 7 p.m. The bridge shall open on signal all day on Sundays, and on Wednesday, July 4, 2007.

From July 20, 2007 through September 17, 2007, Monday through Saturday, the bridge may remain in the closed position, except that, the bridge shall open on signal from 6 a.m. to 7 a.m., and from 4 p.m. to 7 p.m., and, from 7 p.m. to 6 a.m., the bridge shall open on signal after at least a two-hour advance notice is given by calling (203) 579–6204. The bridge shall open on signal all day on Sundays, and the Labor Day weekend (September 1, 2, and 3, 2007.)

In accordance with 33 CFR 117.35(e), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will cancel the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 11, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–9693 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 6

[Docket No. PTO–T–2007–0004]

RIN 0651–AC10

International Trademark Classification Changes

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) issues a final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes became effective January 1, 2007, and are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (9th ed., 2006), which is published by the World Intellectual Property Organization (WIPO). In addition, the Office is amending some punctuation and spelling in certain wording so the wording conforms to what appears in the Nice Agreement.

DATES: This final rule is effective May 22, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Roberts, Office of the Commissioner for Trademarks, by telephone at (571) 272–9574; by facsimile transmission addressed to her at (571) 273–9574; by e-mail addressed to her at *Jessie.Roberts@USPTO.gov;* or by mail marked to her attention and addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451.

SUPPLEMENTARY INFORMATION:

Discussion of Specific Rule Changed

The Office is revising § 6.1 to incorporate classification changes and modifications that became effective January 1, 2007, or in earlier revisions of the Nice Agreement, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (9th ed., 2006), published by WIPO. In addition, the Office is revising the punctuation and spelling of certain wording so that it will conform to what appears in the Nice Agreement.

These revisions have been incorporated into the Nice Agreement. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to Article 1.

The following changes are noted:

Class 4 is amended to change ''wicks'' to ''wicks for lighting.''

Class 5 is amended to change ''pharmaceutical, veterinary, and sanitary preparations'' to ''pharmaceutical and veterinary preparations; sanitary preparations for medical purposes;''

Class 9 is amended to delete ''electric'' after ''surveying;'' and to add ''apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity;'' before ''apparatus for recording.''

Class 16 is amended to delete ''playing cards.'' Playing cards are classified in Class 28.

Class 21 is amended to delete ''(not of precious metal or coated therewith)'' after ''Household or kitchen utensils and containers.''

Class 29 is amended to add ''frozen'' before ''dried;'' to delete ''fruit sauces'' and replace it with ''compotes.''

Class 42 is amended to delete ''Legal services.''

Class 45 is amended to add ''Legal services'' and to reorder the manner in which the services are listed in the class.

Rule Making Requirements

Administrative Procedure Act: The amendments in this final rule are procedural in nature as they only reorganize the international classifications of goods and services and modify the form of the wording. The reorganization and modification have been established by the Committee of Experts of the Nice Union and have been promulgated in the volume entitled International Classification of Goods and Services for the Purposes of the Registration of Marks (9th ed. 2006). Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A), or any other law. Furthermore, pursuant to 5 U.S.C. 553(b)(B), notice and an opportunity for public comment are unnecessary since the amendments are required by the Nice Agreement, to which the United States is a signatory.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5

U.S.C. 553 (or any other law), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Executive Order 13132: This final rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132 (August 4, 1999).

Executive Order 12866: This final rule has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act: This final rule does not involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 37 CFR Part 6

Trademarks.

■ For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1112 and 1123, as amended, the United States Patent and Trademark Office is amending part 6 of title 37 as follows:

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

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

Authority: 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.

5. Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; bed and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread,

pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

32. Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

Dated: May 16, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property, and Director of the United States Patent and Trademark Office.

[FR Doc. E7–9764 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2005–0159; FRL–8316–5]

RIN 2060–AN40

Final Rule on the Treatment of Data Influenced by Exceptional Events; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting Amendments.

SUMMARY: The EPA issued a final rule on March 22, 2007, entitled ''Treatment of Data Influenced by Exceptional Events.'' The rule governs the review and handling of air quality monitoring data determined to be influenced by exceptional events. This document makes minor corrections to language contained in the regulatory text for the rule.

EFFECTIVE DATE: This document is effective on May 22, 2007.

FOR FURTHER INFORMATION CONTACT: For questions regarding these corrections, contact Mr. Larry Wallace, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–0906 or by e-mail at: *wallace.larry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The EPA issued the final rule on ''The Treatment of Data Influenced by Exceptional Events'' on March 22, 2007, 72 FR 13560.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. EPA finds that there is good cause to make these corrections without providing for notice and comment, and for making these corrections effective immediately upon publication, because neither notice or comment, nor a delayed effective date, is necessary and would not be in the public interest due to the nature of the corrections which are minor, technical, and non-controversial.

The final action, without notice and comment, and the immediate effective date for this action is authorized under 5 U.S.C. 553(d)(3)(B) and 553(d)(3) which allows an effective date less than 30 days after publication if ''as otherwise provided by the agency for cause found and published with the rule.'' As indicated above, the final rule on Exceptional Events was published after notice and comment on March 22, 2007 and becomes effective on May 21, 2007, 60 days from publication. Thus, additional notice and comment for these minor technical corrections is unnecessary under 5 U.S.C. 553(b)(3)(B) and EPA finds that good cause exists for these corrections to become effective immediately.

Corrections of Rule

In the final rule for ''The Treatment of Data Influenced by Exceptional Events'', 72 FR 13560, March 22, 2007, correction is being made to the regulatory text of the rule beginning at 40 CFR 50.14(c) and to the title of 40 CFR part 51. This action makes a correction under the section entitled ''Treatment of air quality monitoring data influenced by exceptional events.'' Under § 50.14(c)(2) entitled ''Schedules and procedures'', ''Flagging of data'', change subsection (i) to remove the reference to 40 CFR 58.16 and to read as follows:

(i) A State shall notify EPA of its intent to exclude one or more measured exceedances of an applicable ambient air quality standard as being due to an exceptional event by placing a flag in the appropriate field for the data record of concern which has been submitted to the AQS database.

The final correction being made to the rule begins on page 13581, column two. Change the title of the section to read as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS''

Dated: May 15, 2007.

Stephen L. Johnson,

Administrator.

■ In consideration of the foregoing, the Environmental Protection Agency amends 40 CFR parts 50 and 51 as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Section 50.14 (c)(2)(i) is revised to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

* * * * *

(c) * * *

(2) Flagging of data.

(i) A State shall notify EPA of its intent to exclude one or more measured

exceedances of an applicable ambient air quality standard as being due to an exceptional event by placing a flag in the appropriate field for the data record of concern which has been submitted to the AQS database.

* * * * *

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 50 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671Q.

■ 4. The heading for part 51 is revised to read as set forth above.

[FR Doc. E7–9892 Filed 5–21–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Coconino (FEMA Docket No.: B–7467).	City of Flagstaff (05–09–1103P).	December 8, 2005; December 15, 2005; *Arizona Daily Sun.*	The Honorable Joseph C. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	March 16, 2006	040020
Greenlee (FEMA Docket No.: B–7474).	Town of Clifton (06–09–B068P).	October 25, 2006; November 1, 2006; *The Copper Era.*	The Honorable David McCullar, Mayor, Town of Clifton, P.O. Box 1415, Clifton, AZ 85533.	September 29, 2006	040035

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa (FEMA Docket No.: B–7467).	Town of Gilbert (06–09–B885X).	June 29, 2006; July 6, 2006; *Arizona Business Gazette*.	The Honorable Steve M. Berman, Mayor, Town of Gilbert, 50 West Civic Center Drive, Gilbert, Arizona 85296.	August 19, 2006	040044
Maricopa (FEMA Docket No.: B–7467).	City of Phoenix (06–09–B520P).	April 27, 2006; May 4, 2006; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	April 17, 2006	040051
Maricopa (FEMA Docket No.: B–7467).	Town of Queen Creek (06–09–B885X).	June 29, 2006; July 6, 2006; *Arizona Business Gazette*.	The Honorable Wendy Feldman-Kerr, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, AZ 85242.	August 19, 2006	040132
Maricopa (FEMA Docket No.: B–7467).	Unincorporated areas of Maricopa County (05–09–0394P).	May 18, 2006; May 25, 2006; *Arizona Business Gazette*.	The Honorable Max Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	April 27, 2006	040037
Maricopa (FEMA Docket No.: B–7467).	Unincorporated areas of Maricopa County (06–09–B885X).	June 29, 2006; July 6, 2006; *Arizona Business Gazette*.	The Honorable Max Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	August 19, 2006	040037
Pima (FEMA Docket No.: B–7467).	City of Tucson (05–09–A090P).	March 30, 2006; April 6, 2006; *The Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	July 6, 2006	040076
Pima (FEMA Docket No.: B–7467).	City of Tucson (05–09–A160P).	February 16, 2006; February 23, 2006; *The Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 25, 2006	040076
Pima (FEMA Docket No.: B–7467).	Unincorporated areas of Pima County (05–09–0847P).	December 8, 2005; December 15, 2005; *The Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	November 28, 2005	040073
Pima (FEMA Docket No.: B–7467).	Unincorporated areas of Pima County (05–09–A090P).	March 30, 2006; April 6, 2006; *The Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	July 6, 2006	040073
Pima (FEMA Docket No.: B–7467).	Unincorporated areas of Pima County (05–09–A160P).	February 16, 2006; February 23, 2006; *Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	May 25, 2006	040073
Arkansas: Benton (FEMA Docket No.: B–7712).	City of Rogers (05–06–A137P).	January 3, 2007; January 10, 2007; *Rogers Hometown News*.	The Honorable Steve Womack, Mayor, City of Rogers, 300 West Poplar Street, Rogers, AR 72756.	April 4, 2007	050013
California:					
Amador (FEMA Docket No.: B–7474).	City of Jackson (06–09–B819P).	October 20, 2006; October 27, 2006; *Amador Ledger Dispatch*.	The Honorable Al Nunes, Mayor, City of Jackson, 33 Broadway, Jackson, CA 95642.	January 26, 2007	060448
Riverside (FEMA Docket No.: B–7467).	City of San Jacinto (05–09–A244P).	February 16, 2006; February 23, 2006; *The Press-Enterprise*.	The Honorable Dale Stubblefield, Mayor, City of San Jacinto, 201 East Main Street, San Jacinto, California 92583.	March 2, 2006	065056
Riverside (FEMA Docket No.: B–7467).	Unincorporated areas of Riverside County (05–09–A213P).	February 8, 2006; February 15, 2006; *The Press-Enterprise*.	The Honorable Marion Ashley, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, Fifth Floor, Riverside, California 92501.	January 23, 2006	060245
San Bernardino (FEMA Docket No.: B–7712).	City of Barstow (06–09–B313P).	December 28, 2006; January 4, 2007; *San Bernardino County Sun*.	The Honorable Lawrence E. Dale, Mayor, City of Barstow, 220 East Mountain View Street, Suite A, Barstow, CA 92311.	November 30, 2006	060271
San Bernardino (FEMA Docket No.: B–7712).	Unincorporated areas of San Bernardino County (06–09–B313P).	December 28, 2006; January 4, 2007; *San Bernardino County Sun*.	The Honorable Bill Postmus, Chairman, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, 3rd Floor, San Bernardino, CA 92415.	November 30, 2006	060270
San Diego (FEMA Docket No.: B–7467).	City of San Diego (06–09–B001P).	March 16, 2006; March 23, 2006; *San Diego Daily Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	June 22, 2006	060295
San Diego (FEMA Docket No.: B–7467).	City of San Diego (06–09–B048P).	May 18, 2006; May 25, 2006; *San Diego Daily Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	April 28, 2006	060295
San Diego (FEMA Docket No.: B–7467).	Unincorporated areas of San Diego County (06–09–BB14P).	August 3, 2006; August 10, 2006; *San Diego Daily Transcript*.	The Honorable Bill Horn, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, California 92123.	November 9, 2006	060284
San Luis Obispo (FEMA Docket No.: B–7703).	City of Arroyo Grande (06–09–BA92P).	November 22, 2006; November 29, 2006; *The Tribune*.	The Honorable Tony M. Ferrara, Mayor, City of Arroyo Grande, 215 East Branch Street, Arroyo Grande, CA 93420.	February 28, 2007	060305
Santa Clara (FEMA Docket No.: B–7467).	City of San Jose (06–09–B378P).	July 19, 2006; July 26, 2006; *San Jose Mercury News*.	The Honorable Ron Gonzales, Mayor, City of San Jose, 200 East Santa Clara Street, San Jose, California 95113.	October 25, 2006	060349

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Santa Clara (FEMA Docket No.: B–7467).	City of Santa Clara (06–09–B378P).	July 19, 2006; July 26, 2006; *San Jose Mercury News*.	The Honorable Patricia Mahan, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.	October 25, 2006	060350
Shasta (FEMA Docket No.: B–7712).	Unincorporated areas of Shasta County (06–09–BB09P).	November 9, 2006; November 16, 2006; *Redding Record Searchlight*.	The Honorable Patricia A. ''Trish'' Clarke, Chairman, Shasta County Board of Supervisors, 1450 Court Street, Suite 308 B, Redding, CA 96001.	October 31, 2006	060358
Colorado:					
Arapahoe (FEMA Docket No.: B–7712).	City of Centennial (06–08–B400P).	December 28, 2006; January 4, 2007; *The Littleton Independent*.	The Honorable Randy Pye, Mayor, City of Centennial, City of Centennial Office, 12503 East Euclid Drive, Suite 200, Centennial, CO 80111.	April 5, 2007	080315
El Paso (FEMA Docket No.: B–7712).	City of Colorado Springs (05–08–0608P).	November 22, 2006; November 29, 2006; *El Paso County Advertiser and News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	October 25, 2006	080060
Jefferson (FEMA Docket No.: B–7467).	City of Arvada (05–08–0531P).	June 1, 2006; June 8, 2006; *The Golden Transcript*.	The Honorable Ken Fellman, Mayor, City of Arvada, 8101 Ralston Road, Arvada, Colorado 80002.	September 7, 2006	085072
Jefferson (FEMA Docket No.: B–7467).	City of Golden (06–08–A676P).	April 20, 2006; April 27, 2006; *The Golden Transcript*.	The Honorable Charles J. Baroch, Mayor, City of Golden, 701 Ridge Road, Golden, Colorado 80403.	July 27, 2006	080090
Jefferson (FEMA Docket No.: B–7474).	City of Lakewood (06–08–B318P).	November 9, 2006; November 16, 2006; *The Golden Transcript*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	February 15, 2007	085075
Jefferson (FEMA Docket No.: B–7467).	Unincorporated areas of Jefferson County (06–08–0531P).	June 1, 2006; June 8, 2006; *The Golden Transcript*.	The Honorable Jim Congrove, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	September 7, 2006	080087
Larimer (FEMA Docket No.: B–7467).	Unincorporated Areas of Larimer County (05–08–0587P).	April 20, 2006; April 27, 2006; *Fort Collins Coloradoan*.	The Honorable Kathay Rennels, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522.	July 27, 2006	080101
Larimer (FEMA Docket No.: B–7467).	Town of Wellington (05–08–0379P).	December 22, 2005; December 29, 2005; *Fort Collins Coloradoan*.	The Honorable Larry Noel, Mayor, Town of Wellington, P.O. Box 127, Wellington, Colorado 80549.	March 30, 2006	080104
Jefferson (FEMA Docket No.: B–7467).	City of Westminster (04–08–0439P).	December 7, 2005; December 14, 2005; *Brighton Standard Blade*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	November 30, 2005	080008
Summit (FEMA Docket No.: B–7467).	Unincorporated Areas of Summit County (05–08–0618P).	June 16, 2006; June 23, 2006; *Summit County Journal*.	The Honorable Tom Long, Chairman, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, Colorado 80424.	May 17, 2006	080290
Weld (FEMA Docket No.: B–7467).	Town of Erie (05–08–0364P).	November 2, 2005; November 9, 2005; *Erie Review*.	The Honorable Andrew J. Moore, Mayor, Town of Erie, P.O. Box 750, Erie, Colorado, 80516–0100.	February 8, 2006	080181
Weld (FEMA Docket No.: B–7467).	Town of Pierce (06–08–B003P).	January 19, 2005; January 26, 2005; *The Greeley Republican*.	The Honorable Craig Cleveland, Mayor, Town of Pierce, P.O. Box 57, Pierce, Colorado, 80650.	April 27, 2006	080189
Weld (FEMA Docket No.: B–7467).	Town of Severance (05–08–0378P).	March 16, 2006; March 23, 2006; *The Greeley Republican*.	The Honorable Pierre DeMilt, Mayor, Town of Severance, P.O. Box 122, Severance, Colorado 80546.	June 22, 2006	080317
Weld (FEMA Docket No.: B–7467).	Unincorporated areas of Weld County (06–08–B003P).	January 19, 2005; January 26, 2005; *Greeley Tribune*.	The Honorable William Jerke, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632.	April 27, 2006	080266
Georgia: Walton (FEMA Docket No.: B–7474).	Unincorporated areas of Walton County (05–04–A009P).	October 18, 2006; October 25, 2006; *The Walton Tribune*.	The Honorable Kevin W. Little, Chairman, Walton County Board of Commissioners, 303 South Hammond Drive, Monroe, GA 30655.	September 25, 2006	130185
Hawaii:					
Hawaii (FEMA Docket No.: B–7712).	Unincorporated areas of Hawaii County (06–09–B047P).	November 2, 2006; November 9, 2006; *Hawaii Tribune Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Room 215, Hilo, HI 96720.	October 16, 2006	155166
Maui (FEMA Docket No.: B–7467).	Unincorporated areas of Maui County (06–09–A607P).	May 25, 2006; June 1, 2006; *Maui News*.	The Honorable Alan M. Arakawa, Mayor, County of Maui, 200 South High Street, Wailuku, Hawaii 96793.	May 10, 2006	150003
Kansas: Shawnee (FEMA Docket No.: B–7712).	City of Topeka (06–07–B029P).	November 16, 2006; November 23, 2006; *Topeka Capital Journal*.	The Honorable William W. Bunten, Mayor, City of Topeka, City Hall, 215 Southeast 7th Street, Topeka, KS 66603–3914.	November 30, 2006	205187
Massachusetts: Plymouth (FEMA Docket No.: B–7474).	Town of Scituate (06–01–B143P).	September 14, 2006; September 21, 2006; *The Patriot Ledger*.	Mr. Richard Agnew, Town Administrator, Town of Scituate, Scituate Town Hall, 600 Chief Justice Cushing Highway, Scituate, MA 02066.	August 23, 2006	250282

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montana: Gallatin (FEMA Docket No.: B–7467).	City of Three Forks (05–08–A579P).	March 23, 2006; March 30, 2006; *Bozeman Daily Chronicle*.	The Honorable Gene Townsend, Mayor, City of Three Forks, P.O. Box 187, Three Forks, Montana 59752.	June 29, 2006	300029
New Mexico: Bernalillo (FEMA Docket No.: B–7466).	City of Albuquerque (06–06–A653P).	February 9, 2006; February 16, 2006; *The Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	January 30, 2006	350002
Ohio:					
Fairfield (FEMA Docket No.: B–7466).	City of Reynoldsburg (05–05–1178P).	June 29, 2006; July 6, 2006; *Lancaster Eagle-Gazette*.	The Honorable Ronald L. McPherson, Mayor, City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, Ohio 43068.	October 5, 2006	390177
Lorain (FEMA Docket No.: B–7712).	City of Amherst (05–05–A229P).	November 30, 2006; December 7, 2006; *The Chronicle Telegram*.	The Honorable David A. Taylor, Mayor, City of Amherst, 480 Park Avenue, Amherst, OH 44001.	March 8, 2007	390347
Oklahoma:					
Oklahoma (FEMA Docket No.: B–7474).	City of Edmond (06–06–B417P).	October 19, 2006; October 26, 2006; *The Edmond Sun*.	The Honorable Saundra G. Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083–2970.	January 25, 2007	400252
Oklahoma (FEMA Docket No.: B–7466).	City of Oklahoma City (05–06–0453P).	January 12, 2006; January 19, 2006; *Oklahoma Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, City Hall, 200 North Walker Street, Third Floor, Oklahoma City, Oklahoma 73102.	December 29, 2005	405378
Tulsa (FEMA Docket No.: B–7466).	City of Tulsa (05–06–A430P).	April 20, 2006; April 27, 2006; *Tulsa World*.	The Honorable Bill Lafortune, Mayor, City of Tulsa, 200 Civic Center, 11th Floor, Room 532, Tulsa, Oklahoma 74103.	March 31, 2006	405381
Pennsylvania:					
Chester (FEMA Docket No.: B–7474).	Township of Sadsbury (06–03–B160P).	October 19, 2006; October 26, 2006; *Daily Local News*.	The Honorable Dale Hensel, Chairman, Board of Supervisors, Sadsbury Township, 6 Ramsey Alley, P.O. Box 261, Sadsburyville, PA 19369.	September 29, 2006	421488
York (FEMA Docket No.: B–7466).	York Township (06–03–B333P).	August 24, 2006; August 31, 2006; *York Dispatch*.	The Honorable Phillip W. Briddell, President, York Township Board of Commissioners, 335 Hill-N-Dale Drive, York, Pennsylvania 17403.	July 31, 2006	421032
Rhode Island: Bristol (FEMA Docket No.: B–7712).	Town of Bristol (05–01–0763P).	November 9, 2006; November 16, 2006; *Bristol Phoenix*.	The Honorable Diane C. Mederos, Mayor, Town of Bristol, Town Hall, 10 Court Street, Bristol, RI 02809.	October 17, 2006	445393
South Carolina: Sumter (FEMA Docket No.: B–7466).	Unincorporated areas of Sumter County (04–04–B134P).	June 19, 2006; June 22, 2006; *The Item*.	Mr. William T. Noonan, Sumter County Administrator, 13 East Canal Street, Sumter, South Carolina 29150.	September 21, 2006	450182
Tennessee:					
Davidson (FEMA Docket No.: B–7466).	Metropolitan Government of Nashville and Davidson County (05–04–A471P).	June 15, 2006; June 22, 2006; *Nashville Record*.	The Honorable Bill Purcell, Mayor, Metropolitan Government of Nashville and Davidson County, 225 Polk Avenue, Nashville, Tennessee 37203.	September 21, 2006	470040
Williamson (FEMA Docket No.: B–7466).	City of Brentwood (06–04–B110P).	June 22, 2006; June 29, 2006; *The Tennessean*.	The Honorable Brian Joe Sweeney, Mayor, City of Brentwood, P.O. Box 788, Brentwood, Tennessee 37024–0788.	September 27, 2006	470205
Texas:					
Collin (FEMA Docket No.: B–7466).	City of McKinney (05–06–0127P).	February 16, 2006; February 23, 2006; *McKinney Courier Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee, P.O. Box 517, McKinney, Texas 75069.	May 25, 2006	480135
Collin (FEMA Docket No.: B–7466).	City of Plano (06–06–B374P).	August 16, 2006; August 23, 2006; *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Suite 300, Plano, Texas 75086–0358.	November 22, 2006	480140
Dallas (FEMA Docket No.: B–7466).	City of Dallas (05–06–0199P).	December 8, 2005; December 15, 2005; *The Daily Commercial Record*.	The Honorable Laura Miller, Mayor, City of Dallas, Dallas City Hall, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201–6390.	March 16, 2006	480171
Dallas (FEMA Docket No.: B–7466).	City of Garland (06–06–B168P).	August 17, 2006; August 24, 2006; *The Daily Commercial Record*.	The Honorable Bob Day, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	November 23, 2006	485471
Hays (FEMA Docket No.: B–7466).	Unincorporated areas of Hays County (06–06–B006P).	August 17, 2006; August 24, 2006; *Hays County Free Press*.	The Honorable Jim Powers, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, Texas 78666.	November 23, 2006	480321
Hidalgo (FEMA Docket No.: B–7466).	City of McAllen (05–06–1607P).	March 9, 2006; March 16, 2006; *The Monitor*.	The Honorable Richard F. Cortez, Mayor, City of McAllen, 1300 Houston Avenue, McAllen, Texas 78501.	February 21, 2006	480343
Tarrant (FEMA Docket No.: B–7474).	City of Fort Worth (06–06–BB25P).	October 19, 2006; October 26, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	September 28, 2006	480596

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant (FEMA Docket No.: B–7474).	Unincorporated areas of Tarrant County (06–06–BB25P).	October 19, 2006; October 26, 2006; *Fort Worth Star-Telegram.*	The Honorable Tom Vandergriff, Tarrant County Judge, Tarrant County Commissioners Court, 100 East Weatherford Street, Room 502A, Fort Worth, TX 76196.	September 28, 2006	480582
Wyoming: Teton (FEMA Docket No.: B–7466).	Unincorporated areas of Teton County (05–08–0317P).	March 29, 2006; April 5, 2006; *Jackson Hole News.*	The Honorable Leland Christensen, Chair, Teton County Board of Commissioners, P.O. Box 3594, Jackson, Wyoming 83001.	March 15, 2006	560094

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 11, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–9785 Filed 5–21–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Guadalupe County, Texas and Incorporated Areas Docket No.: FEMA–B–7461			
Cibolo Creek	At intersection of IH 35 and Cibolo Creek	+755	Guadalupe County (Unincorporated Areas), City of Schertz.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	At intersection of Lookout Road and Cibolo Creek.	+763	
Tributary No. 13	At confluence with East Branch Dietz Creek and Cibolo Creek Tributary No. 13.	+728	Guadalupe County (Unincorporated Areas), City of Cibolo.
	Approximately 2,500 feet upstream of the confluence with East Branch Dietz Creek and Cibolo Creek Tributary No. 13.	+776	
Dietz Creek	Approximately 1,000 feet downstream of the confluence with Cibolo Tributary 11 and Dietz Creek.	+692	Guadalupe County (Unincorporated Areas), City of Cibolo, City of Schertz
	Approximately 2,700 feet upstream of the confluence with Cibolo Tributary 16 and Dietz Creek.	+766	
East Branch Dietz Creek.	Approximately 1,000 feet downstream of the intersection with Borgfield Road and Turncreek Avenue.	+693	Guadalupe County (Unincorporated Areas), City of Cibolo, City of Schertz
	Approximately 1,100 feet NE of the intersection of Old Weiderstein Road and Cibolo Valley Drive.	+844	
Geronimo Creek	Approximately 3,100 feet downstream of the confluence with Geronimo Creek and Geronimo Tributary 2.	+464	Guadalupe County (Unincorporated Areas), City of Seguin.
	Approximately 2,000 feet downstream of the confluence with Geronimo Creek and Geronimo Creek Tributary 2.	+464	
Guadalupe River	At confluence with Geronimo Creek and Guadalupe River.	+464	Guadalupe County (Unincorporated Areas), City of Seguin.
	Approximately 250 feet downstream of East County Line Road.	+598	
Town Creek	Approximately 350 feet downstream of Dean Road and Town Creek.	+784	Guadalupe County (Unincorporated Areas), City of Cibolo.
	Approximately 1,300 feet upstream of Dean Road and Town Creek.	+814	
Tributary 1	At confluence with Town Creek and Town Creek Tributary 1.	+708	Guadalupe County (Unincorporated Areas), City of Cibolo.
	At Intersection of FM 1103 Road and Brite Road.	+712	
Walnut Branch	At confluence with Walnut Branch and Guadalupe River.	+492	Guadalupe County (Unincorporated Areas).
	Approximately 1,500 feet upstream of McQueeny Dam.	+548	

* National Geodetic Vertical Datum.
+ National American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Guadalupe County (Unincorporated Areas)

Maps are available for inspection at Maintenance Building, 415 East Donegan Street, Seguin, TX 78155.
Send comments to the Honorable Donald Schraub, County Judge, Guadalupe County, County Courthouse, Seguin TX 78155.

City of Cibolo

Maps are available for inspection at 109 South Main Street, Cibolo, TX 78108.
Send comments to the Honorable Johnny Sutton, Mayor, City of Cibolo, P.O. Box 826, Cibolo, TX 78108.

City of Schertz

Maps are available for inspection at Public Works Building, 10 Commercial Place, TX 78154.
Send comments to the Honorable Hal Baldwin, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.

City of Seguin

Maps are available for inspection at 210 East Gonzales, Seguin, TX 78155.
Send comments to the Honorable Betty Ann Maties, Mayor, City of Seguin, P.O. Box 581, Seguin, TX 78155.

Guadalupe County, Texas, and Incorporated Areas Docket No.: FEMA–B–7702

Cibolo Creek	Approximately 7500 feet downstream from intersection with I–35.	+740	City of Selma.
	Approximately 4800 feet upstream from intersection with I–35.	+763	
Dietz Creek	Approximately 2000 feet downstream of I–35 ...	+751	City of Selma.
	Approximately 4000 feet upstream from I–35 ...	+767	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Guadalupe River	Approximately 2500 feet upstream from Confluence with Long Creek.	+558	City of Braunfels.
	At East County Line Road	+598	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of New Braunfels
Maps are available for inspection at 424 South Castell, New Braunfels, TX 78130.
Send comments to The Honorable Bruce Boyer, Mayor, City of New Braunfels, 424 South Castell, New Braunfels, TX 78130.
City of Selma
Maps are available for inspection at 9375 Corporate Dr, Selma, TX 78154.
Send comments to The Honorable James Parma, Mayor, City of Selma, 9375 Corporate Dr, Schertz, TX 78154.

Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 11, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–9783 Filed 5–21–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. NHTSA–2006–25593]

Exemptions From Average Fuel Economy Standards; Passenger Automobile Average Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final decision to grant exemption.

SUMMARY: This final decision responds to a petition filed by Spyker Automobielen B.V. (Spyker) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 2006 and 2007, and that, for Spyker, lower alternative standards be established. In this document, NHTSA establishes an alternative average fuel economy standard for Spyker of 18.9 mpg for MYs 2006 and 2007.

DATES: *Effective Date:* June 21, 2007.

This exemption and the alternative standards apply to Spyker for MYs 2006 and 2007.

Petitions for reconsideration: Petitions for reconsideration must be received no later than June 21, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Ken Katz, Lead Engineer, Fuel Economy Division, Office of International Vehicle, Fuel Economy, and Consumer Standards, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov.* For legal issues, contact Stephen Wood of the Office of the Chief Counsel, at (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility.

(2) Economic practicability.

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Proposed Decision and Public Comment

This final decision was preceded by a proposal announcing the agency's tentative conclusion that Spyker should be exempted from the generally applicable MY 2006 and 2007 passenger automobile average fuel economy of 27.5 mpg and that alternative standards of 18.9 mpg for MYs 2006 and 2007 be established for Spyker. (71 FR 49407; August 23, 2006). The agency received only one comment, from a Ms. Barb Sachau, who argued that all vehicles should get higher gas mileage and that the exemption for Spyker should not be granted unless Spyker's vehicles were able to obtain 100 mpg.

NHTSA has decided not to adopt Ms. Sachau's recommendation. NHTSA's proposed decision presented several reasons why it would not be technologically feasible or economically practicable for Spyker to improve the fuel economy of its MY 2006 and 2007 vehicles above an average of 18.9 mpg. Ms. Sachau did not refute the agency's reasoning or provide a technical evaluation of how a standard of 100 mpg for MYs 2006 and 2007 would be technologically feasible or economically practicable for Spyker. Thus, the agency has no basis to adopt Ms. Sachau's recommendation.

NHTSA Final Determination

Therefore, the agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on these conclusions, the maximum average fuel economy for Spyker is 18.9 mpg for MYs 2006 and 2007. NHTSA has determined that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision and that the national effort to conserve energy will not be affected by granting this exemption. NHTSA hereby exempts Spyker from the generally applicable MY 2006 and 2007 passenger automobile average fuel economy of 27.5 mpg and establishes an alternative standard of 18.9 mpg for MYs 2006 and 2007 for Spyker.

Regulatory Impact Analyses

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the decision would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' Since this decision would apply only to Spyker, as discussed in this notice, it is not a ''rule'' under the definition. Under DOT regulatory policies and procedures, the decision is not a ''significant regulation.'' If Departmental policies and procedures were applicable, the agency would have determined that this decision is not significant. The principal impact of this decision is that the exempted company will not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and that purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be the maximum feasible for Spyker for MYs 2006 and 2007, no fuel would be saved by establishing a higher alternative standard.

NHTSA finds in the Section on ''The Need of the United States to Conserve Energy'' that because of the small size of the Spyker fleet, that incremental usage of gasoline by Spyker's customers would not affect the United States' need to conserve gasoline. Spyker plans to import a maximum of 112 vehicles to the U.S. market by MY 2007. Given that over 8,350,000 passenger cars were produced for sale in the U.S. market in MY 2006, Spyker's importation of these vehicles would amount to .001% of the U.S. market. Thus, the impact for the public at large is minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act (NEPA) and determined that it does not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than provided, the decision does not affect the amount of fuel used.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor Vehicles.

■ In consideration of the foregoing, 49 CFR part 531 is amended as follows:

PART 531—[AMENDED]

■ 1. The authority citation for part 531 is revised to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

■ 2. Section 531.5 is amended by adding paragraph (b) (15) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) * * *

(15) Spyker Automobielen B.V.

AVERAGE FUEL ECONOMY STANDARD

Model year	Miles per gallon
2006	18.9
2007	18.9

Issued on: May 17, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–9867 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XA40

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 17, 2007, through 1200 hrs, A.l.t., July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 300 metric tons as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), for the period 1200 hrs, A.l.t., April 1, 2007, through 1200 hrs, A.l.t., July 1, 2007.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder.

This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 16, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: May 17, 2007.

James P. Burgess

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–2536 Filed 5–17–07; 1:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 98
Tuesday, May 22, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28022; Airspace Docket 07–ASO–7]

Proposed Establishment of Class E Airspace; Centreville, AL

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to establish Class E airspace at Centreville, AL. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Runway (RWY) 10 has been developed for Bibb County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rules (IFR) operations at Bibb County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before June 21, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28022; Airspace Docket 07–ASO–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* you may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28022/Airspace Docket No. 07–ASO–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be field in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Centreville, AL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 16, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 16, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Centreville, AL [NEW]

Bibb County Airport, AL
(Lat. 32°56′12″ N., long. 87°05′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-radius of Bibb County Airport.

* * * * *

Issued in College Park, Georgia, on May 9, 2007.

Barry Knight,

Acting Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–2514 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28101; Airspace Docket 07–ASO–9]

Proposed Establishment of Class E Airspace; Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace at Vero Beach, FL.

As a result of an evaluation, it has been determined Class E Airspace Designated as Surface Areas should be established for Vero Beach Municipal Airport. Miami Air Route Traffic Control Center has communications capabilities and weather observation reporting when the Vero Beach tower is closed. Therefore, the airport will meet criteria for Class E2 airspace. Class E2 surface area airspace is required when the control tower is closed to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class E2 airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the airport and within 3.2 miles each side of the 261° bearing from the Vero Beach Nondirectional Radio Beacon (NDB) extending from the 4.2 mile radius of the Vero Beach Municipal Airport to 7 miles west of the NDB.

DATES: Comments must be received on or before June 21, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28101/ Airspace Docket No. 07–ASO–9, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28101/Airspace Docket No. 07–ASO–9.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E2 airspace at Vero Beach, FL. Class E Airspace Designations as Surface Areas are published in Paragraph 6002 of FAA Order 7400.9P, dated September 16, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E2 airspace designation listed in this document

would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 16, 2006 and effective September 16, 2006, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO FL E2 Vero Beach, FL [NEW]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N., long. 80°25′05″ W.)
Vero Beach NDB
(Lat. 27°39′51″ N., long. 80°25′10″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within 4.2 mile radius of Vero Beach Municipal Airport and within 3.2 miles each side of the 261° bearing from the Vero Beach NDB extending from the 4.2 mile radius of the Vero Beach Municipal Airport to 7 miles west of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on May 9, 2007.

Barry Knight,

Acting Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–2511 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28146; Airspace Docket No. 07–AAL–7]

Proposed Revision of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Kotzebue, AK. Eight (8) Standard Instrument Approach Procedures (SIAPs) are being amended for the Ralph Wien Memorial Airport at Kotzebue, AK. A Departure Procedure (DP) is also being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from the surface, from 700 feet (ft.) and 1,200 ft. above the surface, at the Ralph Wien Memorial Airport, Kotzebue, AK.

DATES: Comments must be received on or before July 6, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28146/Airspace Docket No. 07–AAL–07, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28146/Airspace Docket No. 07–AAL–07.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a

request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Ralph Wien Memorial Airport, AK. The intended effect of this proposal is to revise Class E airspace upward from the surface, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Ralph Wien Memorial Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended eight SIAPs and a DP for the Ralph Wien Memorial Airport. The amended approaches are (1) the Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) Runway (RWY) 09, Amendment (Amdt) 5, (2) the Area Navigation (Global Positioning System) (RNAV (GPS)) RWY 09, Amdt 1, (3) the Instrument Landing System (ILS) or Localizer (LOC)/DME RWY 09, Amdt 1, (4) the RNAV (GPS) RWY 27, Amdt 1, (5) the VOR RWY 09, Amdt 4, (6) the VOR RWY 27, Amdt 4, (7) the VOR/DME Y RWY 27, Amdt 1, and (8) the VOR/DME Z RWY 27, Amdt 1. DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from the surface, from 700 ft. and 1,200 ft. above the surface, in the Ralph Wien Memorial Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Ralph Wien Memorial Airport, Kotzebue, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Ralph Wien Memorial Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Kotzebue, AK [Revised]

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N., long. 162°35′55″ W.)
Kotzebue VOR/DME, AK
(Lat. 66°53′08″ N., long. 162°32′24″ W.)

Within a 4.3-mile radius of the Ralph Wien Memorial Airport, and within 2.4 miles each side of the 278°(T)/259°(M) radial of the Kotzebue VOR/DME, extending from the 4.3-mile radius of the Ralph Wien Memorial Airport to 8.7 miles west of the Kotzebue VOR/DME, and within 2.4 miles each side of the 092°(T)/073°(M) radial of the Kotzebue VOR/DME extending from the 4.3-mile radius of the Ralph Wien Memorial Airport to 7 miles east of the Kotzebue VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska Airport/Facility Directory.

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kotzebue, AK [Revised]

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N., long. 162°35′55″ W.)
Kotzebue VOR/DME, AK
(Lat. 66°53′08″ N., long. 162°32′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Ralph Wien Memorial Airport, and within 4 miles north and 8.2 miles south of the 278°(T)/259°(M) radial of the Kotzebue VOR/DME extending from the 6.8-mile radius of the Ralph Wien Memorial Airport to 16.4 miles west of the Kotzebue VOR/DME; and within 8 miles north of the 092°(T)/073°(M) radial of the Kotzebue VOR/DME, extending from the 6.8-mile radius of the Ralph Wien Memorial Airport to 16 miles west of the Kotzebue VOR/DME, and from the 063°(T)/044°(M) radial of the Kotzebue VOR/DME clockwise to the 130°(T)/111°(M)

of the Kotzebue VOR/DME within 18 miles of the Kotzebue VOR/DME; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Kotzebue VOR/DME.

* * * * *

Issued in Anchorage, AK, on May 14, 2007.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–9759 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28145; Airspace Docket No. 07–AAL–6]

Proposed Revision of Class E Airspace; Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Fort Yukon, AK. One Standard Instrument Approach Procedure (SIAP) is being amended and three new SIAPs are being developed for the Fort Yukon Airport. A Departure Procedure (DP) and a Direction Finding (DF) procedure (used by Flight Service Station personnel) is also being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from the surface, from 700 feet (ft.) and 1,200 ft. above the surface, at Fort Yukon Airport, Fort Yukon, AK.

DATES: Comments must be received on or before July 6, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–18145/Airspace Docket No. 07–AAL–06, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–18145/Airspace Docket No. 07–AAL–06.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at Fort Yukon Airport, AK. The intended effect of this proposal is to revise Class E airspace upward from the surface, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Fort Yukon Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended one SIAP and developed three new SIAPs. They have also amended a DP and a DF for the Fort Yukon Airport. The amended approach is the Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) or Tactical Air Navigation (TACAN) Runway (RWY) 22, Amendment (Amdt) 2. The three new SIAPs are (1) the VOR/DME or TACAN A, Original, (2) the Area Navigation (Global Positioning System) (RNAV (GPS)) RWY 04, Original and (3) the RNAV (GPS) RWY 22, Original. DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. DF's are for use by Flight Service Station personal to aid lost pilots. Class E controlled airspace extending upward from the surface, from 700 ft. and 1,200 ft. above the surface, in the Fort Yukon Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Fort Yukon Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas

designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Fort Yukon Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Fort Yukon, AK [Revised]

Fort Yukon Airport, AK
(Lat. 66°34′17″ N., long. 145°15′02″ W.)

Within a 4.7-mile radius of the Fort Yukon Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska Airport/Facility Directory.

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Fort Yukon, AK [Revised]

Fort Yukon Airport, AK
(Lat. 66°34′17″ N., long. 145°15′02″ W.)
Fort Yukon VORTAC
(Lat. 66°34′28″ N., long. 145°16′36″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Fort Yukon VORTAC, and within 4 miles either side of the 076°(T)/045°(M) bearing from the Fort Yukon VORTAC, extending from the 7.2-mile radius of the Fort Yukon VORTAC, to 21 miles east of the Fort Yukon VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 71-mile radius of the Fort Yukon VORTAC.

* * * * *

Issued in Anchorage, AK, on May 14, 2007.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–9758 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28147; Airspace Docket No. 07–AAL–8]

Proposed Revision of Class E Airspace; Noatak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Noatak, AK. One Standard Instrument Approach Procedure (SIAP) is being amended for the Noatak Airport at Noatak, AK. A Departure Procedure (DP) is also being amended. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the Noatak Airport, Noatak, AK.

DATES: Comments must be received on or before July 6, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28147/Airspace Docket No. 07–AAL–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28147/Airspace Docket No. 07–AAL–08.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Noatak Airport, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Noatak Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended one SIAP and a DP for the Noatak Airport. The amended approach is the Non-directional Beacon (NDB)-Distance Measuring Equipment (DME) Runway 01, Amendment 2. DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the Noatak Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Noatak Airport, Noatak, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9Q, *Airspace Designations and Reporting Points,* dated September 1, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Noatak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Noatak, AK [Revised]

Noatak Airport, AK
(Lat. 67°33′58″ N., long. 162°58′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Noatak Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Noatak Airport.

* * * * *

Issued in Anchorage, AK, on May 14, 2007.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–9757 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28148; Airspace Docket No. 07–AAL–9]

Proposed Revision of Class E Airspace; Ruby, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Ruby, AK. Two Standard Instrument Approach Procedures (SIAPs) are being amended for the Ruby Airport at Ruby, AK. Adoption of this proposal would result in revision of existing Class E airspace upward, from 700 feet (ft.) and 1,200 ft. above the surface, at the Ruby Airport, Ruby, AK.

DATES: Comments must be received on or before July 6, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–28148/Airspace Docket No. 07–AAL–09, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–28148/Airspace Docket No. 07–AAL–09.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Ruby Airport, AK. The intended effect of this proposal is to revise Class E airspace upward, from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Ruby Airport, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has amended two SIAPs for the Ruby Airport. The amended approaches are (1) the Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 03, Amendment (Amdt) 1 and (2) the RNAV (GPS) RWY 21, Amdt 1. Class E controlled airspace extending upward, from 700 ft. and 1,200 ft. above the surface, in the Ruby Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Ruby Airport, Ruby, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Ruby Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ruby, AK [Revised]

Ruby, Ruby Airport, AK
(Lat. 64°43′38″ N., long. 155°28′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ruby Airport, and within 4.8 miles either side of the 051°(T)/032°(M) bearing from the Ruby Airport extending from the 6.4-mile radius of the Ruby Airport to 17.4 miles northeast of the Ruby Airport; and that airspace extending upward from 1,200 feet above the surface within a 70-mile radius of the Ruby Airport.

* * * * *

Issued in Anchorage, AK, on May 14, 2007.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–9774 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28161; Airspace Docket No. 07–ASO–6]

RIN 2120–AA66

Proposed Establishment of Low Altitude Area Navigation Route T–209; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a low altitude Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) area navigation (RNAV) route, designatedT–209, in the vicinity of Augusta, GA. The FAA is proposing this action to enhance the safe and efficient use of the navigable airspace. The proposed route would reduce air traffic controller workload and provide a nonradar route that ensures clearance from the Bulldog A Military Operations Area (MOA).

DATES: Comments must be received on or before July 6, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2007–28161 and Airspace Docket.

No. 07–ASO–6, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–28161 and Airspace Docket No. 07–ASO–6) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–28161 and Airspace Docket No. 07–ASO–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov,* or the **Federal Register** web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the System Support Group, Eastern Service

Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to establish a low altitude RNAV route, designated T–209, in the vicinity of Augusta, GA. The route would extend between the Colliers, SC, very high frequency omnidirectional range/tactical air navigation (VORTAC) aid and the EHEJO, GA, navigation fix (located on Federal airway V–154). T–209 would provide a more direct route for north and southbound traffic and would also establish a published route that ensures clearance from the Bulldog A MOA to assist aircraft navigating around the MOA.

This route would enhance the safe and efficient use of the navigable airspace for north and southbound IFR aircraft in the vicinity of Augusta, GA.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9P, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV route listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6011 Contiguous United States Area Navigation Routes.

* * * * *

T–209 EHEJO, GA to Colliers, SC [New]

EHEJO, GA	Fix	(Lat. 32°23′26″ N., long. 82°05′12″ W.)
NASDE, GA	WP	(Lat. 32°32′54″ N., long. 82°06′26″ W.)
YASLU, GA	WP	(Lat. 32°49′42″ N., long. 81°56′52″ W.)
JAMITA, GA	WP	(Lat. 33°06′41″ N., long. 82°00′27″ W.)
Colliers, SC	VORTAC	(Lat. 33°42′26″ N., long. 82°09′43″ W.)

* * * * *

Issued in Washington, DC, on May 14, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7–9773 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–043]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''East Coast Boat Racing Club power boat race'', a marine event to be held over the waters of the Chesapeake Bay adjacent to Cape Charles, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on the Chesapeake Bay in the vicinity of Cape Charles Beach, Cape Charles, Virginia during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 21, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 391–8149. The Inspections and Investigations Branch, 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 the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398–6204.

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 (CGD05–07–043), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound

format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed 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

On August 4, 2007, the East Coast Boat Racing Club of New Jersey will sponsor a power boat race, on the waters of the Chesapeake Bay, Cape Charles, Virginia. The event will consist of approximately 20 New Jersey Speed Garveys and Jersey Speed Skiffs conducting high-speed competitive races along an oval race course in close proximity to Cape Charles Beach, Cape Charles, Virginia. A fleet of spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Piankatank River. The temporary special local regulations will be effective from 11:30 a.m. to 4:30 p.m. on August 4, 2007, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Chesapeake Bay during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

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 this portion of the Chesapeake Bay adjacent to Cape Charles Beach during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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 the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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 concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule 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–REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35–T05–043 to read as follows:

§ 100.35–T05–043 Chesapeake Bay, Cape Charles, Virginia.

(a) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the East Coast Boat Racing Club power boat race under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(4) *Regulated area* includes the waters of the Chesapeake Bay, along the shoreline adjacent to Cape Charles, Virginia, to and including waters up to 300 yards offshore, parallel with the Cape Charles Beach shoreline in this area. The area is bounded on the south by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′.2″ North, longitude 076°01′28.5″ West, to a point offshore approximately 300 yards at latitude 37°16′3.4″ North, longitude 076°01′36.6″ West, and bounded on the north by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′26.2″ North, longitude 076°01′14″ West, to a point offshore approximately 300 yards at latitude 37°16″28.9″ North, longitude 076°01′24.1″ West. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(c) *Effective period.* This section will be enforced from 11:30 a.m. to 4:30 p.m. on August 4, 2007. If the race is postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day, August 5, 2007.

Dated: May 11, 2007.

Larry L. Hereth,

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

[FR Doc. E7–9838 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–044]

RIN 1625–AA08

Special Local Regulations for Marine Events; Mill Creek, Fort Monroe, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for the ''Hampton Cup Regatta'', a power boat race to be held on the waters of Mill Creek, near Fort Monroe, Hampton, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Mill Creek adjacent to Fort Monroe during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before June 21, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 391–8149, or e-mail them to *Dennis.M.Sens@uscg.mil*. The Inspection and Investigation Branch, 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 the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Compliance and Inspection Branch, at (757) 398–6204.

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 (CGD05–07–044), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed 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

On August 10, 11 and 12, 2007, the Virginia Boat Racing Association will sponsor the ''Hampton Cup Regatta'', on the waters of Mill Creek adjacent to Fort Monroe, Hampton, Virginia. The event will consist of approximately 100 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of Mill Creek adjacent to Fort Monroe, Hampton, Virginia. The regulated area is comprised of the southern section of Mill Creek approximately one half mile in length and width. This rule will be enforced from 7:30 a.m. to 6:30 p.m. on August 10, 11, and 12, 2007, and will restrict general navigation in the regulated area during the power boat race. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Mill Creek during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

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 this section of Mill Creek during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 7:30 a.m. to 6:30 p.m. on August 10, 11, and 12, 2007. The regulated area will apply to the southerly segment of Mill Creek adjacent to Fort Monroe and the Route 258 bridge. Marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes

passage through the regulated area during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

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 the Coast Guard at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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 concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule 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.

2. Add temporary § 100.35–T05–044 to read as follows:

§ 100.35–T05–044, Mill Creek, Fort Monroe, Hampton, Virginia.

(a) *Regulated area.* The regulated area is established for the waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: To the north, a line drawn along latitude 37°01′00″ N, to the east a line drawn along longitude 076°18′30″ W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the ''Hampton Cup Regatta'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. to 6:30 p.m. on August 10, 11, and 12, 2007.

Dated: May 11, 2007.

Larry L. Hereth,

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

[FR Doc. E7–9843 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3130

[WO–310–1310–PP–241A]

RIN 1004–AD78

Oil and Gas Leasing; National Petroleum Reserve—Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM), proposes to amend its regulations at 43 CFR part 3130 pertaining to oil and gas resources in the National Petroleum Reserve-Alaska (NPR–A). The proposed rule would make oil and gas administrative procedures in NPR–A consistent with Section 347 of the Energy Policy Act of 2005. The proposed rule would amend the administrative procedures for the efficient transfer, consolidation, segregation, suspension, and unitization of Federal leases in the NPR–A. The rule would also make changes to the way the BLM processes lease renewals, lease extensions, lease expirations, lease agreements, exploration incentives, lease consolidations, and termination of administration for conveyed lands in the NPR–A. Finally, the rule would make the NPR–A regulation on additional bonding consistent with the regulations that apply outside of the NPR–A.

DATES: Send your comments on this proposed rule to the BLM on or before July 23, 2007. The BLM will not necessarily consider any comments received after the above date during its decision on the rule.

ADDRESSES: Commenters may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC 20036. Comments will be available for public review at the L Street address from 7:45 a.m. to 4:15 p.m., Eastern Time, Monday through Friday, except Federal holidays.

E-mail: *comments_washington@blm.gov*.

Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Noble, Chief, Energy Branch, the BLM's Alaska State Office at (907) 267–1429 or Ian Senio at the BLM's Division of Regulatory Affairs at (202) 452–5049. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

You may submit your comments by any one of several methods:

You may mail your comments to: Director (630), Bureau of Land Management, 1620 L Street, NW., Suite 401, Washington, DC 20036, Attention: RIN 1004–AD78.

You may deliver comments to: 1620 L Street, NW., Suite 401, Washington, DC 20036. You may e-mail your comments to: *comments_washington@blm.gov*. (Include ''Attention: AD78'' in the subject line.) Please make your comments on the rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The Department of the Interior may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

Part 3130 of 43 Code of Federal Regulations (CFR) contains the regulations that apply to oil and gas leasing in the NPR–A authorized under the Naval Petroleum Reserves Production Act of 1976, as amended (NPRPA), (42 U.S.C. 6501 *et seq.*).

On April 11, 2002 (67 FR 17865), the BLM published a final rule that applies to operations under Federal oil and gas leases in NPR–A and added a new

subpart allowing the formation of oil and gas units in the NPR–A.

On August 8, 2005, the President signed the Energy Policy Act of 2005 (EPAct of 2005) (Pub. L. 109–58). Section 347 of the EPAct of 2005 amends the NPRPA. These amendments require that the BLM revise our existing regulations on:

(A) Lease extensions and renewals;

(B) Participation in oil and gas units;

(C) Production allocation;

(D) Termination of administration of conveyed mineral estate; and

(E) Waiver, suspension, and reduction of rental, minimum royalty, or royalty.

This proposed rule would make the part 3130 regulations on these subjects consistent with the EPAct of 2005. The rule would also make other changes to NPR–A regulations affecting administration of NPR–A leases and units.

III. Discussion of the Proposed Rule

Section 3130.0–3 Authority

This proposed rule would amend the authority section by adding a reference to the Energy Policy Act of 2005 (Pub. L. 109–58) in a new paragraph (d).

Section 3130.0–5 Definitions

The EPAct of 2005 uses three terms that we also use in this proposed rule. All three terms are used in the provisions having to do with the proposed methodology for allocating production among committed tracts in a unit in the NPR–A (see proposed section 3137.23(g)). If the unit included non-Federal land, the methodology must take into account reservoir heterogeneity and area variation in reservoir producibility. This section of the rule would define the terms ''production allocation methodology,'' ''reservoir heterogeneity,'' and ''variation in reservoir producibility'' in a manner consistent with normal usage in the field.

Section 3133.3 Under what circumstances will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty on my NPR–A lease?

The EPAct of 2005 addresses the circumstances under which the BLM would consider waiving, suspending, or reducing the rental, royalty, or minimum royalty on an NPR–A lease. This section of existing regulations would be amended by this rule and under new paragraph (a)(2) the BLM could waive, suspend, or reduce the rental, royalty, or minimum royalty on an NPR–A lease if it was necessary to promote development or the BLM determined that the lease could not be successfully operated under the terms of the lease.

Also, as a result of changes made to the NPRPA by the EPAct of 2005, this proposed rule would change existing paragraph (b) by requiring the BLM to consult with the State of Alaska and the North Slope Borough within 10 days of receiving an application for waiver, suspension, or reduction of rental, royalty, or minimum royalty. Under new paragraph (b), the BLM would not approve an application for these benefits (under § 3133.4) until at least 30 days after the consultation is completed.

This proposed rule would add a new paragraph (c) to this section. Under this new paragraph, if a lease included land that was made available for acquisition by a Regional Corporation (as defined in 43 U.S.C. 1602) under Section 1431(o) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), the BLM would only approve a waiver, suspension, or reduction of rental, royalty, or minimum royalty if the Regional Corporation concurred. This change is necessary because the statute requires concurrence from the Regional Corporation prior to approval of these actions.

Section 3133.4 How do I apply for a waiver, suspension or reduction of rental, royalty or minimum royalty for my NPR–A lease?

Under this proposed rule, existing paragraph (a)(6) would have a new requirement that an applicant who is applying for a waiver, suspension, or reduction of rental, royalty, or minimum royalty demonstrate that the waiver, suspension, reduction of the rental, royalty, or minimum royalty encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation, and all the facts demonstrate that it cannot successfully operate the lease under its terms. The new requirement is as a result of changes that the EPAct of 2005 made to NPRPA.

This rule would also make a minor editorial change to existing paragraph (a)(7) by replacing ''can't'' with ''cannot.''

Section 3134.1–2 Additional Bonds

Changes to the existing paragraph (a) on additional bonding would allow the BLM to require additional bonding for all NPR–A leases, not only special areas, using the criteria of section 3104.5(b) of the existing regulations. This rule would add a cross reference to existing section 3104.5(b), which would allow the BLM to require an increase in the amount of any NPR–A lease bond if the BLM determined that the operator posed a risk due to factors, including, but not limited to:

(A) A history of previous violations;

(B) A notice from the Minerals Management Service (MMS) that there are uncollected royalties due; or

(C) The total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the BLM.

The existing regulations only allow BLM to increase the bonding amount in the Special Areas as defined in the NPRPA. This rule would allow BLM to increase the bonding amount on all NPR–A leases and would make the NPR–A oil and gas regulations consistent with the regulations that currently apply to Federal oil and gas leases outside of the NPR–A.

Section 3135.1–4 Effect of Transfer of a Tract

This proposed rule would revise paragraph (a) of this section to make the existing provisions clearer. This proposal would not change the meaning or intent of this paragraph.

This proposed rule would revise the provisions on segregation in paragraph (b) of this section by changing the standard that the BLM applies when determining if a segregated lease should continue in full force and effect. The existing standard is that a segregated lease remains in full force and effect if the BLM determines that oil and gas is being produced in paying quantities from that segregated portion of the lease area or so long as drilling or well reworking operations, either actual or constructive, are being conducted. The new standard would be that a lease would continue in full force and effect as long as the activities on the segregated lease support lease extension under the regulations in section 3135.1–5. That section would be revised by this rule as well and it is discussed further below.

Section 3135.1–5 Extension of Lease

Existing regulations on lease extensions require that the BLM extend the term of a lease beyond its primary term so long as:

(A) Oil or gas is produced from the lease in paying quantities; or

(B) Drilling or reworking operations, actual or constructive, as approved by the BLM, are being conducted on the lease.

This proposed rule would add a new condition to paragraph (a) of this section under which the BLM would grant a lease extension in cases where the BLM has determined in writing that oil or gas

is capable of being produced in paying quantities from the lease.

The proposed rule would amend existing paragraph (a) by breaking it into subparagraphs so that it is easier to read. The last sentence of paragraph (a) would be rewritten to make it clear that the BLM approves drilling or reworking operations, actual or constructive, rather than the Secretary.

This rule would also add a new paragraph (b) to this section that explains that NPR–A leases expire on the 30th anniversary date of the original issuance date of the lease unless oil or gas is being produced in paying quantities from the lease. The new paragraph further explains that if a lease contains a well that is capable of production, but the lease does not produce the oil or gas due to circumstances beyond the lessee's control, the lessee may apply for a suspension under section 3135.2. If the BLM approved the suspension, the lease would not expire on the 30th anniversary of the original issuance date of the lease. These proposed changes are in response to changes to NPRPA made by the EPAct of 2005.

This rule would amend paragraph (c) of the existing regulation by making it clear that the directional wells discussed in that paragraph are the BLM-approved directional wells. This is a clarification of existing practice.

Section 3135.1–6 Lease Renewal

This proposed rule would add a new section on lease renewals to the existing NPR–A regulations that would be based on changes the EPAct of 2005 made to the NPRPA. The EPAct of 2005 addresses, and this section would address, lease renewals in two parts: those leases that have a discovery of hydrocarbons and those leases that do not have a discovery.

With a Discovery. Under this proposed section, at any time after the fifth year of the primary term of a lease, the BLM could approve a 10-year lease renewal for a lease on which there has been a well drilled and a discovery of hydrocarbons, even if the BLM had determined that the well is not capable of producing oil or gas in paying quantities. Under this section the BLM must receive the lessee's application for lease renewal no later than 60 days prior to the expiration of the primary term of the lease.

This section would require that the renewal application provide evidence, and a certification by the lessee, that the lessee has discovered oil or gas on the leased lands in such quantities that a prudent operator would hold the lease for potential future development.

Under this proposed section, the BLM would approve the application if it determined that a discovery was made and that a prudent operator would hold the lease for future development.

The lease renewal would be effective on the day following the end of the primary term of the lease. The BLM may approve the lease renewal on the condition that the lessee drills one or more additional wells or acquires and analyzes more well data, seismic data, or geochemical survey data prior to the end of the primary term of the lease.

The BLM is interested in all comments that you may have on what constitutes a ''discovery'' for purposes of lease renewal. If today's proposal were adopted, the BLM would use professional judgment, on a case-by-case basis, to make a determination on whether there is a discovery. However, we are especially interested in comments regarding whether any specific criteria should be used to make this determination or, if by the very nature of the determination, each case should be judged individually.

Without a Discovery. Under this proposed section, at any time after the fifth year of the primary term of a lease, the BLM could approve an application for a 10-year lease renewal for a lease on which there has not been a discovery of oil or gas. The BLM must receive the lessee's application no later than 60 days prior to the expiration of the primary term of the lease.

Under this proposed rule, the renewal application must:

(A) Provide sufficient evidence that the lessee has diligently pursued exploration that warrants continuation of the lease with the intent of continued exploration or future potential development of the leased land. The application must show the lessee has drilled one or more wells or acquired seismic or geochemical data indicating a probability of future success, and the application must include a plan for future exploration; or

(B) Show that all or part of the lease is part of a unit agreement covering a lease that qualifies for renewal without a discovery and that the lease has not been previously contracted out of the unit.

The BLM would approve the renewal application if it determined that the application satisfied the requirements of paragraph (b)(2)(A) or (B) of this section. If the BLM approved the application for lease renewal, the applicant would be required to submit to the BLM a fee of $100 per acre within 5 business days of receiving notification of the renewal approval.

The lease renewal would be effective on the day following the end of the primary term of the lease. The BLM may approve the lease renewal on the condition that the lessee drills one or more additional wells or acquires and analyzes more well data, seismic data, or geochemical survey data prior to the end of the primary term of the lease.

The renewed lease would be subject to the terms and conditions applicable to new oil and gas leases issued under the Integrated Activity Plan in effect on the date that the BLM issues the decision to renew the lease.

Section 3135.1–7 Consolidation of Leases

This proposed rule would revise the consolidation provisions in existing regulations having to do with the term of a consolidated lease. Under the existing regulations, the term of a consolidated lease is extended beyond the primary term of the lease only as long as oil or gas is produced in paying quantities or approved constructive or actual drilling or reworking operations are conducted on the lease. Under paragraph (d) of this proposed rule, the term of a consolidated lease would be extended or renewed, as appropriate, under the extension or renewal provisions of the regulations. The change would recognize that the new standards in the extension and renewal provisions of this rule apply to consolidated leases.

This rule would amend paragraph (e) of the existing regulation by making it clear that the highest of the royalty or rental rates of any original lease apply to the consolidated lease. This is consistent with existing policy and practice.

Section 3135.1–8 Termination of Administration for Conveyed Lands and Segregation

This rule would add a new section concerning the waiver of administration for conveyed lands in a lease. This new section is necessary because of changes that the EPAct of 2005 made to the NPRPA. Under this new section, the BLM would be required to terminate administration of any oil and gas lease if all of the mineral estate is conveyed to the Arctic Slope Regional Corporation (ASRC). The ASRC would then assume the lessor's obligation to administer any oil and gas lease.

This section would explain that if a conveyance of the mineral estate does not include all of the land covered by an oil and gas lease, the lease would be segregated into two leases, one of which will cover only the mineral estate conveyed. The ASRC would assume

administration of the lease within the conveyed mineral estate.

Under this proposed rule, if the ASRC assumed administration of a lease under paragraphs (a) or (b) of this section, all lease terms, the BLM regulations, and the BLM orders in effect on the date of assumption would continue to apply to the lessee's obligations under the lease. All such obligations would remain enforceable by the ASRC as the lessor until the lease terminated.

In a case in which a conveyance of a mineral estate described in paragraph (b) of this section does not include all of the land covered by the oil and gas lease, a person who owns part of the mineral estate covered by the lease is entitled to the revenues associated with its mineral rights, including all royalties resulting from oil and gas produced from or allocated to that part of the mineral estate.

Section 3137.5 What terms do I need to know to understand this subpart?

This rule would make one change to the definition of ''participating area'' by replacing the word ''contain'' with the phrase ''are proven to be productive.'' Existing regulations imply that every committed tract within a participating area must contain a well that meets the productivity criteria specified in the unit agreement. The rule would clarify that the participating area consists of tracts that have been proven productive by a well meeting the productivity criteria, but that not every committed tract in the participating area would necessarily contain a well meeting the productivity criteria.

Section 3137.11 What consultation must BLM perform if lands in the unit area are owned by the Arctic Slope Regional Corporation or the State of Alaska?

This rule would add a new section on consultation if lands in a unit are owned by the ASRC or the State of Alaska. This section is based on changes that the EPAct of 2005 made to the NPRPA. The new section requires that if the BLM administers a unit containing tracts where the mineral estate is owned by the ASRC or the State of Alaska, or if a proposed unit contains tracts where the mineral estate is owned by the ASRC or the State of Alaska, the BLM would consult with and provide opportunities for participation with respect to the creation or expansion of the unit by:

(A) The ASRC, if the unit acreage contains the ASRC's mineral estate; or

(B) The State of Alaska, if the unit acreage contains the state's mineral estate.

The EPAct of 2005 requires that the BLM provide opportunity for participation by the State of Alaska and the ASRC in the creation and expansion of units if those units include acreage in which the State of Alaska or the ASRC has an interest in the mineral estate. If a proposed oil and gas unit included lands where one or both of these entities owned an interest in the mineral estate, the BLM would require the unit proponent to allow the State of Alaska and/or the ASRC to participate in the negotiations of the unit agreement terms and the unit agreement area. This would allow the State of Alaska and the ASRC to protect their interests in the unit agreement before they committed their tracts to the unit.

Similarly, if a unit expansion is proposed, and the existing unit or the acreage included in the expansion included lands in which the State of Alaska or the ASRC owned a mineral interest, both parties would participate in the negotiation of the terms of the expanded unit and in the determination of the expanded unit area. ''Participation'' in this case does not mean sharing of revenues or production. Instead, the term means participation by the ASRC or the state, as applicable, in the process of government oversight, through consultation, of the unit's creation or expansion.

Section 3137.21 What must I include in an NPR–A unit agreement?

The rule would make one minor change to section 3137.21(a)(3) by replacing the word ''proposed'' with the word ''anticipated.'' Existing regulations assume that in all cases the applicant would be in a position to propose the participating area size and well locations at the application stage. The wording change would recognize that at the early application stage in the process an applicant may not be able to propose the participating area size or well locations. Using the word ''anticipated'' instead of ''proposed'' better reflects on-the-ground circumstances.

This proposed rule would amend the existing paragraph (a)(5) of this section by requiring that unit agreements that contain the ASRC's mineral estate or the state's mineral estate must acknowledge that, with respect to those two entities, the BLM consulted with and provided opportunities for participation in the creation of the unit and that the BLM will consult with and provide opportunities for participation in the expansion of the unit, as appropriate. Existing regulations do not contain this consultation requirement, which is now necessary due to changes to NPRPA made by the EPAct of 2005. As in proposed section 3137.21, ''participation'' by the ASRC or the state means participation in the oversight process through consultation with the BLM.

This rule would also make a minor editorial change to existing paragraph (a)(5) (renumbered paragraph (a)(6)) by adding ''that'' between ''subpart'' and ''you.''

Section 3137.23 What must I include in my NPR–A unitization application?

This proposed rule would add to the existing regulation a provision requiring in the unit application a discussion of the proposed methodology for allocating production among the committed tracts. If the unit included non-Federal oil and gas mineral estate, new paragraph (g) would require that the application explain how the methodology would take into account reservoir heterogeneity and area variation in reservoir producibility. These changes are necessary because of changes that the EPAct of 2005 made to the NPRPA. Also, as discussed earlier, the terms ''reservoir heterogeneity'' and ''reservoir producibility'' would be defined in section 3130.0–5 of this rule.

Section 3137.41 What continuing development obligations must I define in a unit agreement?

This proposed rule would amend the section on continuing development obligations by requiring that a unit agreement provide for the submission of supplemental or additional plans of development which obligate the operator to a program of exploration and development. The existing regulations require that the unit agreement actually obligate the operator to a program of exploration and development. The change recognizes that at the early stages of a unit agreement, an operator may not be able to identify the program of exploration and development and therefore it might not be possible for an operator to commit to one at that time. The proposal would allow an operator to submit plans of development later in the process, allowing the operator to collect additional data prior to requiring the operator to obligate itself to a program of exploration and development.

Section 3137.80 What are participating areas and how do they relate to the unit agreement?

This proposed rule would make two changes to this section. The first change would revise paragraph (a) of the section by replacing ''that contain'' with ''that are proven to be productive.'' The

existing regulations imply that every committed tract within a participating area must contain a well that meets the productivity criteria specified in the unit agreement. The revision would make it clear that a participating area contains committed tracts in a unit area that are proven to be productive by a well meeting the productivity criteria specified in the unit agreement, but that not every committed tract in the participating area would necessarily contain a well meeting the productivity criteria.

The second change this rule would make is to paragraph (b) of this section. Under the new rule, an applicant would be required to include ''a description of the anticipated participating area(s) size in the unit agreement'' rather than merely stating that the unit area ''contain'' a well meeting the productivity criteria. This change makes it clear that the application must contain a description of the anticipated participating area size.

Section 3137.81 What is the function of a participating area?

The rule would revise paragraph (a) of this section by changing how the BLM allocates production, for royalty purposes, to each committed tract within the participating area. Under existing regulations, the BLM allocates to each committed tract within the participating area in the same proportion as that tract's surface in the participating area to the total acreage in the participating area. Under this proposed rule, the BLM would allocate production for royalty purposes to each committed tract within the participating area using the allocation methodology agreed to in the unit agreement (see section 3137.23(g)). This change would allow for variations in the reservoir geology and producibility when calculating allocations for royalty purposes.

Section 3137.85 What is the effective date of a participating area?

This proposed rule would revise paragraph (b) of this section by changing how the BLM determines the effective date of a modified participating area or modified allocation schedule. Under existing regulations, the effective date of a modified participating area or modified allocation schedule is the earlier of the first day of the month in which you: (1) Complete a new well meeting the productivity criteria; or (2) Should have known you need to revise the allocation schedule. Under this proposed rule, the effective date of a modified participating area or allocation schedule would be the earlier of the first day of the month in which you file a proposal for modification or such other date as may be provided in the unit agreement. It has been common practice with oil and gas units administered by the State of Alaska to allow for an earlier effective date when participating areas or allocation schedules are modified.

The proposed rule would allow the BLM to approve an earlier effective date of the participating area, if it is warranted, consistent with the approach that the State of Alaska takes. Under this proposed rule, rather than just determining a fair, current allocation of a revised participating area, the BLM would be able to approve an effective date back in time. This would allow corrections of past, errant allocations rather than just moving forward with a fair allocation from the time new information is acquired. This method of ''backward'' looking reallocation creates a greater administrative workload for the BLM and the MMS, but it is the superior approach because it would allow for corrections of allocations that were incorrect and helps to ensure that parties to the unit are treated equitably.

Section 3137.111 When will BLM extend the primary term of all leases committed to a unit agreement or renew all leases committed to the unit?

This proposed rule would revise this section by adding lease renewals to this section and referencing the proposed rule governing extensions (43 CFR 3135.1–5). The EPAct of 2005 addresses lease renewals and provides for a renewal fee of $100 per acre for each lease in the unit that is renewed without a discovery under 43 CFR 3135.1–6 of this proposed rule. Renewals are addressed under 43 CFR 3135.1–6 of this proposed rule. This section incorporates those changes to this section of the NPR–A unit regulations. As a result of these changes and because the EPAct of 2005 addresses extensions and lease renewals, existing section 3137.111 is superseded by the statutory provisions that this rule would implement.

Section 3137.131 What happens if the unit terminated before the unit operator met the initial development obligations? and

Section 3137.134 What happens to committed leases if the unit terminates?

These two sections address what happens to leases in a unit in the event a unit terminates. This proposed rule would revise these sections by adding the option of a lessee applying for a renewal upon unit termination and by adding a cross-reference to the proposed lease renewal provisions in these proposed regulations.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

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

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government (see below). A cost-benefit and economic analysis is not required.

b. This rule will not create inconsistencies with other agencies' actions. These rule changes are administrative in nature and will not effect other agencies' actions. There are provisions in the rule that require the BLM to consult with or request concurrence from the state, North Slope Borough, or the ASRC before approving certain actions. These provisions are to the benefit of these other agencies because they help ensure that their rights are protected. These provisions would more than likely help ensure that the actions taken under this rule would not create inconsistencies with those agencies' actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The one fee this rule would implement (lease renewals without a discovery) is a per-acre fee mandated by Congress. As stated below, when compared to the scope and cost of operations in NPR–A, this fee is not significant.

d. This rule will not raise novel legal or policy issues. All of the NPR–A oil and gas regulations changes that this rule would implement are currently addressed similarly in other existing BLM regulations or policies.

The following discusses the potential impacts of the proposed rule changes:

Waiver, Suspension, or Reduction of the Rental, Royalty, or Minimum Royalty

The rule would add a provision that would allow the BLM to waive, suspend, or reduce the rental, royalty, or minimum royalty on an NPR–A lease if it was necessary to promote development or the BLM determined that the lease could not be successfully operated under the terms of the lease. The BLM would not allow for any of these to take place unless it were

necessary to promote development or if we determined that the lease could not be successfully operated under the terms of the lease.

Operators would benefit from this provision since they would be able to continue to operate their leases. The Federal Government would benefit since producible wells would not be shut in and the Federal Government would continue to receive revenue from wells that might otherwise be shut in, which may result in waste of Federal oil and gas. Furthermore, since this provision may reduce the risk of investment to lessees, it may result in higher bonus bids for new leases. State, local and tribal governments and communities would be positively affected since wells that would under other circumstances be shut in, would continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition or jobs would be positive, but would be too speculative to predict.

Also, as a result of changes made to the NPRPA by the EPAct of 2005, the proposed rule would change existing regulations by requiring the BLM to consult with the State of Alaska and the North Slope Borough within 10 days of receiving an application for waiver, suspension, or reduction of rental, royalty, or minimum royalty. This provision could increase costs slightly for the BLM, the State of Alaska, and the North Slope Borough because under this proposed rule these parties would be involved in consultation that is currently not required. However, consultation would help ensure that the rights of the state and the North Slope Borough are protected.

The proposed rule would add a new provision to the regulations stating that if a lease included land that was made available for acquisition by a Regional Corporation under the Alaska National Interest Lands Conservation Act, the BLM would only approve a waiver, suspension, or reduction of rental, royalty, or minimum royalty if the Regional Corporation concurred. This change is necessary because the statute requires concurrence from the Regional Corporation prior to approval of these actions. Concurrence by the Regional Corporation is not currently required. Therefore, this provision could minimally increase administrative costs for the Federal Government and for the Regional Corporation; however, requiring concurrence would help ensure that the rights of the Regional Corporation are protected.

Additional Bonding

Changes to the bonding regulations would allow the BLM to require additional bonding under certain circumstances. The existing regulations only allow BLM to increase the bonding amount in the Special Areas as defined in the NPRPA. The rule would allow the BLM to require an increase in the amount of an NPR–A lease bond for any NPR–A lease if the BLM determined that the operator posed a risk due to factors, including, but not limited to:

(A) A history of previous violations;

(B) A notice from the MMS that there are uncollected royalties due; or

(C) The total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the BLM.

The rule change would make the existing regulations on bonding of NPR–A leases consistent with the Mineral Leasing Act regulations that currently apply to Federal oil and gas leases outside of the NPR–A. The BLM has used this authority on lands leased under the Mineral Leasing Act. The increases have most often been based on the significant liabilities that an operator has under a single bond. Under these circumstances, the average bond increase has been about 200 percent. While it is not possible, at this time, to predict how much any specific bond amount might be increased were this provision to become effective, increasing an area-wide NPR–A bond ($300,000) by 200 percent would make the increased bond amount $900,000. This is more consistent with bonding of other agencies on the North Slope than is the existing area-wide bond amount under existing regulations. For example, the State of Alaska requires bonding of $700,000 for multiple oil wells and the MMS requires bonding of $3,000,000 for offshore development.

This provision would economically impact only those operators who have a history of previous violations, those that have uncollected royalties that are due, and those who have leases where the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the BLM. The economic impact to these operators would be minimal when compared to the value of an oil and gas lease in the NPR–A, and when compared to the additional protection the Federal Government and Federal lands would receive.

A typical development in NPR–A would produce approximately 20,000 barrels per day or 7,300,000 barrels per year. With a market price of $60 per barrel [1] in the lower 48 states and approximately $8 in transportation costs per barrel to get the oil from NPR–A to the lower 48 states, the wellhead price would be approximately $52 per barrel.

A typical bond amount for a lease in the NPR–A is approximately $300,000. If we raised the bonding requirement from $300,000 to $900,000, the annual bonding fee the operator would pay would go from approximately $3,000 per year to $9,000 per year (the cost of a surety bond is approximately 1% per year), an increase of $6,000 per year.

How does that compare to other costs the operator faces? The transportation cost to get the production to the lower 48 states would be about $58,400,000 per year. Receipts at the wellhead would be approximately $379,600,000 per year. The lifting cost would be about $33,000,000. Royalties would be approximately $47,450,000 per year. A $6,000, or even $60,000, increase in costs per year would have minimal impact on the operator.

Effect of Transfer of a Tract-Segregation

The proposed rule would change the standard that the BLM applies when determining if a segregated lease should continue in full force and effect. The existing standard is that a segregated lease remains in full force and effect if the BLM determines that oil and gas is being produced in paying quantities from that segregated portion of the lease area or so long as drilling or well reworking operations, either actual or constructive, are being conducted. The new standard would be that a lease would continue in full force and effect as long as oil or gas is produced or is capable of being produced from the lease in paying quantities or drilling or reworking operations, actual or constructive, as approved by the Secretary, are being conducted on the lease. This would have the same economic impact as discussed under the ''Lease Extension'' and ''Lease Renewal'' sections since the segregated lease would be able to be extended or renewed based on the same criteria used for all NPR–A leases.

Lease Extension

Existing regulations on lease extensions require that the BLM extend the term of a lease beyond its primary term so long as:

(A) Oil or gas is produced from the lease in paying quantities; or

[1] According to the Alaska Department of Revenue, Tax Division, the per-barrel price for oil between January 2005 and April 2006 fluctuated between $41.12 and $67.74 per barrel. We cannot predict price fluctuations in the future; however, the $60 represents an estimate of average prices expected.

(B) Drilling or reworking operations, actual or constructive, as approved by the Secretary, are being conducted on the lease.

The proposed rule would add a new condition under which the BLM would grant a lease extension in cases where the BLM has determined that oil or gas is capable of being produced in paying quantities from the lease.

This rule would also add a new provision that explains that NPR–A leases expire on the 30th anniversary date of the original issuance date of the lease unless oil or gas is being produced from the lease. This provision is required by the EPAct of 2005.

Prior to the EPAct of 2005, NPR–A lease terms were fixed at 10 years. Longer lease terms for NPR–A leases are preferable since there are harsh climatic conditions and a short ''winter only'' exploration window in the NPR–A that make it difficult to operate in that region. Longer lease terms allow operators additional time to deal with these conditions. Under the existing regulations, the long lead time between exploration and production on the North Slope (6–8 years) reduces incentive for operators to explore on leases with less than 6–8 years left in their primary term. The new rule would provide incentive for operators to continue exploration in the later years of the primary term of the lease. The timeframe for bringing a gas discovery to production is even longer. Without a gas pipeline to the North Slope, operators currently have little incentive to explore in gas-prone areas or to further delineate gas discoveries. The new rule may have the effect of increasing the value of the NPR–A leases, increasing the level of exploration activity, and increasing the likelihood of eventual production from NPR–A leases. The value of these benefits, if any, is too speculative to predict. These changes would also have minor administrative savings and economic benefit to operators and to the Federal Government since lessees would not be required to file for lease extensions as frequently and since the Federal Government would not be required to process those lease extensions.

Lease Renewal

The proposed rule would add a new section on lease renewals based on changes the EPAct of 2005 made to the NPRPA. The rule would address lease renewals in two parts: Those leases that have a discovery of hydrocarbons and those leases that do not have a discovery.

With a Discovery. Under this proposed section, the BLM would approve a 10-year lease renewal for a lease on which there has been a well drilled and a discovery of hydrocarbons, even if the BLM had determined that the well is not capable of producing oil or gas in paying quantities. This section would require that the applicant provide evidence that oil or gas has been discovered on the leased lands in such quantities that a prudent operator would hold the lease for potential future development. This regulatory change is required by the EPAct of 2005.

The economic impact of this provision would be positive. Existing regulations do not provide for lease renewals but do provide for lease extensions if there is actual production or as long as drilling and reworking operations are being conducted. This provision would allow for lease renewal for a 10-year term if a discovery was made and a prudent operator would hold the lease for future development. This provision provides an incentive for an operator to explore, even if there is not enough time to meet the current conditions for lease extensions. This change would allow the lessee another 10 years to explore and develop the lease without having to compete for the lease again in a subsequent lease sale. Leases in the NPR–A typically are either 5,760 or 11,520 acres and the average high bid is approximately $70 per acre. The Federal Government may be foregoing between $400,000 and $800,000 for each of these lease renewals, since lessees who were granted a lease renewal would not be required to compete for a new lease for the same lands. In exchange for this ''opportunity cost'' the lease has a much greater likelihood of being developed and developed sooner.

It is also possible that without the option of renewal, the lease which has been explored without a paying well discovery would have less value and not receive bids in the next sale. In this case, the United States would lose the value of lease rental ($60,000–$150,000 per year). Lease bonuses and lease rentals are both lesser considerations in the United States realizing the value of leased lands, however. The value of potential production from an NPR–A lease far exceeds either of these revenue streams. A typical North Slope development produces about 20,000 barrels of oil per day. At a $60 per barrel oil price, the United States would collect between $45 and $60 million dollars per year in royalties. If the renewals make the likelihood of development greater, the identified ''opportunity costs'' are viewed as beneficial to the United States.

Furthermore, this could reduce risk of investment to the lessee, which may increase bonus bids on future leases.

Without a Discovery. Under this proposed section, the BLM could approve an application for a 10-year lease renewal for a lease on which there has not been a discovery of oil or gas.

Under this proposed rule, the renewal application must:

(A) Provide sufficient evidence that the lessee has diligently pursued exploration that warrants continuation of the lease with the intent of continued exploration or future potential development of the leased land; or

(B) Show that all or part of the lease is part of a unit agreement covering a lease that qualifies for renewal without a discovery and that the lease has not been previously contracted out of the unit.

If the BLM approved the application for lease renewal, the applicant would be required to submit to the BLM a fee of $100 per acre within 5 working days of receiving notification of the renewal approval. This fee is mandated by the EPAct of 2005.

As discussed above, existing regulations do not allow for lease renewals, only lease extensions if there is actual production or as long as drilling and reworking operations are being conducted. This new provision would allow for lease renewal without a discovery under certain circumstances and would require that lessees pay a fee of $100 per acre for the renewal. The economic impact of this provision would be minimal. As with lease renewal with a discovery, this provision provides the lessee with incentive to explore, even if there is not sufficient time to take actions to qualify for a lease extension. As discussed above, the cost to obtain the lease in a subsequent sale would likely be around $70 per acre. The new rule would allow the lessee to retain the lease without competition, or the risk of loss of the lease, for a cost above what it might cost in a competitive lease sale, but it would allow the operator to seamlessly pursue exploration. This is likely to have the effect of accelerating the eventuality of bringing the lease into production. It is also possible, as discussed above, that without the option of renewal the lease which has been explored without a discovery would have less value and not receive bids in the next sale. In this case the United States would lose the value of lease rental ($60,000—$150,000 per year). Furthermore, nothing compels a lessee to apply for a lease renewal and pay the per acre fee. If the lessee

believes the lease may be valuable, but not worth $100 per acre, he can relinquish the lease and try to obtain it at a lower price in a subsequent competitive lease sale. Operators may still apply for lease extensions under the revised provisions of this rule. Operators may also apply for a renewal under other provisions of this rule and avoid paying the fee by a discovery and a showing that a prudent operator would hold the lease for future development.

The new rule has the effect of allowing the government to be compensated for the lease without having the administrative costs of conducting a new lease sale. The new rule also increases the likelihood of production and royalty payments at an earlier date. The value of potential production from an NPR–A lease far exceeds the value of lease bonuses. A typical North Slope development produces about 20,000 barrels of oil per day. At a $60 per barrel oil price, the United States would collect between $45 and $60 million dollars per year in royalties.

This provision could lower the risk of investment to the lessee and possibly result in higher bonus bids at future lease sales. Like other changes this rule would make, any benefits of this provision are too speculative to predict.

Lease Consolidation

The proposed rule would revise the consolidation provisions in existing regulations having to do with the term of a consolidated lease. Under existing regulations, the term of a consolidated lease is extended beyond the primary term of the lease only as long as oil or gas is produced in paying quantities or approved constructive or actual drilling or reworking operations are conducted on the lease. Under this proposed rule, the term of a consolidated lease would be extended or renewed, as appropriate, under the extension or renewal provisions of the regulations. The change would recognize that the new standards in the extension and renewal provisions of this rule apply to consolidated leases. This would have the same economic impacts discussed under ''Lease Extension'' and ''Lease Renewal'' sections above, i.e., it could have the effect of increasing the value of the NPR–A leases, increasing the level of exploration activity, increasing the likelihood of production from NPR–A leases, and increasing future bonus bids.

Termination of Administration for Conveyed Lands and Segregation

This rule would add a new section concerning the waiver of administration for conveyed lands in a lease. This new section is necessary because of changes that the EPAct of 2005 made to the NPRPA. Under this new section, the BLM would be required to terminate administration of any oil and gas lease if all of the mineral estate is conveyed to the ASRC. The ASRC would then assume the lessor's obligation to administer any oil and gas lease. This provision does not provide the authority to convey the mineral estate to the Regional Corporation, only that once a conveyance is made, the BLM would no longer administer any oil and gas lease. This change would have a minor positive economic impact on the Federal Government because costs for administration of these types of leases would no longer be borne by the BLM. The Regional Corporation would be responsible for administration and likewise be responsible for administrative costs.

This section would explain that if a conveyance of the mineral estate does not include all of the land covered by an oil and gas lease, the lease would be segregated into two leases, one of which will cover only the mineral estate conveyed. The ASRC would assume administration of the lease within the conveyed mineral estate. The segregation of a lease would not impair the mineral estate owners' rights to royalties for oil and gas produced from, or allocated to, their portions of land covered by the lease. This provision is purely administrative in nature and would have a minimal economic impact. It would decrease administrative costs for the Federal Government and increase the administrative costs to the ASRC for leases that have been conveyed.

Change to the Definition of Participating Area

This rule would make one change to the definition of ''participating area'' by replacing the word ''contain'' with the phrase ''are proven to be productive.'' Existing regulations are not clear that a committed tract does not need to contain a well that meets the productivity criteria specified in the unit agreement. Instead, a unit well meeting the productivity criteria proves that the committed tract is productive. This change would have no economic impact since this change merely clarifies existing policy.

Consultation if Lands in the Unit Area Are Owned by the Arctic Slope Regional Corporation or the State of Alaska

This rule would add a new section on consultation if lands in a unit are owned by the ASRC or the State of Alaska. This section is based on changes that the EPAct of 2005 made to the NPRPA. The new section requires that if the BLM administers a unit containing tracts where the mineral estate is owned by the ASRC or the State of Alaska, or if a proposed unit contains tracts where the mineral estate is owned by the ASRC or the State of Alaska, the BLM would consult with and provide opportunities for participation with respect to the creation or expansion of the unit by:

(A) The ASRC, if the unit acreage contains the ASRC's mineral estate; or

(B) The State of Alaska, if the unit acreage contains the state's mineral estate.

The rule would have minor economic impacts on the BLM, the State of Alaska, and the ASRC. All parties involved in the consultation could incur minor additional costs; however, consultation would help ensure that the rights of all parties to the unit are protected.

NPR–A Unitization Application

The proposed rule would require the unit application to explain the proposed methodology for allocating production among the committed tracts. If the unit included non-Federal mineral estate, the applicant would be required to explain how the methodology would take into account reservoir heterogeneity and area variation in reservoir producibility. These changes are necessary because of changes that the EPAct of 2005 made to the NPRPA. The economic impacts of this provision are expected to be minor, but not measurable, since the change would impact different unit agreements differently. However, the rule would help ensure fair allocation of production among unit participants and ensure that the Federal Government receives the correct royalty payment.

Continuing Development Obligations in a Unit Agreement

The proposed rule would amend the provisions on continuing development obligations in existing regulations by requiring that a unit agreement provide for the submission of supplemental or additional plans of development which obligate the operator to a program of exploration and development. The existing regulations require that the unit agreement actually obligate the operator to a program of exploration and development.

The change recognizes that at the early stages of a unit agreement, an operator may not be able to identify the program of exploration and development and therefore it might not be possible for an operator to commit to one at that time. The proposal would allow an operator to submit plans of

development later in the process, allowing for the operator to collect additional data prior to requiring the operator to obligate itself to a program of exploration and development. Under the existing process, because the data may be incomplete, the operator may be required to submit information several times as the data becomes available. The new provision would have minor positive economic benefits for applicants and the BLM since it would allow commitment to a program of exploration and development at a more appropriate time when sufficient data is available.

Participating Areas

This proposed rule would make two changes to the provisions on participating areas. The first change would make it clear that a participating area contains committed tracts in a unit area that are proven to be productive by a well meeting the productivity criteria specified in the unit agreement. The second change is that this rule would make it clear that the application must contain a description of the anticipated participating area size. Neither of these changes would have an economic impact because they merely clarify existing policy.

Function of a Participating Area

The rule would revise the participating area provisions of existing rules by changing how the BLM allocates production, for royalty purposes, to each committed tract within the participating area. Under existing regulations, the BLM allocates to each committed tract within the participating area in the same proportion as that tract's surface in the participating area to the total acreage in the participating area. Under this proposed rule, the BLM would allocate production for royalty purposes to each committed tract within the participating area using the allocation methodology agreed to in the unit agreement. This change would allow for variations in the reservoir geology and producibility when calculating allocations for royalty purposes. This change would implement changes mandated by Congress in the EPAct of 2005. This rule change would have little economic impact to industry or the Federal Government, but would help ensure proper production allocations on a case-by-case basis.

Effective Date of a Participating Area

This proposed rule would revise how the BLM determines the effective date of a modified participating area or modified allocation schedule. Under existing regulations, the effective date of a modified participating area or modified allocation schedule is the earlier of the first day of the month in which you: (1) Complete a new well meeting the productivity criteria; or (2) Should have known you need to revise the allocation schedule. Under this rule, the effective date of a modified participating area or allocation schedule would be the earlier of the first day of the month in which you file a proposal for modification or such other date as may be provided in the unit agreement. This change allows the BLM to approve an earlier effective date, if warranted. Rather than just determining a fair current allocation of a revised participating area, the BLM would be able to approve an effective date back in time. This would allow corrections of past, erroneous, allocations rather than just moving forward with a fair allocation from the time new information is acquired. This provides greater flexibility and certainty that allocations will be equitably determined for all parties and overall would have no economic impact except that it could affect individual allocations.

Extension of the Primary Term of Leases Committed to a Unit Agreement or Renewal of Leases Committed to a Unit

This proposed rule would revise the provisions on the term of leases committed to a unit by adding lease renewals as an option. The EPAct of 2005 addresses lease renewals and provides for a renewal fee of $100 per acre for each lease in the unit that is renewed without a discovery. This section incorporates those changes to this section of the NPR–A unit regulations. As a result of these changes and because the EPAct of 2005 addresses extensions and lease renewals, existing provisions on lease extensions for leases in a unit are superseded by the statutory provisions that this rule would implement. We anticipate that the economic impacts of this rule would be the same as described under the ''Lease Extension'' section above.

Leases in Terminated Units and Lease Renewal

The rule change addresses what happens to leases in a unit in the event a unit terminates. The proposed rule would allow a lessee to apply for a lease renewal upon unit termination and would conform the provisions addressing termination with Congress' mandates regarding extension in the EPAct of 2005. Existing regulations allow lease extensions upon unit termination, but do not provide for lease renewals in these circumstances. These changes would have a minor positive economic impact by allowing lessees the option of applying for lease renewal upon unit termination.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?
2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example: § 3135.1–4 Effect of transfer of a tract.).
5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) and has found that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

The action of modifying the existing regulations would have very little impact on the environment. The new regulations would create more favorable lease terms for oil and gas companies (e.g., allowing lease extensions and renewals, potential for relief from royalty, rental and minimum royalty) and this may increase the likelihood of exploration and development in the NPR–A. The revised regulations would also allow the BLM greater flexibility in

granting relief from rentals and royalty which may also have the effect of encouraging development. But while the likelihood of exploration and development may be greater, the character or intensity of exploration and development remains unchanged. The potential impacts from exploration and development have been addressed in three environmental impact statements (EIS) written for the Integrated Activity Plans for the Northeast and Northwest NPR–A, seven EAs written for individual exploration proposals, and the Alpine Satellites Development EIS.

To the extent that recent Court decisions may require further NEPA analysis with respect to the environmental impacts of proposed leasing in the NPR–A, the BLM would address such analysis within the context of its consideration of land use planning and any proposed leasing. However, these proposed regulations do not invoke any significant environmental impact requiring additional NEPA analysis beyond the environmental assessment.

The revised regulations may also have the effect of allowing the oil and gas operators to pursue exploration and development at a more measured pace since terms of the lease can be extended beyond what was previously available.

The change to bonding levels would provide the BLM more certainty that environmental obligations, such as reclamation and well plugging, are honored. This would lessen the likelihood of adverse environmental impacts to the NPR–A.

Changes in the regulations that would require: (1) The BLM to allow participation from ASRC and the State of Alaska in the creation and expansion of oil and gas units; (2) Consultation with ASRC, State of Alaska, and the North Slope Borough when considering relief from royalty, rentals, or minimum royalty; (3) Allocation of production based on reservoir characteristics; and (4) The BLM to give ASRC administration of leases conveyed to the Native Corporation, are strictly administrative in nature and will have no effect on the environment.

This view as to the minimal environmental effects of the proposed changes in the regulations is consistent with the Department's previously expressed policies as indicated by provisions of the Departmental Manual (DM) which establish categorical exclusions under NEPA for actions by the BLM of the type addressed by the proposed regulations. These include ''(4) approval of unitization [*sic*] agreement[s] * * * (5) approval of suspensions of operations, force majeure suspensions, and suspensions of operations and production.'' See 516 DM Chapter 6, Appendix 5, 5.4B.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

This rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA. An initial or final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The BLM cannot determine how many lessees may qualify as small businesses or how many would be adversely affected by this proposed rule because the BLM does not track this type of information and it is not readily available. The BLM believes that several of the types of businesses identified in the North American Industrial Classification System (NAICS) (codified in the Small Business Administration regulations at 13 CFR 121.201) may do business in the NPR–A. These businesses, NAICS codes, and size standards in millions of dollars in receipts annually or number of employees are listed in the following table:

NAICS code	NAICS U.S. industry title	Size standard in millions of dollars	Size standard in number of employees
211111	Crude Petroleum and Natural Gas Extraction		500
211112	Natural Gas Liquid Extraction		500
213111	Drilling Oil and Gas Wells		500
213112	Support Activities for Oil and Gas Operations	6.5	
237120	Oil and Gas Pipeline and Related Structures Construction	31	

As stated above, the businesses in the table represent ones that may operate in NPR–A. However, we do not believe that businesses with the NAICS codes 213111, 213112, or 237120 would be impacted by the changes this rule proposes to make to the current regulations. Of the businesses listed in the table, businesses with NAICS codes 211111 and 211112 may be impacted by the proposed changes this rule would make because the regulatory changes would primarily affect lessees, and lessees may fall into one or both of these two categories.

Due to the scale and cost of operations on the North Slope (see the discussion under Executive Order 12866 above), it is not likely that operators in NPR–A would be small businesses. Furthermore, the BLM is unaware of any small businesses operating on lands in NPR–A under existing regulations and because of the large scale and high cost of operations in NPR–A, we do not anticipate that small businesses will enter the market in the future. Even if a small business did begin doing business in NPR–A, when compared to the costs of operating in the NPR–A and the potential receipts involved if production were to take place (see the discussion under Executive Order 12866 above), the impact of the proposed rule changes would be minimal. Therefore, the proposed changes would not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million or more. Please see the discussion under Executive Order 12866 above.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Please see the discussion under Executive Order 12866 above.

c. Does not have significant adverse effects on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. These proposed changes should have no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because their impact, economic and otherwise, would be minimal.

Unfunded Mandates Reform Act

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

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required.

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

This proposed rule would not mandate additional expenditures by any state or local government, any Federal agency, or any other entity. The State of Alaska and the ASRC may incur minor additional expenses under the consultation provisions of this proposed rule, but the consultations are for the benefit of those parties.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The proposed rule primarily extends benefits to leaseholders. The cost of additional bonding is too minor to constitute a taking. Therefore, the Department of the Interior has determined that the proposed rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule 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.

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required.

The proposed rule would only have a minimal 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. There are certain consultation provisions in the proposed rule where the state would be invited to participate in the discussion of the creation or expansion of Federal unit agreements in NPR–A which contain state lands. The consultation burden is minimal and it would be in the interest of the state to participate to help ensure that allocations to the state were fair.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM has worked closely with the Office of the Solicitor to help ensure that the proposed rule is written clearly and to help eliminate drafting errors.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (E.O. 13175) provides that Federal agencies must consult with Indian Tribal Governments before formal promulgation of regulations ''that have Tribal implications.'' E.O. 13175 defines ''Indian Tribes'' for purposes of government-to-government consultation as those ''that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a'' (E.O. 13175 at section 1(b)). In accordance with this mandate, the Bureau of Indian Affairs recently published a list of recognized tribes, including a large number of Native Alaskan entities including villages, communities, and tribes (see 70 FR 71194 (November 25, 2005)). If there were a duty of government-to-government consultation, prior to promulgation of these regulations, it would be owed to those listed tribal governments.

None of the recognized tribal governments have significant oil and gas interests within NPR–A or within the vicinity of NPR–A. Therefore, nothing in these final regulations has ''substantial direct effects 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'' (see section 1(a) of E.O. 13175). Accordingly, the final regulations do not have tribal implications and there is no government-to-government consultation obligation in this case.

Additionally, we are aware that a number of Alaska Native corporations organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) (ANCSA) may have oil and gas interests. The proposed rule would provide for consultation with the ASRC in accordance with the requirements of the EPAct of 2005 if lands in the unit area are owned by the ASRC. Also, the proposed rule would provide for concurrence by the ASRC before the BLM approves a waiver, suspension, or reduction of royalties under section 3133.3 if the lease includes land that was made available for acquisition by the Regional Corporation under Section 1431(o) of the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96–487). Additionally, these corporations could potentially become participants in units that include Federal NPR–A leases. If so, they would be eligible to participate in those unit agreements in the same manner as any other participants. However, no special consultation beyond that required by the EPAct of 2005 or by these proposed rules, if adopted, with such corporations would be required as a matter of law. The Bureau of Indian Affairs has recently declined to include such corporations on the list of recognized tribes eligible for government-to-government consultation (see 70 FR 71194 (November 25, 2005)). The Bureau of Indian Affairs previously indicated that ANCSA corporations are formally state-chartered corporations rather than tribes in the conventional legal or ''political sense'' and that Alaskan Native Villages were Indian tribes. See ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs,'' (60 FR 9250 (February 16, 1995)).

Prior to the promulgation of these rules, the BLM will provide opportunity for the tribal governments, along with the public generally, to comment during the comment period, in accordance with the notice and comment requirements of the Administrative Procedure Act.

Therefore, in accordance with E.O. 13175, we have found that this proposed rule does not include policies that have tribal implications.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that the proposed rule will not have substantial direct effects on the energy supply,

distribution or use, including a shortfall in supply or price increase. For the most part, this proposed rule does not represent the exercise of agency discretion inasmuch as a substantial portion of this rule is mandated by the EPAct of 2005. Congress's mandate to amend the BLM's existing NPR–A oil and gas regulations may result in an increase in oil and gas production of unknown amounts.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety. The proposed rule may positively affect the facilitation of cooperative conservation because the proposed rule seeks to add provisions to the existing NPR–A oil and gas regulations requiring that the BLM consult with the ASRC and the state in certain circumstances where consultation is not currently required.

Paperwork Reduction Act

The BLM has determined that this rulemaking does not contain any new information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Data Quality Act

When the BLM developed this rule, it did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Authors

The principal authors of this proposed rule are Greg Noble, Chief, Energy Branch, Bureau of Land Management, Alaska State Office, and Erick Kaarlela, Special Assistant to the Assistant Director, Minerals, Realty and Resource Protection, assisted by the Department of the Interior Office of the Solicitor and BLM's Division of Regulatory Affairs, Washington, DC.

List of Subjects in 43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: May 11, 2007.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the BLM proposes to amend 43 CFR part 3130 as set forth below:

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA

1. The authority citation for part 3130 continues to read as follows:

Authority: 42 U.S.C. 6508, 43 U.S.C. 1733 and 1740.

2. Amend § 3130.0–3 by adding a new paragraph (d) to read as follows:

§ 3130.0–3 Authority.

* * * * *

(d) The Energy Policy Act of 2005 (Pub. L. 109–58).

3. Amend § 3130.0–5 by adding three new paragraphs (g), (h), and (i) to read as follows:

§ 3130.0–5 Definitions.

* * * * *

(g) *Production allocation methodology* means a way of attributing the production of oil and gas produced from a unit well to individual tracts committed to the unit.

(h) *Reservoir heterogeneity* means spatial differences in the oil and gas reservoir properties. This can include, but is not limited to, the thickness of the reservoir, the amount of pore space in the reservoir rock that contains oil, gas, or water, and the amount of water contained in the reservoir rock. This information may be used to allocate production.

(i) *Variation in reservoir producibility* means differences in the rates oil and gas wells produce from the reservoir. This can be dependent on where the well penetrates the reservoir.

4. Amend § 3133.3 by revising paragraphs (a)(2) and (b) and by adding a new paragraph (c) to read as follows:

§ 3133.3 Under what circumstances will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty on my NPR–A lease?

(a) * * *

(2) It is necessary to promote development or the BLM determines the lease cannot be successfully operated under the terms of the lease.

(b) The BLM will consult with the State of Alaska and the North Slope Borough within 10 days of receiving an application for waiver, suspension, or reduction of rental, royalty, or minimum royalty and will not approve an application under § 3133.4 of this subpart until at least 30 days after the consultation.

(c) If your lease includes land that was made available for acquisition by a Regional Corporation (as defined in 43 U.S.C. 1602) under the provision of Section 1431(o) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*), the BLM will only approve a waiver, suspension, or reduction of rental, royalty, or minimum royalty if the Regional Corporation concurs.

5. Amend § 3133.4 by revising paragraphs (a)(6) and (a)(7) to read as follows:

§ 3133.4 How do I apply for a waiver, suspension or reduction of rental, royalty or minimum royalty for my NPR–A lease?

(a) * * *

(6) All facts that demonstrate that the waiver, suspension, reduction of the rental, royalty, or minimum royalty encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation;

(7) All facts that demonstrate that you cannot successfully operate the lease under the terms of the lease; and

* * * * *

6. Amend § 3134.1–2 by revising paragraph (a) to read as follows:

§ 3134.1–2 Additional bonds.

(a) The authorized officer may require the bonded party to supply additional bonding in accordance with § 3104.5(b) of this chapter.

* * * * *

7. Revise § 3135.1–4 to read as follows:

§ 3135.1–4 Effect of transfer of a tract.

(a) When a transfer is made of all the record title to a portion of the acreage in a lease, the transferred and retained portions are divided into separate and distinct leases. The BLM will not approve transfers of a tract of land:

(1) Of less than 640 acres that is not compact; or

(2) That would leave a retained tract of less than 640 acres.

(b) Each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as the activities on the segregated lease support extension in accordance with § 3135.1–5.

8. Revise § 3135.1–5 to read as follows:

§ 3135.1–5 Extension of lease.

(a) The term of a lease shall be extended beyond its primary term:

(1) So long as oil or gas is produced from the lease in paying quantities;

(2) The BLM has determined in writing that oil or gas is capable of being produced in paying quantities from the lease; or

(3) So long as drilling or reworking operations, actual or constructive, as approved by the BLM, are conducted thereon.

(b) Your lease will expire on the 30th anniversary of the issuance date of the lease unless oil or gas is being produced in paying quantities. If your lease contains a well that is capable of production, but you fail to produce the oil or gas due to circumstances beyond your control, you may apply for a suspension under § 3135.2. If the BLM approves the suspension, the lease will not expire on the 30th anniversary of the original issuance date of the lease.

(c) A lease may be maintained in force by the BLM-approved directional wells drilled under the leased area from surface locations on adjacent or adjoining lands not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the lease area when drilling is commenced on the adjacent or adjoining lands for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining lands. Production, drilling or reworking of any such directional well shall be considered production or drilling or reworking operations on the lease area for all purposes of the lease.

9. Redesignate § 3135.1–6 as § 3135.1–7 and add a new § 3135.1–6 to read as follows:

§ 3135.1–6 Lease Renewal.

(a)(1) *With a discovery*—At any time after the fifth year of the primary term of a lease, the BLM may approve a 10-year lease renewal for a lease on which there has been a well drilled and a discovery of hydrocarbons even if the BLM has determined that the well is not capable of producing oil or gas in paying quantities. The BLM must receive the lessee's application for lease renewal no later than 60 days prior to the expiration of the primary term of the lease.

(2) The renewal application must provide evidence, and a certification by the lessee, that the lessee has drilled one or more wells and discovered producible hydrocarbons on the leased lands in such quantities that a prudent operator would hold the lease for potential future development.

(3) The BLM will approve the application if it determines that a discovery was made and that a prudent operator would hold the lease for future development.

(4) The date of the lease renewal will be effective on the day following the end of the primary term of the lease.

(5) The lease renewal may be approved on the condition that the lessee drills one or more additional wells or acquires and analyzes more well data, seismic data, or geochemical survey data prior to the end of the primary term.

(b)(1) *Without a discovery*—At any time after the fifth year of the primary term of a lease, the BLM may approve an application for a 10-year lease renewal for a lease on which there has not been a discovery of oil or gas. The BLM must receive the lessee's application no later than 60 days prior to the expiration of the primary term of the lease.

(2) The renewal application must:

(i) Provide sufficient evidence that the lessee has diligently pursued exploration that warrants continuation of the lease with the intent of continued exploration or future potential development of the leased land. The application must show the:

(A) Lessee has drilled one or more wells or has acquired and analyzed seismic data, or geochemical survey data on a significant portion of the leased land since the lease was issued;

(B) Data collected indicates a reasonable probability of future success; and

(C) Lessee's plans for future exploration; or

(ii) Show that all or part of the lease is part of a unit agreement covering a lease that qualifies for renewal without a discovery and that the lease has not been previously contracted out of the unit.

(3) The BLM will approve the renewal application if it determines that the application satisfies the requirements of paragraph (b)(2)(i) or (ii) of this section. If the BLM approves the application for lease renewal, the applicant must submit to the BLM a fee of $100 per acre within 5 business days of receiving notification of approval.

(4) The date of the lease renewal will be effective on the day following the end of the primary term of the lease.

(5) The lease renewal may be approved on the condition that the lessee drills one or more additional wells or acquires and analyzes more well data, seismic data or geochemical survey data prior to the end of the primary term.

(c) The renewed lease will be subject to the terms and conditions applicable to new oil and gas leases issued under the Integrated Activity Plan in effect on the date that the BLM issues the decision to renew the lease.

10. Amend newly designated § 3135.1–7 by revising paragraph (d) and by adding a new sentence to the end of paragraph (e) to read as follows:

§ 3135.1–7 Consolidation of leases.

* * * * *

(d) The effective date, the anniversary date, and the primary term of the consolidated lease will be those of the oldest original lease involved in the consolidation. The term of a consolidated lease may be extended, or renewed, as appropriate, beyond the primary lease term under § 3135.1–5 or 3135.1–6.

(e) * * * The highest of the royalty or rental rates of any original lease shall apply to the consolidated lease.

11. Add a new § 3135.1–8 to read as follows:

§ 3135.1–8 Termination of administration for conveyed lands and segregation.

(a) If all of the mineral estate is conveyed to the Arctic Slope Regional Corporation, the Regional Corporation will assume the lessor's obligation to administer any oil and gas lease.

(b) If a conveyance of the mineral estate does not include all of the land covered by an oil and gas lease, the lease will be segregated into two leases, one of which will cover only the mineral estate conveyed. The Arctic Slope Regional Corporation will assume administration of the lease within the conveyed mineral estate.

(c) If the Arctic Slope Regional Corporation assumes administration of a lease under paragraph (a) or (b) of this section, all lease terms, BLM regulations, and BLM orders in effect on the date of assumption continue to apply to the lessee's obligations under the lease. All such obligations remain enforceable by the Arctic Slope Regional Corporation as the lessor until the lease terminates.

(d) In a case in which a conveyance of a mineral estate described in paragraph (b) of this section does not include all of the land covered by the oil and gas lease, the owner of the mineral estate in any particular portion of the land covered by the lease is entitled to all of the revenues reserved under the lease as to that portion including all of the royalty payable with respect to oil or gas produced from or allocated to that portion.

12. Amend § 3137.5 by revising the definition of ''Participating area'' to read as follows:

§ 3137.5 What terms do I need to know to understand this subpart?

* * * * *

Participating area means those committed tracts or portions of those committed tracts within the unit area that are proven to be productive by a well meeting the productivity criteria specified in the unit agreement.

* * * * *

13. Add a new § 3137.11 to read as follows:

§ 3137.11 What consultation must the BLM perform if lands in the unit area are owned by the Arctic Slope Regional Corporation or the State of Alaska?

If the BLM administers a unit containing tracts where the mineral estate is owned by the Arctic Slope Regional Corporation or the State of Alaska, or if a proposed unit contains tracts where the mineral estate is owned by the Arctic Slope Regional Corporation or the State of Alaska, the BLM will consult with and provide opportunities for participation in negotiations with respect to the creation or expansion of the unit by—

(a) The Regional Corporation, if the unit acreage contains the Regional Corporation's mineral estate; or

(b) The State of Alaska, if the unit acreage contains the state's mineral estate.

14. Amend § 3137.21 by revising paragraph (a)(3), redesignating paragraph (a)(5) as paragraph (a)(6), adding a new paragraph (a)(5) and revising newly designated paragraph (a)(6) to read as follows:

§ 3137.21 What must I include in an NPR–A unit agreement?

(a) * * *

(3) The anticipated participating area size and proposed well locations (see § 3137.80(b) of this subpart);

* * * * *

(5) A provision that acknowledges the BLM consulted with and provided opportunities for participation in the creation of the unit and a provision that acknowledges that the BLM will consult with and provide opportunities for participation in the expansion of the unit by—

(i) The Regional Corporation, if the unit acreage contains the Regional Corporation's mineral estate; or

(ii) The State of Alaska, if the unit acreage contains the state's mineral estate.

(6) Any optional terms which are authorized in § 3137.50 of this subpart that you choose to include in the unit agreement.

* * * * *

15. Amend § 3137.23 by removing ''and'' from the end of the paragraph (f), redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

§ 3137.23 What must I include in my NPR–A unitization application?

* * * * *

(g) A discussion of the proposed methodology for allocating production among the committed tracts. If the unit includes non-Federal oil and gas mineral estate, the methodology must take into account reservoir heterogeneity and area variation in reservoir producibility; and

* * * * *

16. Amend § 3137.41 by revising the introductory paragraph of the section to read as follows:

§ 3137.41 What continuing development obligations must I define in a unit agreement?

A unit agreement must provide for submission of supplemental or additional plans of development which obligate the operator to a program of exploration and development (see § 3137.71 of this subpart) that, after completion of the initial obligations—

* * * * *

17. Amend § 3137.80 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 3137.80 What are participating areas and how do they relate to the unit agreement?

(a) Participating areas are those committed tracts or portions of those committed tracts within the unit area that are proven to be productive by a well meeting the productivity criteria specified in the unit agreement.

(b) You must include a description of the anticipated participating area(s) size in the unit agreement for planning purposes to aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR–A surface resources. * * *

* * * * *

18. Amend § 3137.81 by revising paragraph (a) to read as follows:

§ 3137.81 What is the function of a participating area?

(a) The function of a participating area is to allocate production to each committed tract within a participating area. The BLM will allocate production for royalty purposes to each committed tract within the participating area using the allocation methodology agreed to in the unit agreement (see § 3137.23(g) of this subpart).

* * * * *

19. Amend § 3137.85 by revising paragraph (b) to read as follows:

§ 3137.85 What is the effective date of a participating area?

* * * * *

(b) The effective date of a modified participating area or modified allocation schedule is the earlier of the first day of the month in which you file the proposal for a modification or such other effective date as may be provided for in the unit agreement and approved by the BLM, but no earlier than the effective date of the unit.

20. Revise § 3137.111 to read as follows:

§ 3137.111 When will BLM extend the primary term of all leases committed to a unit agreement or renew all leases committed to a unit agreement?

If the unit operator requests it, the BLM will extend the primary term of all NPR-A leases committed to a unit agreement or renew the leases committed to a unit agreement if any committed lease within the unit is extended or renewed under §§ 3135.1–5 or 3135.1–6. If the BLM approves a lease renewal under § 3135.1–6(b), the BLM will require a renewal fee of $100 per acre for each lease in the unit that is renewed.

21. Amend § 3137.131 by revising the second and third sentences of the section to read as follows:

§ 3137.131 What happens if the unit terminated before the unit operator met the initial development obligations?

* * * You, as lessee, forfeit all further benefits, including extensions and suspensions, granted any NPR-A lease because of having been committed to the unit. Any lease that the BLM extended because of being committed to the unit would expire unless it qualified for an extension or renewal under §§ 3135.1–5 or 3135.1–6.

22. Amend § 3137.134 by revising paragraph (b) to read as follows:

§ 3137.134 What happens to committed leases if the unit terminates?

* * * * *

(b) An NPR–A lease that has completed its primary term on or before the date the unit terminates will expire unless it qualifies for extension or renewal under §§ 3135.1–5 or 3135.1–6.

[FR Doc. E7–9696 Filed 5–21–07; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 8, and 189

[USCG–2004–19823]

RIN 1625–AA92

Alternate Compliance Program: Vessel Inspection Alternatives

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the vessel inspection regulations to expand the Alternate Compliance Program (ACP). These amendments would update the list of certificates the Coast Guard issues, incorporate Coast Guard policy regarding eligibility requirements for classification societies participating in the ACP, recognize classification societies other than the American Bureau of Shipping, and expand the ACP to include oceanographic research vessels.

DATES: Comments and related material must reach the Docket Management Facility on or before July 23, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–19823 to the Docket Management Facility at the U.S. Department of Transportation. Two different locations are listed under the mail and delivery options below because the Document Management Facility is moving May 30, 2007. Please note dates when certain submission options will not be available. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.* Note, however, that because the computers housing this electronic docket are being moved to a new location, this submittal option will not be available from Wednesday, June 13, 2007, through Sunday, June 17, 2007.

(2) *Mail:*

- Address mail to be delivered by May 24, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.
- Address mail to be delivered on or after May 25, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(3) *Fax:* 202–493–2251.

(4) *Delivery:*

- Before 5 p.m., Thursday, May 24, 2007, deliver comments to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.
- From Friday, May 25, through Tuesday, May 29, 2007, this delivery option will not be available.
- On or after Wednesday, May 30, 2007, deliver comments to: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

At either location, deliveries may be made 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.* Submissions you make through this Federal eRulemaking portal from June 13 through 17, will not be received in the electronic docket until June 18.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, contact Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–372–1371, or e-mail address *William.S.Peters@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
II. Public Meeting
III. Acronyms
IV. Background and Purpose
V. Discussion of Proposed Rule
VI. Regulatory Evaluation
A. Small Entities
B. Assistance for Small Entities
C. Collection of Information
D. Federalism
E. Unfunded Mandates Reform Act
F. Taking of Private Property
G. Civil Justice Reform
H. Protection of Children
I. Indian Tribal Governments
J. Energy Effects
K. Technical Standards
L. Environment
List of Subjects
Amendatory Text

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by reviewing the proposed rules and 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.

A. Submitting Comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–19823), indicate the specific section of this document to which each comment applies, and give the reason or justification 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 each set of comments and material only once (*e.g.*, mail, electronic, or fax). 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 Document Management 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.

B. Viewing Comments and Documents: To view comments or documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov/* at any time and conduct a simple search using the last five digits of the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. 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/.*

II. Public Meeting

We do not plan to hold a public meeting. You may submit a request for one to the Docket Management Facility at Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 explaining why it would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place

announced by a later notice in the **Federal Register**.

III. Acronyms

ACP Alternative Compliance Program
CFR Code of Federal Regulations
DHS Department of Homeland Security
DMS Docket Management System
DOT Department of Transportation
FR Federal Register
IMO International Maritime Organization
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
PSSC Passenger Ship Safety Certificate
HSC High-speed Craft
RIN Regulation Identifier Number
SOLAS International Convention for the Safety of Life at Sea
US United States
USC United States Code
USCG United States Coast Guard

IV. Background and Purpose

This rulemaking would revise and update the regulations for the Alternate Compliance Program (ACP).

The ACP was launched as a pilot program in 1995. A notice was published in the **Federal Register** on February 3, 1995 and can be found at 60 FR 6687. It was an element of a larger initiative to harmonize domestic and international marine safety and environmental protection standards. Other goals of the initiative were to reduce the regulatory burden on industry and improve the efficiency of the vessel plan review and inspection process.

Under the ACP, owners and operators of eligible vessels were allowed to request inspection by an authorized classification society, as defined in 46 CFR 8.100, using an equivalence to the requirements in the Code of Federal Regulations (CFR) comprising classification society rules, provisions of International Maritime Organization (IMO) treaties, and a supplementary list of requirements from the CFR that were not in IMO provisions or classification society rules. A classification society gained eligibility to participate in the ACP by meeting the standards described in the regulations and, as a result, was delegated authority to conduct plan review and inspections and issue, on the Coast Guard's behalf, certain IMO certificates documenting compliance with IMO treaty provisions. An interim final rule establishing new 46 CFR part 8, ''Vessel Inspection Alternatives'' was published in the **Federal Register** on Friday, December 27, 1996. This interim final rule can be found at 61 FR 68510. The pilot program was concluded in 1997 and the ACP was fully implemented via the final rule published on Wednesday, December 24, 1997. This final rule may be found at 62 FR 67526.

The ACP has proven to be extremely successful for both the Coast Guard and ship owners and operators. As expected, the program has evolved since 1997 and the lessons learned have typically been documented and implemented through Coast Guard policy decisions. This Notice of Proposed Rulemaking (NPRM) describes the Coast Guard's proposals to incorporate into the CFR those policy decisions as well as other revisions that expand the ACP.

When the ACP was initiated, the Coast Guard chose to retain issuing authority for the SOLAS Passenger Ship Safety Certificate (PSSC). This decision was intentionally conservative, given the newness of the ACP, and was based on our experience with the complexities of the passenger vessel plan review, inspection, and certification process. Subsequent experience has shown that retaining this issuing authority creates confusion over the roles of the Coast Guard versus the authorized classification society under the ACP. Experience with the ACP has also allowed us to gain confidence with the ACP process and its undeniably successful results. Therefore, we feel granting authorized classification societies issuing authority for the PSSC is now appropriate.

For similar reasons, we are also proposing to allow authorized classification societies to be delegated the authority to issue the High-Speed Craft (HSC) Safety Certificate. In May 2000, we determined that the HSC Code is equivalent to the 46 CFR Subchapter H requirements for large passenger vessels. As the Coast Guard and several classification societies have now gained significant experience with the HSC Code, we feel it is logical that the ACP include this document.

Our experience with the success of the ACP has also given us the flexibility to explore applying the program to other types of vessels that were originally excluded under our measured implementation approach. Positive feedback and recommendations from the U.S. maritime industry demonstrate broad support for this idea. As a result, we propose the ACP be expanded to encompass Oceanographic Research Vessels that engage on international voyages.

Soon after the current rule went into effect, we recognized that a classification society needs authorization to issue five basic IMO certificates before it can comprehensively fulfill its role in the ACP, namely:

- The Cargo Ship Safety Construction Certificate from the International Convention for Safety of Life at Sea, 1974;
- The Cargo Ship Safety Equipment Certificate from the International Convention for Safety of Life at Sea, 1974;
- The International Load Line Certificate from the International Convention on Load Lines;
- The International Tonnage Certificate from the International Convention on Tonnage Measurement; and
- The International Oil Pollution Prevention Certificate from the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973.

While we have implemented this concept as part of our operating policies, it has not been incorporated into 46 CFR part 8. Therefore, this proposed rule would also accomplish this change.

The initial version of the ACP only applied to the American Bureau of Shipping with whom the Coast Guard had collaborated to develop the first U.S. Supplement (the list of differences between the CFR and the combination of IMO treaty provisions and classification society rules). As the program has expanded, we have engaged in similar partnerships with other classification societies resulting in their approval to participate in the ACP. Consequently, our specific references to the American Bureau of Shipping in 46 CFR part 2 are outdated. Therefore, we proposed to replace specific references to the American Bureau of Shipping with a more general reference to authorized classification societies. The term ''authorized classification society'' is already defined in 46 CFR 8.100.

V. Discussion of Proposed Rule

This NPRM proposes to amend 46 CFR 2.01–25(a) to:

- List all IMO certificates required to be maintained aboard ships; and
- Update the lists of IMO certificates issued only by the USCG and those that may be issued by an authorized classification society on the Coast Guard's behalf.

In § 2.01–25, we would change the phrase ''American Bureau of Shipping'' to ''authorized classification society.''

In § 8.320(b), this NPRM would add the following IMO certificates to the list of those that can be issued by an authorized classification society:

• Passenger Ship Safety Certificate (PSSC)

• High-Speed Craft (HSC) Safety Certificate

This NPRM would also, in § 8.420(c), add to the list of conditions for eligibility to participate in the ACP, a requirement that a classification society must have been delegated issuing authority for the Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, International Load Line Certificate, International Tonnage Certificate, and International Oil Pollution Prevention Certificate.

Finally, in new § 189.15–5, we would expand the ACP to include Subchapter U ''Oceanographic Research Vessels.''

VI. 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 will not impose any mandatory costs on the public because it enables a voluntary alternative to the traditionally prescribed method of inspection. However, we anticipate that vessel owners and operators may realize an economic benefit in the form of cost savings as a result of this proposed rule as outlined in the final rule published December 24, 1997. See 62 FR 67525 and 67530. We request comments from the public on how much they believe the proposed rule would save them.

A. 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.

This rule does not change any requirements in the regulations. It simply updates and expands an existing voluntary program for alternate compliance with Coast Guard regulations. Therefore, 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. 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 to the Docket Management Facility at Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

B. 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 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 consult Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–372–1731. 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.

C. 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).

D. 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.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in lieu of government-unique standards in their regulatory activities unless the agency determines use of these standards would be inconsistent with law or are otherwise impractical. Agencies not using voluntary consensus standards in lieu of government-unique standards

must provide 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 standard bodies.

This proposed rule does not use voluntary consensus standards as there are none that meet the objectives of this rulemaking, and, therefore, we did not consider the use of voluntary consensus standards.

L. 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 this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

Amendatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 2, 8, and 189 as follows:

PART 2—VESSEL INSPECTIONS

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

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec. 1).

§ 2.01–25 [Amended]

2. In § 2.01–25—

a. Add a new paragraph (a)(1)(ix) to read as set forth below:

b. In paragraph (a)(3), remove the words ''the American Bureau of Shipping may issue the Cargo Ship Safety Construction Certificate to cargo and tankships which it classes.'' and add, in their place, the words ''an authorized classification society may issue international convention certificates as permitted under part 8, subpart C, of this title.'' and;

c. In paragraph (b)(1), after the word ''Cargoes),'' remove the word ''and'', and after the words ''Passenger Vessels)'', add the words ''and Subchapter U (Oceanographic Research Vessels),''.

§ 2.01–25 International Convention for the Safety of Life at Sea, 1974.

(a)* * *

(1) * * *

(ix) High Speed Craft Safety Certificate

* * * * *

PART 8—VESSEL INSPECTION ALTERNATIVES

3. The authority citation for part 8 continues to read as follows:

Authority: 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 8.320 [Amended]

4. In § 8.320, amend paragraph (b)—

a. In paragraph (b)(8), remove the word ''and'';

b. In paragraph (b)(9), remove the period and add, in its place, a semicolon; and

c. Add new paragraphs (b)(10) and (11) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *

(b) * * *

(10) SOLAS Passenger Ship Safety Certificate; and

(11) High-Speed Craft Safety Certificate.

* * * * *

§ 8.420 [Amended]

5. In § 8.420, revise paragraph (c) to read as follows:

§ 8.420 Classification society authorization to participate in the Alternate Compliance Program.

* * * * *

(c) A recognized classification society:

(1) Will be eligible to receive authorization to participate in the ACP only after the Coast Guard has delegated to it the authority to issue the following certificates:

(i) International Load Line Certificate;

(ii) International Tonnage Certificate;

(iii) Cargo Ship Safety Construction Certificate;

(iv) Cargo Ship Safety Equipment Certificate; and

(v) International Oil Pollution Prevention Certificate; and

(2) Must have performed a delegated function related to general vessel safety assessment, as defined in § 8.100 of this part, for a two-year period.

* * * * *

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 189—INSPECTION AND CERTIFICATION

6. The authority citation for Part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 189.15–5 [Added]

7. Add new § 189.15–5 to read as follows:

§ 189.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of 46 CFR Part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (CG–3PSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202) 372–1371; or fax (202) 372–1925. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: May 11, 2007.

Craig E. Bone,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.

[FR Doc. E7–9840 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Contract Closeout; Systemic Issues

AGENCY: Defense Acquisition Regulations System, Department of Defense.

ACTION: Response to public comments.

SUMMARY: The Director of Defense Procurement and Acquisition Policy (DPAP) recently completed an assessment of public input on systemic issues related to contract closeout that were identified in a public meeting held on September 21, 2005. This assessment has resulted in recommendations for revisions to policy, guidance, and training related to contract closeout responsibilities.

FOR FURTHER INFORMATION CONTACT: Ms. Pat West, DPAP CPF Directorate, by telephone at (703) 602–8387, or by e-mail at *pat.west@osd.mil.*

SUPPLEMENTARY INFORMATION: In June 2005, the Department of Defense (DoD) formed a Contract Closeout Systemic Issues Team to develop recommendations for improving the contract closeout process. During June/July 2005, the Team engaged with respondents to DoD's September 24, 2002, **Federal Register** notice (67 FR 59799) requesting public input on how to improve the contract closeout process. On September 21, 2005, DoD held a public meeting to discuss potential opportunities to streamline the closeout process for DoD contracts (70 FR 46824, August 11, 2005). At the public meeting, interested parties provided input on 23 primary issue areas. The public meeting was attended by Government and industry representatives, and the issues discussed during the public meeting are published at *http://www.acq.osd.mil/dpap/general/cost-pricing.htm.*

DPAP has reviewed the public comments and plans to pursue recommended revisions to the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and its companion Procedures, Guidance, and Information (PGI), User Guides, and DoD training resources. DPAP plans to take the following actions to enhance the contract closeout process:

- Open a DFARS case on contract closeout to establish a comprehensive PGI section to address contract closeout and to assess whether regulatory clarification/revision is needed to address the following:
  - —Cumulative Allowable Cost Worksheets.
  - —Quick closeout.
  - —Subcontract closeout.
  - —Final indirect cost rate proposals.
  - —Periods of performance.
  - —Government property.
  - —Alternate contract closing methods.
  - —Contractor compliance with data submission requirements related to contract closeout.
- Identify and make available best practices used by the military departments and defense agencies in completing contract closeouts.
- Identify any additional training that should be provided on contract closeout.

The following is a discussion of the public comments/recommendations received and the DPAP response and/or planned

1. Final Vouchers

a. Waiver of Final Voucher Audits

Comment: The following recommendations were received relating to the waiver of final voucher audits:

(1) Provide the administrative contracting officer (ACO) waiver authority.

(2) Clearly identify the Government representative that has the authority to waive the audit (ACO versus procuring contracting officer (PCO)).

(3) Waive the audit for contracts less than a specified amount (e.g., $10 million).

(4) Provide specific risk assessment guidance to the ACO for use in determining whether a waiver of audit is appropriate.

(5) Include factors in addition to the dollar value in determining when final voucher audits should be waived, such as the size of the company, the number of contracts, and consideration of the contractor's corrective actions with respect to system inadequacies.

(6) Permit the Government and the contractor to agree to waive the final voucher audit when money owed is below a stipulated amount (e.g., less than $1,000).

(7) Require final voucher audits for cost-type contracts only on an exception basis for those contractors having billing systems that meet specified standards. Audits may be required when adverse circumstances exist, such as inadequate internal control systems, contracts exceeding a specified dollar threshold, recent frequency of audits, and previous audit exceptions.

(8) Allow for application of the audit waiver requirements at the delivery order level.

DPAP Response: In cases where final indirect cost rates have not been negotiated, FAR 42.708 provides for a quick closeout procedure when certain other criteria have been met. These criteria may warrant expansion based on particular facts and circumstances. Therefore, the DFARS case on contract closeout will include a review of whether it is appropriate to amend the FAR and/or DFARS to expand on the existing quick closeout FAR criteria. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language on quick closeout.

In those cases where final indirect cost rates have been negotiated, DPAP does not believe a broad-based waiver of audits of final vouchers would facilitate the contract closeout process. Instead, DPAP believes that the contract closeout process is significantly reduced if contractors submit a Cumulative Allowable Cost Worksheet (CACWS) after the indirect cost rates are finalized. The CACWS allows the ACO to close out a contract without requesting an audit of the contractor's final voucher. Therefore, the DFARS case on contract closeout will include a review to determine if, and to what extent, the CACWS should be required and/or encouraged in the regulations. This review will also include an assessment of how the CACWS is or should be structured to best meet contract closeout needs without imposing significant administrative burden on the contractor or the Government.

b. Use of Bilateral Modifications

Comment: It was recommended that contracting officers be permitted to use a bilateral modification to close out a contract, rather than requiring a final voucher, when no money is owed to the Government and specific risk criteria are met.

DPAP Response: The DFARS case on contract closeout will include a review of the quick closeout criteria in the FAR. DPAP will also review the feasibility of permitting bilateral modifications, in lieu of final vouchers, when certain criteria are met. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language.

c. Issuance of Demand Letters

Comment: It was recommended that a demand letter be issued if monies are owed the Government and a final voucher is not submitted within the required timeframes. Under the recommendation, this demand letter

would state that interest will be assessed as of a specified date, and would identify why payment is delayed and the reasons the contractor has not submitted a final voucher (e.g., extension of period of performance). Other respondents opined that issuance of a demand letter may further delay the process and may also trigger a Treasury Department offset. They also noted that it would be difficult, absent a final voucher, for the Government to determine whether or not monies are owed.

DPAP Response: FAR 42.705(b) and (c) permit the contracting officer to unilaterally close out a contract when the contractor fails to submit a final voucher. The DFARS case on contract closeout will consider if and when a demand letter should be issued for contractors that fail to submit final vouchers in accordance with FAR 42.705(b). The review also will consider how the Government could/would determine if monies are owed and will evaluate the impact of any potential delays in the contract closeout process that the use of a demand letter may create.

d. Prime Contract Closeout in Advance of Subcontract Closeout

Comment: A recommendation was made to permit closeout of a prime contract even though a subcontract or subcontracts under that prime contract have not been closed. It was further recommended that such a process include adequate notice to the subcontractor. Conversely, a concern was expressed that such a closeout of a prime contract may result in the prime contractor's unilateral closeout of subcontracts and elimination of the Government reimbursement of any additional subcontract costs, thereby inhibiting the subcontractor's negotiation with the prime contractor.

DPAP Response: The DFARS case on contract closeout will evaluate if/when it may be appropriate to permit prime contract closeout when one or more subcontracts have not been closed.

2. Final Invoices—Fixed-Price Contracts

a. Timing of Submission of a Final Invoice

Comment: Recommendations were made to require submittal of a final invoice within 60 days of Government acceptance, or to establish a one-year time limit for contractors to submit the final invoice, after which time the contracting officer can unilaterally close the contract without further payment to the contractor.

DPAP Response: DPAP believes that this issue is adequately addressed in FAR 4.804–1, which authorizes the contracting officer to close out fixed-price contracts within six months after the date on which the contracting officer receives evidence of physical completion. No evidence has been presented that indicates the six-month period is causing a significant delay in closing out contracts.

b. Clarification of Requirement to Submit Final Vouchers

Comment: A recommendation was made to clarify regulations regarding the need to submit a final invoice when a DD Form 250, Material Inspection and Receiving Report, is submitted. A second recommendation was made to provide an exception to the requirement for submission of a final voucher for contracts outside the continental United States (OCONUS).

DPAP Response: While Appendix F of the DFARS currently provides guidance on the use of DD Form 250, DPAP believes it may also be helpful to include guidance in the PGI section on contract closeout to address the relationship between the DD Form 250 and the final voucher. Therefore, the DFARS case on contract closeout will include an assessment of whether additional exceptions are needed for OCONUS contracts.

c. Waiver of the Requirement to Submit Final Vouchers

Comment: A recommendation was made to waive the requirement for submission of a final invoice if the amount due to the contractor is less than $1,000 and less than 10 percent of the contract value. In such cases, the respondent recommended that the contracting officer be permitted to unilaterally deobligate any remaining funds.

DPAP Response: DPAP does not believe it is advisable to preclude payment to a contractor when monies are due. DPAP also does not believe there is a legal basis for the Government to extinguish its debt solely on the basis of the dollar amount involved. Thus, submission of a final invoice in such cases is necessary to ensure that proper payments are made under the terms of each contract.

3. Final Indirect Cost Rates

a. Timely Submission of Final Indirect Cost Rate Proposals

Comment: The following recommendations were made to encourage timely submission of indirect cost rate proposals:

(1) Increase the withhold amount (a specified percentage and/or specified amount, e.g., 15 percent or $100,000). One respondent recommended analyzing major vs. non-major contractors to identify problems preventing timely submission before enacting such a withhold. Another respondent stated that increased withholdings will cause problems in obtaining additional monies due to cancelled funds.

(2) Provide incentives, rather than penalize contractors, for timely submission of indirect cost rate proposals.

(3) Include a contract provision that permits the contracting officer to extend the indirect cost rate proposal submission date.

DPAP Response: The DFARS case on contract closeout will include a review of the current provisions addressing the submission of final indirect cost rate proposals to ascertain whether any adjustments (positive and/or negative incentives) to the current regulatory coverage are warranted.

DPAP does not believe action is necessary regarding the proposal submission date, because FAR 52.216–7(d) currently authorizes the contracting officer to extend the submission due date if exceptional circumstances exist.

b. Contract Closeout Using Rates Other Than Established Final Indirect Cost Rates

Comment: Recommendations were made to allow contract closeout using indirect cost rates in the forward pricing rate agreement, provisional rates, or certified year-end rates rather than final indirect cost rates, when final indirect cost rates are not established on a timely basis. One respondent further noted that the use of any such rates should be by contractor and Government mutual agreement only. Another respondent noted that the contractor's past history of costs questioned should be considered in determining whether to use such rates.

DPAP Response: The DFARS case on contract closeout will review if/when the use of forward pricing, provisional, or certified year-end rates would be acceptable when final indirect cost rates are not available. The review will also address the issue of mutual agreement in using any such rates for contract closeout.

c. Content of Final Indirect Cost Rate Proposals

Comment: A number of recommendations were made regarding the required content of an adequate indirect cost rate proposal. These

recommendations included the following:

(1) Review the content requirements for indirect cost rate proposals to determine if/where they could be streamlined.

(2) Establish different content requirements based on dollar thresholds.

(3) Provide flexibility so that the proposal is not rejected when it is not exactly the same as the content requirements, particularly when there are only format issues/problems.

(4) Do not require submission of Cumulative Allowable Cost Worksheets at the time of submission of the indirect cost rate proposal (permit these worksheets to be submitted at a later date).

DPAP Response: The DFARS case on contract closeout will include a review of the current requirements regarding the content of an adequate indirect cost rate proposal to determine if/how they could be streamlined, and the extent to which additional flexibility should be provided. DPAP will evaluate the need for the addition of DFARS/PGI language regarding such content, as well as PGI references to relevant Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), and other agency materials on this subject. This review will also assess whether regulatory language is needed to address if/when Cumulative Allowable Cost Worksheets must be submitted to permit timely audit and negotiation of indirect cost rates and contract closeout.

d. Separate Proposals for Final Direct and Indirect Costs

Comment: One recommendation would permit the separate submission of final direct and indirect cost proposals when the ACO believes separate submissions would facilitate the contract closeout process.

DPAP Response: DPAP does not see the value in permitting separate proposals. DPAP believes that separate proposals would impose an administrative burden on both the Government and the contractor, since both proposals and multiple final vouchers would be required for the same contract (one for direct costs, one for indirect costs). When final indirect cost rates have not been negotiated, the use of quick closeout procedures is a more feasible solution than submission of separate direct and indirect cost proposals. In addition, DPAP believes it is inadvisable to permit the separate submission of direct and indirect costs, since both are required to determine indirect cost rates, and any reclassification of costs between direct and indirect would be made administratively more cumbersome by separate proposals.

e. Lump Sum Settlements

Comment: One recommendation called for providing lump sum settlement guidance to the contracting officer.

DPAP Response: DPAP does not see value in providing guidance on a lump sum settlement; nor does DPAP believe it is prudent to do so, since any such guidance will ultimately tie back to the actual incurred costs. A contracting officer must have a basis for determining the final amount due. The basis for this amount is the annual allowable incurred costs of the contractor and the final negotiated indirect cost rates.

4. Lack of Government Resources and/or Timely Action

a. Utilization of Government Resources

Comment: Various recommendations were made regarding the best utilization of Government resources in performing contract closeout functions. These recommendations included the following:

(1) Assign an individual or team at each agency to be responsible for reducing and eliminating the backlog of open contracts, provide training for individuals to effectively reduce the backlog, and provide promotion opportunities.

(2) Make the contract closeout function an integral part of contract administration rather than a separate function.

(3) Establish Government Centers of Excellence for contract reconciliations, establishment of final indirect cost rates, and expiring funds to assist in resolving contract closeout issues.

(4) Create a contract closeout contracting officer, similar to the termination contracting officer, who would be a specialist in closing out contracts.

(5) Outsource the contract closeout function to contractors.

DPAP Response: DPAP will review the current processes used by the military departments and defense agencies to identify best practices for utilizing resources in performing contract closeout. These best practices will be made available to the military departments and defense agencies for their consideration.

b. Line Item Within the DoD Budget for Contract Closeout

Comment: One respondent recommended establishing a separate line item in the DoD budget dedicated to contract closeout activities.

DPAP Response: DPAP does not believe it would be beneficial to establish a separate budget line item for contract closeout activities for the military departments and defense agencies. Its establishment would impose the significant administrative burden of capturing the individual activities associated with contract closeout in the DoD cost accounting systems, which are not designed to capture costs associated with discrete work activities across the Department. The intention of the separate line item would be to force the military departments and defense agencies to spend sufficient monies to support the closeout effort. However, it could be easily reduced or eliminated and, by itself, would provide no assurance that contract closeouts would be completed, since it most likely would not change the closeout process but would have the adverse effect of reducing flexibility. DPAP believes the key to successful utilization of resources is to provide a set of best practices to the departments and agencies, and to let the departments and agencies apply those practices in a manner that best meets their particular situations.

c. Timeline for DCAA Audits of Final Indirect Cost Rates

Comment: A recommendation was made to establish a timeline by which DCAA audits of indirect cost rate proposals should be completed. Under this recommendation, if the audit is not completed by the date specified, the contracting officer would have the authority to use a third party to conduct the audit, and the cost of the audit could be reimbursed to the contractor or paid directly by the Government to the third party auditor.

DPAP Response: DPAP believes that the key to timely audit of indirect cost rate proposals is the timely submission of an adequate final indirect cost rate proposal by the contractor. DoD has internal mechanisms in place to monitor and take actions when indirect cost rate proposals have been submitted but no audit action has been taken. However, in recognition of the need to ensure that the contracting officer and the auditor maintain adequate communication, the DFARS case on contract closeout will review whether PGI should include information regarding the action to be taken when a contracting officer believes an audit is not being performed on a timely basis.

d. Training Opportunities in Contract Closeout

Comment: Recommendations were made to—

(1) Increase training to Government and contractor personnel in the area of contract closeout; and

(2) Establish a section in the Defense Acquisition University (DAU) Community of Practice Lessons Learned for contract closeout and reference it in PGI.

DPAP Response: As part of the review of best practices, DPAP will work with DAU to determine if/what training needs to be expanded in the area of contract closeout and to establish a community of practice that can provide the best contract closeout practices for use by DoD contracting personnel.

e. Delineate the Roles and Responsibilities of Parties in the Contract Closeout Process

Comment: The following recommendations were made to delineate roles and responsibilities of all parties to contract closeout:

(1) Describe in the DFARS or PGI the roles and responsibilities for all parties involved in the contract closeout process.

(2) Designate the ACO as the central control point for closeout of a contract and for use of the quick closeout process. One respondent noted that this could be problematic, since the ACO is not as knowledgeable as the PCO, and the PCO is a critical player in resolving issues related to older contracts and contract funding (e.g., cancelled funds).

(3) Specifically identify the roles and responsibilities for cost reconciliations and the final determination of contract value when there are discrepancies between the Government's and the contractor's accounting records.

DPAP Response: DPAP agrees that such delineation would help facilitate the contract closeout process. Therefore, as part of the DFARS case, the PGI will be amended to describe the contract closeout process and to delineate the roles and responsibilities of all parties involved in that process.

Regarding contracts for which there are discrepancies in cost reconciliations, DoD has legislative authority to close out contracts entered into prior to October 1, 1996, that have an unreconciled balance of $100,000 or less. Absent additional legislative authority, DPAP does not believe it can provide contracting officers with the authority to close out such contracts.

f. Contract Closeout in the Absence of Defense Finance and Accounting Service (DFAS) Approval

Comment: A recommendation was made to allow the ACO to close out the contract if, after notifying DFAS that a contract is administratively complete, no response is received within 60 days of the notification.

DPAP Response: Since DFAS has the accounting responsibility within DoD, it would not be appropriate to close out the contract without DFAS approval. However, the DFARS case on contract closeout will include a review of whether PGI/DFARS language is needed to address the actions to be taken when the contracting officer believes a timely response has not been received from DFAS.

5. Submission of Contract Closeout Data

a. Contract Closeout as a Condition for Future Awards or as an Element of Past Performance

Comment: One respondent recommended including contractor performance in submitting closeout data, in the contractor's past performance ratings. Another respondent noted that any data submitted for past performance must distinguish between contractor performance in submitting the closeout documents and Government-controlled actions. A third respondent recommended precluding the award of future contracts for contractors that continually fail to submit the required contract closeout items.

DPAP Response: The Office of Federal Procurement Policy Guide on Best Practices for Collecting and Using Current and Past Performance Information (May 2000) includes consideration of timely completion of all administrative requirements under ''Business Relations'' as a criterion for evaluating past performance. The DFARS case on contract closeout will review whether contract closeout should be a more specific past performance element. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language on contract closeout.

DPAP does not believe it would be appropriate to broadly prohibit the award of future contracts to contractors with any history of failing to submit contract closeout items. To do so would be tantamount to debarment, and DPAP does not believe that failure to submit contract closeout items meets the debarment criteria at FAR 9.406–2.

b. Incentives for Fulfillment of Contractor Closeout Requirements

Comment: The following recommendations were made to encourage contractors to complete contract closeout activities:

(1) Include specific contractual terms that provide positive and/or negative consequences for the fulfillment of contractor closeout commitments.

(2) Provide award fees or profit factors based on the submission of contract closeout documents.

(3) Include submittal of contract closeout documents a milestone for receiving a performance-based payment.

(4) Include contract closeout activities as a separately priced contract line item. A specific recommendation was made to address the allowability of contractor costs associated with required contract cost and payment reconciliations.

DPAP Response: The DFARS case on contract closeout will review whether regulatory clarification/revisions are needed to provide additional incentives (positive and/or negative) for encouraging submission of contractor closeout data. This will include a review of the criteria for determining whether to impose a withhold, the approval or denial of direct billing authority, the potential impact on contractor past performance evaluations, and the inclusion of a contract closeout milestone in determining performance-based payments.

DPAP does not believe that award fees or other profit factors are appropriate means by which to compel the contractor to complete contract closeout responsibilities, since award fee and profit criteria are intended to focus on cost, quality, and technical performance. They are not intended to be a means to further reward contractors for satisfying basic contract administration responsibilities.

DPAP also does not believe it is advisable to include contract closeout activities as a separately priced contract line item. This would most likely be perceived as increasing the cost or price of the contract, rather than simply encouraging submittal of the closeout data. Similarly, DPAP does not believe that it is necessary to promulgate specific cost allowability rules related to contractor reconciliation efforts. The contractor should consider the cost of normal contract closeout (including reconciliations) when submitting proposals for contracts and/or indirect cost rates. Furthermore, in those instances where unusual circumstances require the contractor to expend effort that is charged as a direct cost beyond

the current contract period of performance, the contractor should request a contract modification to address these costs, including any necessary extension to the period of performance.

6. Missing Documentation

a. Determination That a Contract Is Administratively Complete

Comment: A recommendation was made to authorize the ACO to issue a final determination that a contract is administratively complete if the Government and the contractor agree that no additional services or products will be received by the Government and there are no outstanding actions.

DPAP Response: DPAP believes that the current listing of actions at FAR 4.804 for determining that a contract is administratively closed provides sufficient criteria for the contracting officer. Ensuring that the items in this listing are all complete is akin to ensuring that there are no outstanding actions. Thus, DPAP does not plan further action with regard to this recommendation.

b. Adequacy of the Government's Contract Files

Comment: A recommendation was made to specify in the regulations and/or PGI what constitutes an adequate contract file (e.g., modifications, DD 250's, invoices, payment vouchers) for purposes of contract closeout, and to require that contracting officers maintain such a file.

DPAP Response: The DFARS case will review whether guidance should be added to PGI to address what constitutes an adequate contract file (see response to Comment 6.a. above). Currently, FAR Subpart 4.8 delineates the applicable contract file documentation requirements depending on the product or service acquired and contract type and complexity. FAR 4.802 allows agencies to retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media. The Electronic Data Access (EDA) system is DoD's electronic file cabinet containing electronic versions of contractual documents, including modifications, and is accessible via the Internet 24 hours a day at *http://eda.ogden.disa.mil.* Also, DFAS has an ongoing Voucher attachment system initiative that uploads supporting documentation for disbursing vouchers in EDA. However, it may be advisable to include these requirements, as well as any other applicable contract file documentation information, in PGI.

7. Quick Closeout Procedures

a. Broaden the Use of Quick Closeout Procedures

Comment: Three respondents recommended broadening the use of quick closeout procedures by raising the dollar threshold and/or percentage limitations currently in the regulations and by extending the existing DCMA deviation. Two respondents recommended considering mandating the use of quick closeout procedures for low-dollar value contracts and making a thorough analysis to determine the numbers of contracts that would be affected by such a mandate.

DPAP Response: The DFARS case on contract closeout will review whether it is appropriate to amend the DFARS to expand on the existing quick closeout criteria at FAR 42.708. In addition, depending on the results of this review, DPAP also may make recommendations to the FAR Council for revisions to the current FAR language on quick closeout.

b. Require Mutual Agreement To Use Quick Closeout Procedures

Comment: A recommendation was made to provide for the quick closeout process to be one of mutual agreement between the Government and the contractor.

DPAP Response: DPAP believes that the FAR already clearly requires mutual agreement between the Government and the contractor in order to use quick closeout procedures. FAR 42.708 requires the contracting officer to ''negotiate'' the settlement of indirect costs for a specific contract, in advance of the determination of the final indirect cost rates. In addition, FAR 42.708 allows the use of quick closeout procedures only if ''agreement'' can be reached on a reasonable estimate of allocable dollars. Thus, DPAP does not believe any further action is needed regarding this recommendation.

c. Justification for Not Using Quick Closeout Procedures

Comment: A recommendation was made to require that an ACO perform a risk assessment to justify not using quick closeout procedures, when final indirect cost rates have not been established. In conjunction with this recommendation, one respondent recommended that the risk assessment include a cost/benefit analysis of applying quick closeout procedures.

DPAP Response: DPAP believes it is unnecessarily burdensome to require a risk assessment whenever quick closeout procedures are not used and final indirect cost rates have not been established. However, the DFARS case will review whether regulatory revisions are needed to address the criteria a contracting officer should consider for applying quick closeout procedures. Depending on the results of this review, DPAP may consider revisions to the DFARS and/or may make recommendations to the FAR Council for revisions to the current FAR language on quick closeout.

d. Evaluation of the Use of Quick Closeout Procedures

Comment: A recommendation was made to evaluate instances in which the criteria for using quick closeout applied, but the quick closeout procedure was not used by the ACO.

DPAP Response: As part of the DFARS case on contract closeout, input will be obtained from contracting personnel as to if/why contracting officers do not apply quick closeout procedures when the facts/circumstances satisfy the FAR criteria for use of such procedures. This input will be considered in determining whether any regulatory revisions are needed regarding the quick closeout procedures.

8. Subcontracts

a. Closeout Plan for Subcontracts

Comment: A recommendation was made to require a contract closeout plan as part of the subcontracting plan.

DPAP Response: DPAP does not believe there would be significant benefit to requiring a specific contract closeout plan as part of the subcontracting plan. However, the DFARS case on contract closeout will include a review to determine whether existing regulations should be amended to emphasize contract closeout in discussing contractor responsibilities for managing subcontracts.

b. Require the Use of Quick Closeout Procedures for Subcontracts

Comment: A recommendation was made to require the use of quick closeout procedures for subcontracts, including interdivisional transfers, to the maximum extent possible.

DPAP Response: FAR 42.202 states that it is the prime contractor's responsibility to manage its subcontracts under existing regulations. However, the DFARS case on contract closeout will review whether regulatory revisions are needed to address subcontracts.

c. Waiver of Final Subcontract Assist Audits

Comment: A recommendation was made to establish a threshold for assist audits and to permit prime contractors

to waive audits for subcontracts that are below this established threshold when the lack of negotiated subcontractor indirect rates is preventing closeout of the prime contract.

DPAP Response: The DFARS case on contract closeout will review if/how subcontracts should be closed when subcontract final indirect cost rates have not been negotiated. Since DPAP believes that the contract closeout process is significantly reduced if contractors (including subcontractors when required) submit an adequate final indirect cost rate proposal and prepare a Cumulative Allowable Cost Worksheet (CACWS) when the indirect cost rates are finalized, the DFARS case will also review the extent to which a final indirect cost rate proposal and a CACWS should be required and/or encouraged for subcontractors/subcontracts.

d. Requirement for Audit Coordination Between the Prime Contractor and DCAA

Comment: A recommendation was made to require DCAA to provide feedback to prime contractors on the status of assist audits.

DPAP Response: The DFARS case on contract closeout will review the current process to assess whether DFARS revisions are needed to address the steps a prime contractor can take to determine the status of DCAA assist audits of subcontract costs.

e. Use of Third-Party Auditors to Complete Subcontract Assist Audits

Comment: A recommendation was made to use third-party auditors for subcontract audits where the Government does not already have a presence, similar to the policy on Other Transactions.

DPAP Response: DPAP does not believe that any action is needed with regard to this comment. In accordance with DoD Directive 5105.36, Defense Contract Audit Agency (DCAA), DCAA is responsible for performing all contract audits required in the negotiation, administration, and settlement of DoD contracts and subcontracts. Should the prime contractor have any issues related to audits of subcontractors, those issues should be raised with the cognizant DCAA auditor.

9. Reconciliations

a. Require Annual Reconciliation of Contract Payments

Comment: A recommendation was made to encourage or require that the Government and the contractor reconcile payments on an annual basis.

DPAP Response: The DFARS case on contract closeout will review if/when it would be feasible to establish an annual contract reconciliation process.

b. Establish Thresholds for Performing Contract Reconciliations

Comment: A recommendation was made to consider establishing dollar thresholds for performing contract reconciliations.

DPAP Response: DPAP does not believe it would be statutorily permitted to establish dollar thresholds below which contract reconciliations would not be required. Absent statutory authority, DPAP does not believe it can provide the contracting officer with the authority to close out unreconciled contracts.

c. Require Replacement Funds Be Acquired on a Timely Basis

Comment: A recommendation was made to require that replacement funds be obtained on a timely basis.

DPAP Response: The DFARS case on contract closeout will consider whether to add specific language to PGI emphasizing the need for agencies to obtain replacement funds on a timely basis.

d. Require That DFAS Notify Contractors of Payment Offsets

Comment: A recommendation was made to require that DFAS notify the contractor when there is an offset to a contractor payment.

DPAP Response: DFAS currently notifies contractors by letter and/or telephone when there is an offset. The DFARS case on contract closeout will include a review of whether the DFARS/PGI should be amended to describe this process.

e. Require the Update of Cumulative Accounting Classification Reference Number (ACRN)/Contract Line Item Numbering (CLIN) Schedules After Each Contract Modification

Comment: A recommendation was made to require the updating of the cumulative ACRN/CLIN schedule each time a modification is issued.

DPAP Response: The DFARS case on contract closeout will review whether PGI language is needed to emphasize the importance of maintaining an updated ACRN/CLIN schedule.

f. Provide Contractors Access to Contract ACRN and Mechanization of Contract Administration Services (MOCAS) Data, and Consider Simplifying ACRN/CLIN Accounting

Comment: A recommendation was made that DoD should provide contractors with read-only access to their contract ACRN data, allow visibility to all modifications, add CLIN data to MOCAS, and consider alternatives to and simplify the ACRN/CLIN accounting.

DPAP Response: DPAP does not believe any action is needed with regard to this recommendation, because the access described is already available. A contractor can request access to the contract ACRN data by contacting the cognizant paying office identified on the DFAS Web site at *http://www.defenselink.mil/dfas/about/Contacts.html.* In addition, contract information, including modifications, can be accessed on the Internet via the Electronic Document Access system at *http://eda.ogden.disa.mil.* Furthermore, the ACRN/CLIN data is already included in MOCAS.

With regard to simplifying the ACRN/CLIN accounting, DoD is working to develop a comprehensive data structure that will support the requirements for budgeting, financial accounting, cost/performance management, and external reporting throughout the Department. This effort is intended to standardize categorization of financial information along several dimensions to support financial management and reporting functions and, when implemented, will provide a common foundation to track, process, and report DoD business transactions.

g. Automated Structuring of Contract CLINS/SubCLINS

Comment: A recommendation was made to not allow agency accounting systems to drive how contracts are structured, i.e., systems automatically add SubCLINs to a CLIN.

DPAP Response: DPAP believes the DFARS adequately addresses this issue. The criteria for establishing CLINs are specified in DFARS 204.7103 and 204.7104.

10. Contract vs. Delivery Order Basis

a. Clearance of Government Property, Final Patent Reports, Security Release, etc.

Comment: A recommendation was made to clear the Government property, final patent report, security release, and other pertinent documents one time against the contract instead of on an order-by-order basis.

DPAP Response: The DFARS case on contract closeout will review if/when it may be appropriate to provide for a one-time clearance of the Government property, final patent report, security release, and other pertinent documents instead of on an order-by-order basis.

b. Close Contracts by Task Order

Comment: Two recommendations were made to close out all task orders as they are completed instead of waiting until the end of the contract, or to explore best practice options.

DPAP Response: The DFARS case on contract closeout will review whether DFARS/PGI language is needed to specifically address the closeout of task orders. Note that DCMA currently has a process to close out task orders as they are completed to facilitate closeout of indefinite-delivery, indefinite-quantity contracts.

c. Contract Period of Performance

Comment: A recommendation was made to clarify language on the period of performance for a task order versus that specified in the basic contract, i.e., if and when the task order period of performance may fall outside the period of performance specified in the basic contract.

DPAP Response: The DFARS case will review whether the regulations should be revised to specifically address issues regarding contract and task order periods of performance.

11. Time-and-Materials (T&M) Contracts

a. Streamline Closeout Procedures

Comment: A recommendation was made to streamline closeout procedures for T&M contracts that are valued at less than a specified amount (e.g., $1 million).

DPAP Response: The DFARS case on contract closeout will review if and when streamlined closeout procedures would be appropriate for T&M contracts. Note that the May 17, 2005, DCAA memorandum, Audit Guidance on Low Risk Time and Material/Labor Hour Contract Closeout Initiative, provides audit procedures for expediting the closeout of T&M contracts valued at $1 million or less when contractors meet certain low risk criteria. The memorandum (05–PPD–037(R)) is available at *http://www.dcaa.mil/.*

b. Verification of Employee Qualifications

Comment: A recommendation was made for DoD guidance to provide extra focus on employee qualifications when closing out T&M contracts.

DPAP Response: The review of employee qualifications should be a part of the contracting officer representative and/or audit responsibilities during contract performance so as to ensure that employees are properly qualified before they perform contract work. DPAP is currently working to provide PGI guidance to delineate the duties of all parties in the contract administration process. The review of employee qualifications will be an integral part of this delineation of duties. Thus, while the Government is not precluded from reviewing employee qualifications at the end of the contract, DPAP believes this issue is better addressed in the guidance on administering T&M contracts, rather than any specific guidance on contract closeout.

12. Classified Contracts

Comment: Two recommendations were made for the use of quick closeout procedures, or certified year-end rates, for all classified contracts.

DPAP Response: DPAP does not believe it would be advisable to provide blanket quick closeout authority for all classified contracts. However, the DFARS case on contract closeout will review whether there are any particular characteristics of classified contracts that would warrant more extensive use of quick closeout procedures than is provided for non-classified contracts.

13. Classified Documents

Comment: Two recommendations were made to develop a contract clause that provides clear instructions for the disposition of classified documents, and to allow the contracting officer the authority to transfer classified documents to other contracts.

DPAP Response: The DFARS case on contract closeout will review whether language on classified contracts should be added to PGI. In DoD, the security classification management program implements the requirements of the National Industrial Security Program Operating Manual (NISPOM). The security office receives, evaluates, interprets, and obtains clarification and changes to classification guidance for contracts and proposals, and issues classification guidance. Classification and distribution guidance is available at *https://intranet.acq.osd.mil/intranet/admin/security/secguide/Implemnt/Altrnats/Classif.htm.* In DoD contracts, the DD Form 254, Department of Defense Contract Security Classification Specification, establishes security classification levels of classified information and hardware, downgrading, and declassification instructions, public dissemination instructions for information related to the contract, and other special security requirements. If a DD Form 254 is not provided with a solicitation or contract, the security office and the contracting office are required to jointly take the actions necessary to obtain one.

14. Government Property

Comment: The following recommendations were made relating to Government property:

(1) Distinguish between the role of the ACO and that of the Government property administrator.

(2) Provide contracting personnel with disposition authority for special tooling, special test equipment, and other property with an acquisition value of $5,000 or less, and be specific in identifying who has disposition authority (i.e., Government property administrator).

(3) Provide contracting officers with the authority to make the determination as to whether property should be reutilized or scrapped, and to scrap military unique items that have been rejected for reutilization by the buying agency. There is little value in retaining these items if they have been rejected by the buying agency.

(4) Delegate authority to the Government property administrator to transfer property to other contracts (e.g., to follow-on contracts to reduce costs).

(5) Permit the Government property administrator to grant accountability relief on the spot for recorded property that was not found at contract completion if (a) the contractor has an approved property system, (b) the lost item has an acquisition date of five years or later, and (c) the lost item has an acquisition cost of $100,000 or less. The Government property administrator would retain the right to a full Lost/Damaged/Destroyed Report.

(6) Establish a site property and/or plant-wide disposition contract for each business element location. As each contract is completed, all property would be automatically transferred to the disposition contract. Each respective buying office could fund a line item on the disposition contract for disposal of its property, or the predominant agency could fund the entire contract.

(7) Transfer accountability for property to the Government for purposes of contract closeout once property is submitted on an inventory schedule. This is an efficient method, because it removes property from the contract.

(8) Consider a system to allow the capture of data related to DoD property in the possession of contractors, since DD Form 1662 was discontinued after fiscal year 2005.

(9) Develop a contract clause that provides clear instructions for the disposition of Government property.

(10) Provide contracting officers with the authority to remove the property clauses from contracts where there is no

probability of issues in these areas (e.g., service contracts with little or no property).

(11) Set a timeframe (e.g., 90 days) at the end of the contract for disposition of lost property.

(12) Clarify an apparent inconsistency between final contract closeout and the timeframe for overall closeout of Government property.

DPAP Response: DPAP anticipates that a final rule revising FAR coverage on Government property will be issued in early 2007. The FAR rule is anticipated to include a number of changes to existing Government property rules. As such, DPAP believes it would be premature to attempt to address the specific recommendations provided with regard to Government property in advance of issuance of that final rule. Upon issuance of the rule, DPAP will review whether the above comments warrant any additional regulatory or PGI coverage.

15. Patents

a. Contract Closeout Based on Negative Interim and Final Patent Reports

Comment: A recommendation was made to allow the contracting officer to proceed with contract closeout within a specified timeframe (e.g., 30 days), if a contractor has submitted a negative report on all interim and final patent right reports, unless the contracting officer receives notification that there are patent issues precluding such closeout.

DPAP Response: The DFARS case on contract closeout will review whether DFARS/PGI language should be added to address if/when a contract could or should be closed out if all interim reports and the final patent reports are negative. Note that current DCMA contract closeout procedures provide a structured timeframe of 60 days for proceeding with closeout when patent reports containing a negative reply are received.

b. Omission of Patent Clauses From Contracts

Comment: Three recommendations were made to provide contracting officers with the authority to remove the patent clauses from contracts where there is no probability of issues in these areas (e.g. service contracts with no patent issues), to clarify PGI as to when the clause is needed, and to reconsider how often to issue negative reports on patents. Currently, a negative report is required every 12 months.

DPAP Response: DPAP does not believe any guidance is needed in the area of contract closeout to address this issue. However, DPAP notes that DoD has a current DFARS case regarding patents, data, and copyrights. Thus, DPAP will forward this recommendation to the cognizant DFARS committee for consideration.

c. Review FAR 52.301 Matrix for Mandatory and Discretionary Clauses

Comment: A recommendation was made to review the FAR 52.301 matrix, which identifies contract clauses that are mandatory versus those that are discretionary, to ensure that clauses are not being included in contracts unnecessarily.

DPAP Response: The current matrix at FAR 52.301 indicates when a FAR clause is required, required as applicable, or optional. Thus, DPAP does not believe any further action is necessary with regard to this recommendation.

16. Planning

Comment: A recommendation was made to require a contract closeout plan as part of the acquisition plan. The contract closeout plan should consider the up-front effort, perceived benefit, and dollar threshold. The plan should also include a memorandum of agreement between the contractor and the Government that weighs the costs and benefits of a closeout plan.

DPAP Response: DPAP does not believe that there would be significant benefit to requiring a specific contract closeout plan as part of the acquisition plan. However, the DFARS case on contract closeout will review whether the DFARS/PGI should be revised to address how contract closeout should be considered in developing the acquisition plan.

17. Mechanization of Contract Administration Services (MOCAS)

Comment: A recommendation was made to revise MOCAS so that it is automatically updated to reflect the current performance period when the contract period is extended.

DPAP Response: DPAP will work with DCMA to ensure that MOCAS capabilities include providing current contract period of performance information.

18. Electronic Submission

Comment: Two recommendations were made to study Wide Area WorkFlow (WAWF) for duplication, because DD Form 1594, Contract Completion Statement, and DD Form 1597, Contract Closeout Checklist, duplicate the current electronic closeout processes being done in Procurement Defense Desktop (PD2).

DPAP Response: DPAP does not believe any action is needed with regard to this recommendation, because the use of WAWF does not duplicate PD2. DD Form 1597 is needed, because not all contracting offices use PD2. When the forms are generated electronically in PD2, the forms do not have to be completed manually. However, PD2 does permit manual closeout using DD Form 1597 and DD Form 1594 for orders under blanket purchase agreements.

19. Allowability of Contract Closeout Costs

a. Definition of ''Period of Performance'' and Guidance on the Allowability of Costs Incurred After the Period of Performance

Comment: Four recommendations were made to clarify the regulations to specify what is meant by the period of performance, or to provide regulations or guidance as to the allowability of costs incurred for contract closeout after the end of the performance period, such as subcontractor costs billed and paid outside the period of performance, or material transfers that occur after the period of performance.

DPAP Response: DPAP does not believe it is necessary or advisable to provide blanket guidance regarding this issue. The circumstances noted in the recommendation must be addressed on a case-by-case basis. DPAP believes the current regulations adequately address this issue. FAR 31.201–2, Determining Allowability, states that a cost is allowable only when the cost is reasonable, is allocable, complies with applicable Cost Accounting Standards or generally accepted accounting principles, complies with the terms of the contract, and complies with the specific provisions in FAR Subpart 31.2. In reading these allowability criteria, the key criteria for this particular issue are the terms of the contract. The contractor should consider the cost of normal contract closeout when submitting proposals for contracts and/or indirect cost rates. Furthermore, when unusual circumstances will require the contractor to expend effort that is charged as a direct cost beyond the current contract period of performance, the contractor should request a contract modification to extend the period of performance. With regard to subcontract costs and material transfers, when the contractor becomes aware that such costs may be incurred outside the period of performance, the contractor should notify the contracting officer and should request an appropriate contract modification to the existing period of performance.

b. Guidance on Determining ''Physical Completeness''

Comment: One recommendation was made to provide guidance on ''physical completion.''

DPAP Response: DPAP does not believe additional guidance on this issue is necessary. FAR 4.804–4 provides specific criteria that must exist for a contract to be physically complete.

20. Statute of Limitations

Comment: Two recommendations were made to shorten the statute of limitations for submission of a claim (currently six years) to mitigate issues concerning expired funds, lost documentation, software changes, and Government/contractor storage costs; and to consider that reducing the period would set precedence to reduce the time requirements in other areas.

DPAP Response: The length of time allowed for the submission of a claim is directly related to the period specified in the Contract Disputes Act (41 U.S.C. 605), which was amended upon enactment of the Clinger-Cohen Act in 1996. Any revision to this period would require a change to existing statutes. DPAP believes this issue is better addressed by focusing on the systemic issues that hinder contract closeout rather than pursuing a legislative change.

21. Transportation Clause

Comment: A recommendation was made to revise the clause at DFARS 252.247–7023, Transportation of Supplies by Sea, to reduce the needless inclusion of this clause in contracts or to consider issuing guidance specifying when the clause needs to be used. Currently it is often included when obviously unnecessary.

DPAP Response: DPAP will refer this issue to the DFARS Transportation Committee to review whether the current clause prescription should be revised.

22. Settlement of Contract Debts

Comment: A recommendation was made to permit the contracting officer to negotiate the settlement of contract debts across a number of contracts. This would avoid the need to find replacement funds, which often takes years and substantially delays the closeout process.

DPAP Response: DPAP does not believe any guidance is needed in the area of contract closeout to address this issue. However, DPAP notes that there is a current FAR case that is focusing on the contract debt process. Therefore, this recommendation will be forwarded to the cognizant FAR team for consideration.

23. Consolidation of Guidance on Contract Closeout

Comment: A number of recommendations were made that the DCAA Contract Audit Closeout Guide be incorporated into PGI to establish a single reference source for contracting personnel, and that the PGI be supported with training.

DPAP Response: DPAP agrees that providing a consolidated resource for contract closeout guidance will facilitate the process. Thus, the DFARS case on contract closeout will include PGI language on contract closeout. In addition to providing basic guidance addressing the contract closeout process, this PGI section will also include links to agency guidebooks, training, and any other relevant information.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–9734 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AF39

Defense Federal Acquisition Regulation Supplement; Lease of Vessels, Aircraft, and Combat Vehicles (DFARS Case 2006–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address statutory provisions relating to leasing. The proposed rule permits the lease of a vessel, aircraft, or combat vehicle only if the contract will be long-term or will provide for a substantial termination liability.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 23, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D013, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D013 in the subject line of the message.
- *Fax:* (703) 602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Gary Delaney, OUSD (AT&L) DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, (703) 602–8384.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2401, as amended by Section 815 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), permits DoD to award a contract for the lease of a vessel, aircraft, or combat vehicle only if the contract will be long-term or will provide for a substantial termination liability, and if the Secretary concerned fulfills certain other requirements. Prior to the enactment of Public Law 109–163, the provisions of 10 U.S.C. 2401 applied to vessels and aircraft; Section 815 of Public Law 109–163 amended 10 U.S.C. 2401 to also include combat vehicles. This proposed rule amends DFARS 207.470 to reflect the statutory provisions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates primarily to DoD planning and budget considerations with regard to leasing of vessels, aircraft, and combat vehicles. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 207 as follows:

PART 207—ACQUISITION PLANNING

1. The authority citation for 48 CFR part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 207.470 is amended as follows:

a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively;

b. By adding a new paragraph (a); and

c. In newly designated paragraph (c), by removing ''Except as provided in paragraph (a) of this section'' and adding in its place ''Except as provided in paragraphs (a) and (b) of this section''. The new paragraph (a) reads as follows:

207.470 Statutory requirements.

(a) *Requirement for statutory authorization for certain contracts relating to vessels, aircraft, and combat vehicles.* The contracting officer shall not enter into any contract for any vessel, aircraft, or combat vehicle, through a lease, charter, or similar agreement, or for services that provide for the use of the contractor's vessel, aircraft, or combat vehicle, unless—

(1) The head of the agency has satisfied the requirements of 10 U.S.C. 2401; and

(2)(i) The contract will be a long-term lease, charter, or similar agreement (10 U.S.C. 2401(d)(1)); or

(ii) The terms of the contract provide for a substantial termination liability (10 U.S.C. 2401(d)(2)).

* * * * *

[FR Doc. E7–9744 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

Contract Profit/Fee Policies

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for public input.

SUMMARY: DoD is conducting a review of the Department's contract profit/fee policies. As part of this review, DoD would like to hear the views of interested parties regarding the effectiveness of the profit/fee policies presently used for DoD contracts.

DATES: Submit written comments to the address shown below on or before July 23, 2007.

ADDRESSES: Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD (AT&L) DPAP (CPF), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments also may be submitted by facsimile at (703) 602–7887, or by e-mail at *Bill.Sain@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, by telephone at (703) 602–0293, or by e-mail at *Bill.Sain@osd.mil.*

SUPPLEMENTARY INFORMATION: DoD contract profit/fee policies, to include policy for developing pre-negotiation profit or fee objectives, are described in the Defense Federal Acquisition Regulation Supplement (DFARS), in sections 215.404–4 and 215.404–70 through 215.404–76. One of the key aspects of DoD's profit policy is the Weighted Guidelines. While there have been some revisions to the Weighted Guidelines over the past few years, the basis for the existing policy was established in the mid-1980s. Since then, there have been a number of changes, including (1) the evolution of DoD's acquisition programs, (2) extensive industry consolidation, and (3) a significant increase in the number of DoD contracts for services. In light of these many changes, DoD is interested in receiving public input on the existing profit/fee policies, with regard to those that are working effectively and those that should be revised or eliminated, along with supporting rationale. Potential areas for consideration include, but are not limited to, the following:

- The contractor risk factors used in DoD's structured approach for developing profit/fee objectives, particularly with regard to—
- The pertinence of the existing factors;
- Whether the ranges and normal values used for the existing factors are still valid; and
- Whether there are other risk factors that are not reflected in the existing policies.
- Any changes needed to—
- The technology incentive at DFARS 215.404–71–2(c)(2) and (d)(4);
- The contract type risk factor at DFARS 215.404–71–3;
- The facilities capital employed factor at DFARS 215.404–71–4;
- The cost efficiency factor at DFARS 215.404–71–5;
- The modified weighted guidelines at DFARS 215.404–72;
- The policies as they provide for consideration of the amount of investment a contractor has in a contract;
- The policies as they provide for consideration of the extent of contract financing payments;
- The policies as they apply to contracts for services; and
- The policies as they apply to contracts for research, development, test, and evaluation.
- Whether any of the existing structured approaches for profit analysis should play a role in establishing the base fee or pool on award-fee contracts.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–9754 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 232

Contract Financing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for public input.

SUMMARY: DoD is conducting a review of the Department's contract financing policies. As part of this review, DoD would like to hear the views of interested parties regarding the effectiveness of the financing policies presently used for DoD contracts.

DATES: Submit written comments to the address shown below on or before July 23, 2007.

ADDRESSES: Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD

(AT&L) DPAP (CPF), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments also may be submitted by facsimile at (703) 602–7887, or by e-mail at *John.McPherson@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. John McPherson, by telephone at (703) 602–0296, or by e-mail at *John.McPherson@osd.mil.*

SUPPLEMENTARY INFORMATION: DoD policies on contract financing are described in Part 32 of the Federal Acquisition Regulation (FAR) and Part 232 of the Defense FAR Supplement. These policies cover a variety of contract finance issues, including non-commercial item purchase financing; commercial item purchase financing; loan guarantees for defense production; advance payments for noncommercial items; progress payments based on costs; contract debts; contract funding; assignment of claims; prompt payment; performance-based payments; electronic funds transfer; electronic submission and processing of payment requests; and levies on contract payments.

DoD is interested in receiving public input on these contract financing policies, particularly with regard to those that are considered to be especially effective or ineffective, along with supporting rationale.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–9751 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Status of the Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to initiate a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intent to initiate a candidate status review for the Rio Grande cutthroat trout (O*ncorhynchus clarki virginalis*) to determine if candidate status is warranted. The Endangered Species Act of 1973, as amended (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered or Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. During or prior to April 2008, we will make a determination concerning the results of the status review for the Rio Grande cutthroat trout, and, shortly thereafter, we will publish this determination in the **Federal Register**.

DATES: We will accept comments and information from all interested parties for our use in the status review and in preparing a revised finding until July 6, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any of the following methods:

1. You may mail or hand-deliver your written comments and information to Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico 87113.

2. You may fax your comments to Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Field Office, at (505) 346–2542.

3. You may send comments by electronic mail (e-mail) to *R2FWE_AL@fws.gov*.

4. You may go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in the preparation of candidate status review, will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, at the street address above (telephone: (505) 346–2525).

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**) (telephone: (505) 346–2525; facsimile: (505) 346–2542). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1998, we received a petition from the Southwest Center for Biological Diversity requesting that the Service add the Rio Grande cutthroat trout (*Onchorynchus clarki virginalis*) to the List of Endangered and Threatened Wildlife. The petition addressed the range-wide distribution of the Rio Grande cutthroat trout, including populations in Colorado and New Mexico.

Section 4(b)(3)(B) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We subsequently published a notice of a 90-day finding in the **Federal Register** (63 FR 49062, September 14, 1998). In the 90-day finding, we concluded that the petition did not present substantial information indicating that listing of the Rio Grande cutthroat trout may be warranted.

On June 9, 1999, the Southwest Center for Biological Diversity filed a complaint challenging the September 14, 1998, 90-day petition finding as violating the Act and the Administrative Procedure Act (5 U.S.C. 551 *et seq*). On November 8, 2001, a settlement agreement executed by both parties (the Service and the Southwest Center for Biological Diversity) was filed with the court. The settlement agreement stipulated that we would conduct a candidate status review for the Rio Grande cutthroat trout.

After completing the candidate status review for the Rio Grande cutthroat trout, the Service made a determination that listing of the trout was not warranted because the trout was neither endangered nor likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Notice of that determination was published in the **Federal Register** on June 11, 2002 (67 FR 39936). Since that time, the Service has further defined how it analyzes what constitutes a ''significant portion'' of a species'' range. For example, in the recent finding regarding the status of the Western Great Lakes distinct population segment of gray wolf (72 FR 6052, February 8, 2007), the Service outlined a framework for analyzing whether a species is in danger of extinction throughout a significant portion of its range. In addition, in the 5 years since the June 2002 deterimation, a significant amount of new information and data

relevant to the Rio Grande cutthroat trout's status has been collected, such that a new candidate status review is prudent.

In light of these developments, the Service has withdrawn the June 11, 2002, candidate status review and the determination based upon that status review. The Service is initiating a new candidate status review for the Rio Grande cutthroat trout that is consistent with the new framework for analyzing ''significant portion of its range'' and that incorporates new information.

Request for Information

Our determination of candidate status for the Rio Grande cutthroat trout will be based upon the best available scientific and commercial data, as required under section 4(b)(1)(A) of the Act. We request that you submit any information on the Rio Grande cutthroat trout not previously submitted for our review. We are particularly interested in any relevant information gathered since June 2002 concerning the following:

(1) Current population status (e.g., population estimates, age-structure, trend) for any of the populations of the Rio Grande cutthroat trout, including methodology used for population estimation and confidence intervals if available;

(2) Rio Grande cutthroat trout's susceptibility to whirling disease, and distribution of Rio Grande cutthroat trout infected by whirling disease in New Mexico and Colorado;

(3) Distribution of *Tubifix tubifix* worms in the streams of New Mexico and Colorado and the susceptibility of these worms to infection;

(4) Genetic classification of any Rio Grande cutthroat trout population(s);

(5) Condition of occupied habitat;

(6) Restoration projects that have been completed, including translocation, new barrier construction or barrier repair, habitat improvement projects, or nonnative trout removal projects;

(7) Results of barrier surveys;

(8) Distribution of nonnative trout or their population size and structure in streams currently occupied by Rio Grande cutthroat trout;

(9) Status of any of the thirteen ''core'' populations identified in the 2002 status review (see 67 FR 39936);

(10) Current and future threats to Rio Grande cutthroat trout populations and remaining habitat areas; and

(11) Other regulatory mechanisms that address those threats, and the success of those mechanisms to date.

(12) Whether any portion of the range of the species is a significant portion of the range, and whether there are threats in that portion sufficient to meet the standards for listing under the Act.

Our candidate status review will take into consideration all comments and any additional information received, including all previous comments and information submitted during the previous candidate status review. As such, information provided during the previous status review does not need to be resubmitted.

If you are submitting e-mail comments, please include ''*Attn:* Rio Grande cutthroat trout'' in your e-mail subject header. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our New Mexico Ecological Services Field Office at (505) 346–2525. Please note that comments must be received by the date specified in the **DATES** section in order to be considered and that the e-mail address (*R2FWE_AL@fws.gov*) will be unavailable at the termination of the public comment period.

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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Author

The primary author of this notice is the staff of the New Mexico Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 11, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–9590 Filed 5–21–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 72, No. 98

Tuesday, May 22, 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

Forest Service

Uinta National Forest, UT; Indian Springs Road Realignment Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Uinta National Forest is initiating the preparation of an Environmental Impact Statement for the Indian Springs Road Realignment.

DATES: Comments concerning the scope of the analysis must be postmarked or received within 30 days from date of publication of this notice in the **Federal Register** to ensure full consideration. The draft environmental impact statement is expected August 2007 and the final environmental impact statement is expected November 2007.

ADDRESSES: Please submit issues or concerns to the Responsible Official: Julie King, Heber District Ranger, 2460 South Highway 40, P.O. Box 190, Heber City, UT 84032; by phone at 435–654–0470; or by fax 435–654–5772. E-mail comments to *intermtn-heber@fs.fed.us*; e-mails must be submitted in MS Word (*.doc) or rich text format (*.rtf) and should include the project name in the subject line. Oral comments as well as written comments may also be submitted at the above address during regular business hours of 8 a.m. to 5 p.m., Monday–Friday, excluding Federal holidays.

Each individual or representative from each organization submitting comments must either sign the comments or otherwise verify identity in order to attain appeal eligibility. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record for this project.

FOR FURTHER INFORMATION CONTACT: Information regarding this project will be posted on the Uinta National Forest's Web site: *http://www.fs.fed.us/r4/uinta/projects/nepa*. For additional information, please contact Jim Percy.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Proposed Action is to reduce adverse impacts to watershed and fisheries, provide safer driving conditions while maintaining access to Strawberry Ridge from the south. The Proposed Action is needed because currently the road is a single lane, native surface primarily located within 50 feet of Indian Creek; several sections of the road are within the stream channel.

Proposed Action

The Proposed Action would relocate the existing Indian Springs Road. Work would include the construction of 1.9 miles at an upland and drier location and obliteration and restoration of 1.6 miles of the existing road in riparian area. The relocated road will be a 16 feet wide, single lane with turnouts, drainage structures and gravel surface. This new alignment would substantially improve water quality through reduction of sediment production, enhanced habitat for fauna and floral species, provide safe infrastructure though improved horizontal and vertical alignment and reduce short and long term operation and maintenance costs.

Possible Alternatives

Three preliminary alternatives are being considered: (1) No action—The existing native surface, single lane road remains at its present location, which is within a riparian zone. (2) Proposed Action—Reconstruct a single lane road with turnouts along a new alignment and obliterate the entire length of existing alignment. (3) Alternative A—Reconstruct a single lane road with turnouts along a new alignment and obliterate a large portion of the existing alignment. Approximately 0.5 mile of dead-end road would remain to allow access for dispersed camping and for access to water for the livestock permittee.

Lead and Cooperating Agencies

The Uinta National Forest is the lead agency. Wasatch County is a cooperating agency.

Responsible Official

Julie King, Heber District Ranger, 2460 South Highway 40, Heber City, UT 84032; by phone at 435–654–0470; or by fax 435–654–5772.

Nature of Decision To Be Made

The Heber District Ranger will decide whether to authorize construction of the Indian Springs Road realignment and to close and rehabilitate the existing road.

Preliminary Issues

Key issues and concerns identified include impacts to inventoried roadless areas, health, safety, and transportation, watershed resources, aquatic species and livestock management.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45-days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont *Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-

day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Dated: May 16, 2007.

Julie K. King,

Heber District Ranger.

[FR Doc. E7–9791 Filed 5–21–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee (Committee) will meet in Washington, DC. The purpose of this meeting is to review the petition submitted by the Governor of Colorado for state specific rulemaking for inventoried roadless area management in the State of Colorado under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28 and to discuss other related roadless area matters.

DATES: The meeting will be held June 13 to June 14, 2007, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Forest Service's Yates Building at 201 14th Street, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jessica Call, Roadless Area Conservation National Advisory Committee (RACNAC) Coordinator, at *jessicacall@fs.fed.us* or (202) 205–1056, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to the RACNAC Coordinator (contact information listed above) by June 8, 2007. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period at the end of the first day's agenda. To offer oral comment, please contact the RACNAC Coordinator at the contact number above.

Dated: May 16, 2007.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E7–9818 Filed 5–21–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Highwood Generating Station Environmental Impact Statement (EIS)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of record of decision (ROD).

SUMMARY: In accordance with the Rural Electrification Act of 1936, the National Environmental Policy Act of 1969 (NEPA), and the Montana Environmental Policy Act, the Rural Utilities Service (RUS), an Agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, and the Montana Department of Environmental Quality (DEQ) announce the availability of the ROD for the EIS for the Highwood Generating Station (HGS), proposed to be located near Great Falls, Montana. The Administrator, Utilities Programs, USDA Rural Development, and the Director, DEQ, have signed the ROD, which is effective upon signing.

ADDRESSES: To obtain copies of the HGS ROD, or for further information, contact: Richard Fristik, Senior Environmental Protection Specialist, U.S. Department of Agriculture, Rural Development Utilities Programs, 1400 Independence Ave., SW, Stop 1571, Washington, DC 20250, phone (202) 720–5093 (*richard.fristik@wdc.usda.gov*); or,Kathleen Johnson, Environmental Impact Specialist, Montana Department of Environmental Quality, P. O. Box 200901, Helena MT 59620–0901, phone 406–444–1760 (katjohnson@mt.us). A copy of the ROD can be viewed online at: *http://www.usda.gov/rus/water/ees/eis.htm#Southern%20Montana%20Electric%20Cooperative,%20Inc* and *http://www.deq.mt.gov/eis.asp*.

The document is in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html*.

SUPPLEMENTARY INFORMATION: The Southern Montana Electric Generation and Transmission Cooperative, Incorporated (SME) proposes to build and operate a 250 (net) megawatt (MW), Circulating Fluidized Bed (CFB), coal-fired electric power plant—called the Highwood Generating Station (HGS)—and 6 MW of wind generation at a site near Great Falls, Montana. SME will lose its principal supply of power from the Bonneville Power Administration beginning in part in 2008 and in full in 2011; thus, the purpose and need of the proposal is for SME to replace that power supply with another source of reliable, long-term, affordable electric energy and related services in order to fulfill its obligations to its member rural electric cooperatives. In order to meet the projected electric power deficit, SME formally applied to Rural Development in 2004 for a loan guarantee for the construction of an electric generating source, the proposed HGS, and related transmission facilities. In September 2005, SME submitted a draft air quality permit application to DEQ and formally applied for an air quality permit in November 2005. The application was reviewed and a draft preliminary determination (PD) was released for public review and comment on March 30, 2006. Comments on the draft PD resulted in a supplemental PD that was included in the Draft and Final EIS. A solid waste management license application was submitted to the DEQ on March 20, 2006. In accordance with

the NEPA and the Montana Environmental Policy Act and applicable agency regulations, the DEQ and Rural Development have prepared an EIS to assess the potential environmental impacts associated with the proposed HGS. The decision being documented in this ROD is that Rural Development agrees to participate, subject to loan approval, in the funding of the HGS at the Salem site. The DEQ's decisions include the approval of SME's air quality permit application and solid waste management license. More details regarding each agency's regulatory authority, rationale for the decisions, and compliance with applicable regulations are included in the ROD. Though Rural Development and DEQ were co-leads in preparation of the EIS, and the ROD is signed by both agencies, it is not necessary for DEQ to sign this notice.

Lists of various alternatives were evaluated for generation source/technology, facility location, water supply and wastewater, and appurtenant facilities. Alternatives eliminated from detailed study were, by category: Generation Source/Technology—power purchase agreements, wind energy, solar energy, hydropower, geothermal energy, biomass, biogas, municipal solid waste, natural gas combined cycle, microturbines, pulverized coal, integrated gasification combined cycle, oil, nuclear power, and two combinations of renewable and non-renewable sources. Facility Location—outstate, the Decker, Hysham, and Nelson Creek sites; and in the Great Falls area, the Sun River, Manchester, Malmstrom, and Section 36 sites. Water Supply and Wastewater at the preferred site—importing bottled water, drinking water wells drilled on-site, additional (Missouri) river diversion, directly discharging wastewater into the Missouri River, and disposing of sanitary wastewater in a septic system. Appurtenant Facilities at the preferred site—two alternate railroad spur alignments, and hauling ash to the High Plains landfill.

Three alternatives were evaluated in detail in the Draft and Final EIS: (1) The No Action Alternative; (2) The Proposed Action, a 250-MW CFB, coal-fired power plant—the HGS—and four 1.5-MW wind turbines at the Salem site; and (3) A 250-MW CFB plant and no wind turbines at an alternative site north of Great Falls, called the Industrial Park site. The agency's preferred alternative is (2), the Proposed Action. The No Action Alternative does not meet the proposal's purpose and need. It would distribute and perhaps disperse environmental impacts from electricity generation to meet SME's customer's needs to other locations in the American and Canadian West. The No Action Alternative would expose SME, its members and customers to higher prices by purchasing power on the volatile open electric market. The Industrial Park alternative would meet the proposal's purpose and need and provide similar benefits as the Proposed Action, but it has disadvantages compared to the Salem site. Disadvantages of the site include increases in local rail and truck traffic due to coal delivery through the City of Great Falls and hauling fly ash to the nearby landfill, presenting greater potential for increased traffic delays and/or accidents. Its proximity to other industrial and residential sources presents potential challenges in air quality permitting as well as noise. The disposal of fly ash at the landfill will shorten the landfill's life requiring expansion of that facility or development of another facility to meet the solid waste needs for Cascade County. The Industrial Park site also is not large enough to accommodate ancillary wind power development.

Fourteen resources or areas of concern that could potentially be affected emerged from the scoping process and agency discussions, or are required to be evaluated by law or regulation. These issues, and the means by which they were evaluated, are summarized on Pages 1–25 to 1–29 in the Final EIS. The following table summarizes the impact conclusions by resource and site.

Resource/issue	Salem site	Industrial Park Site
Soils and Topography	Moderate, short-term impacts due to construction; permanent increase in impermeable surface area; minor, long-term impacts due to waste monofill.	Moderate, short-term impacts due to construction; permanent increase in impermeable surface area.
Water Resources	Negligible construction impacts to receiving water quality; minor impacts on Missouri River flows from water withdrawals.	Negligible construction impacts to receiving water quality; minor impacts on Missouri River flows from water withdrawals.
Air Quality	Short-term construction impacts; long-term minor to moderate impacts due to release of criteria pollutants, Hazardous Air Pollutants (HAP), Green House Gases (GHG), visual plume and haze.	Short-term construction impacts; long-term minor to moderate impacts due to release of criteria pollutants, HAPs, GHGs, visual plume and haze. Potential adverse cumulative and local impacts due to proximity to other industries, City of Great Falls, and local residences.
Biological Resources	Minor, short-term construction impacts to terrestrial and aquatic biota, vegetation; minor long-term impact from rail/traffic collisions.	Minor, short-term construction impacts to terrestrial and aquatic biota, vegetation; minor long-term impact from rail/traffic collisions.
Noise	Minor to moderate, short-term construction impacts; minor long-term impact from train traffic, plant operation; significant impacts to National Historic Landmark (NHL).	Minor to moderate, short-term construction impacts; minor long-term impact from train traffic, plant operation; greater number of residential receptors.
Recreation	Negligible to minor impacts	Negligible to minor impacts.
Cultural Resources/Historic Properties.	Adverse effect to NHL; no impact to archeological resources.	No impact to historic properties or archeological resources.
Visual Resources	Significant impact/adverse effect to NHL	Negligible to minor impact to NHL; moderate impacts in localized area.
Transportation	Short-term, moderate construction impacts	Short-term, moderate construction impacts; increased accident risk and traffic congestion due to rail crossings in Great Falls and truck transportation of ash.
Farmland and Land Use	Permanent loss of farmland; moderate, long-term impact on land use/property values.	Minor, long-term impact on land use/property values.

Resource/issue	Salem site	Industrial Park Site
Waste Management	Minor, medium-term construction impacts; moderate, long-term operation impacts.	Minor, medium-term construction impacts; minor to moderate operation impacts; possible capacity issues with use of Great Falls landfill.
Human Health and Safety	Minor construction-related impacts; minor, long-term operation impacts.	Minor construction-related impacts; increased risk for traffic-related accidents.
Socioeconomics	Minor to moderately beneficial impacts	Minor to moderately beneficial impacts.
Environmental Justice/Protection of Children.	No impact	Minor to moderate, long-term impact on low-income residents.

Five-hundred forty-three (543) letters, postcards, and e-mails were received in response to the Final EIS. Comments received were grouped into 55 categories or themes, and resulted in just over 2300 comments spread over these categories. Approximately 20 percent of the comments simply expressed either opposition or support of the proposal, though the overwhelming majority of these were in opposition. Of the remaining comments, almost half dealt with the following issues or concerns: greenhouse gas emissions/global warming/carbon capture and sequestration; renewable sources/conservation; air pollution in general; mercury/toxic emissions; outdated generation technology/dirty fuel; EIS inadequate; adverse effect to Great Falls Portage NHL; and, waste of scarce water resources. A complete summary of the comments is attached to the ROD. Though comments were not responded to individually, six substantive issues were addressed briefly in the ROD: Rural Development authority to make a loan guarantee for the proposal; financial analysis of the proposal; future carbon regulation; carbon capture and sequestration; renewable energy sources and conservation; and, water use, quality and quantity.

Based on an evaluation of the information and impact analyses presented in the EIS including the evaluation of all alternatives and in consideration of Agency environmental policies and procedures (7 CFR part 1794), Rural Development found that the evaluation of reasonable alternatives is consistent with the NEPA. The Agency selects the Salem site as its preferred alternative. This concludes the Agency's compliance with NEPA and the Agency's environmental policies and procedures. A review and analysis of the proposal's justification, associated engineering studies, and preliminary financial information have been reviewed and the Agency concurs in the proposal's purpose and need. The proposal would have an adverse effect on the Great Falls Portage NHL. Prior to the approval of the expenditure of Federal funds, the National Historic PreservationAct (NHPA), Section 106 process must conclude in accordance with 36 CFR part 800.Ongoing discussions are being conducted with all consulting parties concerning a resolution of adverse effects with the goal of concluding the Section 106 process with the execution of a Memorandum of Agreement (MOA) with the required parties. Once executed, the MOA will be integrated as a condition of the approval of the expenditure of Federal funds. Approval is contingent on SME obtaining and complying with all applicable local, State and Federal permits, implementing in good faith all mitigation measures and recommendations in the Final EIS and Biological Assessment, and continuing to participate in good faith as a consulting party in the NHPA Section 106 process and implementing all measures agreed to by the signatories to the MOA addressing the adverse effect to the Great Falls Portage NHL. This decision is in compliance with applicable statutory, regulatory and policy mandates, including the NEPA, the Endangered Species Act (ESA), Federal Aviation Administration (FAA) requirements, and the NHPA.

Dated: May 16, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–9817 Filed 5–21–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant and Loan Application Deadlines and FundingLevels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The Rural Utilities Service, an agency which administers USDA Rural Development Utilities Programs (USDA Rural Development or the ''Agency'') announces the Fiscal Year (FY) funding levels available for its Revolving Fund Program (RFP) grant. In addition, USDA Rural Development announces the maximum amounts for RFP grants applicable for the fiscal year 2007 and the solicitation of applications.

DATES: You may submit completed applications for the Revolving Fund Program's grant from May 22, 2007 until June 21, 2007.

Reminder of competitive grant application deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than June 21, 2007, to be eligible for FY 2007 grant funding.

ADDRESSES: You may obtain application guides and materials for the RFP program via the Internet at the USDA Rural Development Water and Environmental Programs (WEP) Web site: *http://www.usda.gov/rus/water/index.htm.* You may also request application guides and materials from USDA Rural Development by contacting Anita O'Brien at (202) 690–3789.

Submit completed paper applications for RFP grant to the Rural Development Utilities Programs, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked ''Attention: Assistant Administrator, Water and Environmental Programs.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov) and follow the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water Program Division, USDA Rural Development Utilities Programs; Telephone: (202) 690–3789, fax: (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)).

Announcement Type: Funding Level Announcement, and Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.864.

DATES: You may submit completed application for a RFP grant from May 22, 2007 until June 21, 2007.

Reminder of competitive grant application deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than June 21, 2007, to be eligible for FY 2007 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the RFP.
II. Award Information: Available funds, maximum amounts.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: Award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. With dependable water facilities, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water facilities, the communities cannot sustain economic development.

The USDA Rural Development Utilities Programs supports the sound development of rural communities and the growth of our economy without endangering the environment. Rural Utilities Service (RUS) programs are administered by USDA Rural Development. USDA Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Revolving Fund (RFP) Grant Program has been established to assist communities with water or wastewater systems. Qualified private non-profit organizations will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Water and Waste Disposal and Wastewater loan and grant programs administered by USDA Rural Development. As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems. The amount of financing to an eligible entity shall not exceed $100,000.00 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant work plan.

II. Award Information

Available funds: $495,000 is available for grants in FY 2007.

III. Eligibility Information

A. Who is eligible to apply?

An applicant is eligible to apply for the RFP grant if it:

1. Is a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Is legally established and located within one of the following:

(a) A state within the United States;

(b) The District of Columbia;

(c) The Commonwealth of Puerto Rico; or

(d) A United States territory;

3. Has the legal capacity and authority to carry out the grant purpose;

4. Has a proven record of successfully operating a revolving loan fund to rural areas;

5. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;

6. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt;

7. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

B. What are the basic eligibility requirements for a project?

1. The following activities are authorized under the RFP statute:

(a) Grant funds must be used to capitalize a revolving fund program for the purpose of providing direct loan financing to Ultimate Recipients for pre-development costs associated with proposed or with existing water and wastewater systems, or,

(b) Short-term costs incurred for equipment replacement, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

2. Grant funds may not be used to pay any of the following:

(a) Payment of the Intermediary's administrative costs or expenses, and,

(b) Delinquent debt owed to the Federal Government.

IV. Application and Submission Information

A. The grant application guide, copies of necessary forms and samples, and the RFP regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/water/index.htm* or *http://www.grants.gov.*

2. For paper copies of these materials telephone (202) 690–3789.

B. You may file an application in either paper or electronic format.

1. Applications submitted by paper:

(a) Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to: Assistant Administrator—Water and Environmental Programs, USDA Rural Development Utilities Programs, 1400 Independence Avenue, SW., STOP 1548, Room S–5145, Washington, DC 20250–1548.

(b) For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date. The application and any materials sent with it become Federal records by law and cannot be returned to you.

2. Electronically submitted applications:

(a) For electronic applications you must file through Grants.gov, the official Federal Government Web site at *http://www.grants.gov.* You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to access or register at any of the services. The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. USDA Rural Development may request original signatures on electronically submitted documents later.

(b) The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR

by calling the CCR Assistance Center at 1–888–227–2423 or, you may register online at *http://www.ccr.gov.*

(c) The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov at the following web address: *https://apply.grants.gov/OrcRegister.*

(d) DUNS Number: Whether you file a paper or an electronic application, you will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. You must provide your DUNS number on the SF–424, ''Application for Federal Assistance.'' To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1–866–705–5711 or access the Web site at *http://www.dunandbradstreet.com.* The following information is needed when requesting a DUNS number:

(1) Legal Name.

(2) Headquarters name and address of the organization.

(3) Doing business as (dba) or other name by which the organization is commonly recognized.

(4) Physical address.

(5) Mailing address (if separate from headquarters and/or physical address).

(6) Telephone number.

(7) Contact name and title.

(8) Number of employees at the physical location.

(e) USDA Rural Development will not accept applications by fax or e-mail.

C. A complete application must meet the following requirements:

1. To be considered for support, you must be an eligible entity and must submit a complete application by the deadline date. You should consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a RFP grant:

(a) Standard Form 424, ''Application for Federal Assistance''.

(b) Standard Form 424A, ''Budget Information—Non-Construction Programs''.

(c) Standard Form 424B, ''Assurances—Non-Construction Programs''.

(d) Standard Form LLL, ''Disclosure of Lobbying Activity''.

(e) Form RD 400–1, ''Equal Opportunity Agreement''.

(f) Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the loan program will work. Explain what you will accomplish by lending funds to eligible entities. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should cover the following elements:

(a) Present a brief project overview. Explain the purpose of the project, how it relates to USDA Rural Development's purposes, how you will carry out the project, what the project will produce, and who will direct it.

(b) Describe why the project is necessary. Demonstrate that eligible entities need loan funds. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Address community needs.

(c) Clearly state your project goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the loan program.

(d) The narrative should cover in more detail the items briefly described in the Project Summary. It should establish the basis for any claims that you have substantial expertise in promoting the safe and productive use of Revolving Funds. In describing what the project will achieve, you should tell the reader if it also will have broader influence. The narrative should address the following points:

(1) Document your ability to administer and service a revolving fund in accordance with the provisions of 7 CFR Part 1783.

(2) Document that, to establish the revolving fund, you can commit financial resources your organization controls. This documentation should describe the sources of funds other than the RFP grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that you have secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

(e) The work plan must describe the tasks and activities that will be accomplished with available resources during the grant period. It must show the work you plan to do to achieve the anticipated outcomes, goals, and objectives set out for the RFP Program. The plan must:

(1) Describe the work to be performed by each person.

(2) Give a schedule or timetable of work to be done.

(3) Show evidence of previous experience with the techniques to be used or their successful use by others.

(4) Outline the loan program to include the following: specific loan purposes, a loan application process; priorities, borrower eligibility criteria, limitations, fees, interest rates, terms, and collateral requirements.

(5) Provide a marketing plan.

(6) Explain the mechanics of how you will transfer loan funds to the borrowers.

(7) Describe follow-up or continuing activities that should occur after project completion such as monitoring and reporting borrowers' accomplishments.

(8) Describe how the results will be evaluated. The evaluation criteria should be in line with the project objectives.

(9) List all personnel responsible for administering this program along with a statement of their qualifications and experience.

(f) The written justification for projected costs should explain how budget figures were determined for each category. It should indicate which costs are to be covered by grant funds and which costs will be met by your organization or other organizations. The justification should account for all expenditures discussed in the narrative. It should reflect appropriate cost-sharing contributions. The budget justification should explain the budget and accounting system proposed or in place. The administrative costs for operating the budget should be expressed as a percentage of the overall budget. The budget justification should provide specific budget figures, rounding off figures to the nearest dollar. Applicants should consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations'' for information about appropriate costs for each budget category.

(g) In addition to completing the standard application forms, you must submit:

1. Supplementary material that demonstrate that your organization is legally recognized under state and

Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

2. A certified list of directors and officers with their respective terms.

3. Evidence of tax exempt status from the Internal Revenue Service.

4. Debarment and suspension information required in accordance with 7 CFR, Part 3017, subpart 3017.335, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

5. All of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR, Part 3021, subpart 3021.230. The section heading is ''How and when must I identify workplaces?'' It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

6. The most recent audit of your organization.

7. The following financial statements:

i. A pro forma balance sheet at start-up and for at least three additional years; Balance sheets, income statements, and cash flow statements for the last three years.

ii. If your organization has been formed less than three years, the financial statements should be submitted for the periods from inception to the present. Projected income and cash flow statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected income statement and balance sheet must include one set of projections that shows the revolving loan fund only and a separate set of projections that shows your organization's total operations.

8. Additional information to support and describe your plan for achieving the grant objectives. The information may be regarded as essential for understanding and evaluating the project such as letters of support, resolutions, policies, etc. The supplements may be presented in appendices to the proposal.

V. Application Review Information

A. Within 30 days of receiving your application, USDA Rural Development will send you a letter of acknowledgment. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, USDA Rural Development will return it to you with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

C. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

Scoring criteria	Points
1 Degree of expertise and successful experience in making and servicing commercial loans, with a successful record ..	Up to 30 points.
2 Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows:	
Less than 20 percent	Ineligible.
At least 20 percent but not more than 49 percent of the total project costs	10 points.
At least 50 percent of the total project costs	20 points.
3 Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; clearly defines who will be served by the project or program; and includes all components listed in 1783.37(b)(14).	Up to 40 points.
4 Description of the service area, particularly the range of the area:	
State	10 points.
Regional	15 points.
National	20 points.
5 Extent to which the problem or issue being addressed in the Needs Assessment is defined clearly and supported by data.	Up to 15 points.
6 Extent to which the goals and objectives are clearly defined, tied to the need as defined in the Needs Assessment, and are measurable.	Up to 15 points.
7 Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with expected program outcomes.	Up to 20 points.
8 Administrator's discretion, taking into consideration such factors as: Creative outreach ideas for marketing RFP loans. Amount of funds requested in relation to the amount of needs demonstrated in the proposal. Excellent utilization of a previous revolving loan fund; and. Optimizing the use of agency resources.	Up to 10 points.

VI. Award Administration Information

A. USDA Rural Development will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for RFP grants. Each applicant will be notified in writing of the score its application receives.

B. In making its decision about your application, USDA Rural Development may determine that your application is:

1. Eligible and selected for funding,

2. Eligible but offered fewer funds than requested,

3. Eligible but not selected for funding, or

4. Ineligible for the grant.

C. In accordance with 7 CFR part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied USDA Rural Development funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division

(NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

G. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Grantee will provide project reports as follows:

1. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

2. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

3. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/water.* The USDA Rural Development Utilities Programs Web site maintains up-to-date resources and contact information for RFP programs.

B. Phone: 202–690–3789.

C. Fax: 202–690–0649.

D. E-mail: *anita.obrien@wdc.usda.gov.*

E. Main point of contact: Anita O'Brien, Loan Specialist, Water and Environmental Programs, Water Programs Division, USDA Rural Development Utilities Programs, U.S. Department of Agriculture.

Dated: April 19, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–9819 Filed 5–21–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

Title: Licensing of Private Remote-Sensing Space Systems.

Form Number(s): None.

OMB Approval Number: 0648–0174.

Type of Request: Regular submission.

Burden Hours: 552.

Number of Respondents: 18.

Average Hours Per Response: License application, 40 hours; executive summary, 2 hours; data protection plan, 10 hours; submission of data collection restriction plan, 5 hours; submission of operational plans for restricting collection or dissemination of Israeli territory, 3 hours; submission of data flow diagrams, 3 hours; submission of satellite subsystem drawings, 2 hours; submission of final imaging system specifications, 3 hours; notification of disposition/orbital debris change, 2 hours; license amendment, 10 hours; foreign agreements notification (including investments), 2 hours; submission of preliminary design review, 2 hours; submission of critical design review, 2 hours; notification of binding launch service contract, 1 hour; notification of completion of pre-ship review, 1 hour; submission of information when spacecraft becomes operational, 2 hours; notification of the demise of a system or decision to discontinue system operations, 2 hours; notification of any operational deviation, 2 hours; notification for planned purges of information, 2 hours; operational quarterly reports, 3 hours; annual compliance audit, 8 hours; annual operational audit, 10 hours.

Needs and Uses: The information is being collected in order to issue licenses and related amendments to operate space-based private remote-sensing systems, to review foreign agreements entered into by licensees, and to perform monitoring and compliance functions for licensed systems. The National Oceanic and Atmospheric Administration (NOAA) has issued regulations for its licensing program under Title II of the Land Remote-Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* (1992 Act), the 1997 National Defense Authorization Act section 1064, and the Commercial Space Act of 1998, 42 U.S.C. 70101 *et seq.* They facilitate the development of the U.S. commercial remote-sensing industry and thus promote the collection and widespread availability of Earth remote-sensing data while preserving essential U.S. national security and foreign policy interests. The amendment to the previous version of the regulations reflected improvements that take into account public comments received on the regulations. The amended regulations now allows NOAA to more effectively license Earth remote-sensing space systems and help to ensure their compliance with the requirements of the Act. The final regulations were published in the **Federal Register** on April 25, 2006.

Affected Public: Business or other for-profit.

Frequency: On occasion, quarterly and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9770 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Dealer Reporting Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0040.

Type of Request: Regular submission.

Burden Hours: 6,148.

Number of Respondents: 1,751.

Average Hours Per Response: Biweekly reports, 15 minutes (3 minutes for negative reporting); application for nongovernmental validation authorization, 2 hours; daily landing reports, 2 minutes; daily tagging, 1 minute; and statistical documents and re-export certificates, 18 minutes.

Needs and Uses: This information collection consists of a mandatory dealer reporting program for domestic landings and international trade of highly migratory species. The catch and trade monitoring is required under provisions of the Atlantic Tunas Convention Act, Tunas Convention Act, and the Magnuson-Stevens Fishery Conservation and Management Act. Information collected through this program is essential for the United States to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tunas and the Inter-American Tropical Tuna Commission.

Affected Public: Business or other for-profit organizations.

Frequency: Daily, biweekly, on occasion and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9772 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Bill Chen, aka Yueqiang Chen; In the Matter of: Bill Chen, AKA Yueqiang Chen, Manager, Data Physics China, RM. 1509, Building 2, Xinquduan Jiayan, No. 5 Changchunquia Road, Haidian District, Beijing, P.R. China, 100089 and 615 Blossom Hill Road, #17, Los Gatos, CA 95032, Respondent: Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''),[1] I hereby grant the Bureau of Industry and Security's request for an Order Temporarily Denying the Export Privileges of Respondent, Bill Chen aka Yueqiang Chen, for 180 days as I find that the TDO is necessary in the public interest to prevent an imminent violation of the EAR.

I. Legal Standard

Pursuant to § 766.24(b) of the EAR, the Assistant Secretary may issue a TDO ''upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the * * * EAR.'' ''A violation may be 'imminent' either in time or in degree of likelihood.'' 15 CFR 766.24(b)(3). This includes a violation that ''is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* Significant, deliberate, and covert violations are more probative of imminence and the likelihood of future violations than lesser technical ones. *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. Findings

Respondent has been under a temporary denial order since May 12, 2006 for his role in selling and shipping items subject to the EAR to end-users in China who are engaged in the design, development, production and use of cruise missile systems without the required export licenses. On May 24, 2006, the Respondent was indicated by a federal grand in the Northern District of California for violating the EAR in connection with five unlicensed exports, occurring as early as January 22, 2003 and as recently as July 3, 2005, to end-users in China knowing that such items would be used in the design, development, production, and use of missiles. On April 6, 2007, Mr. Chen submitted a declaration that he would assert his Fifth Amendment privilege against self incrimination in connection with any questions that would be raised during his deposition in a related administrative proceeding. Then, on April 30, 2007, a U.S. Magistrate Judge granted Respondent's request to travel to China to visit ailing family members while the indictment is pending against him. Based upon this authorization, Mr. Chen has departed for China and is scheduled return in late May 2007. While Mr. Chen has been placed on administrative leave, he remains an employee of Data Physics. Additionally, BIS has submitted evidence to me that shows that Respondent has played a role in selling items subject to the EAR

[1] 15 CFR Parts 730–774 (2007). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. § 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006 (71 FR 44551, (August 7, 2006)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701–1706 (2000)) (''IEEPA'').

to entities in China on BIS's Entity List without the required export licenses.[2]

I find that the evidence presented by BIS demonstrates that the Respondent has violated the EAR, that such violations have been significant, deliberate and covert, and that there is a likelihood of future violations. Accordingly, I find that issuing a TDO against Bill Chen for 180 days is necessary in the public interest to prevent an imminent violation of the EAR.

III. Order

It is Therefore Ordered:

First, that the Respondent, BILL CHEN, AKA Yueqiang Chen, of Data Physics China, RM. 1509, Building 2, Xinquduan Jiayan, No. 5 Changchunquia Road, Haidian District, Beijing, P.R. China, 100089 and of 615 Blossom Hill Road, #17, Los Gatos, California 95032 (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Person in the Untied states any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, or whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondent may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this order shall be served on the Respondent and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Entered this 16th day of May, 2007.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–2525 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–DT–M

[2] 15 CFR 744 Supplement No. 4.

DEPARTMENT OF COMMERCE.

International Trade Administration

[A–122–840]

Carbon and Certain Alloy Steel Wire Rod From Canada: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 22, 2007.

FOR FURTHER INFORMATION CONTACT: Shane Subler, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2006, the Department of Commerce (the Department) published its notice of initiation of an antidumping duty administrative review on carbon and certain alloy steel wire rod from Canada. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 68535 (November 27, 2006). The preliminary results of this administrative review are currently due on July 3, 2007.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the specified time periods, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Completion of the preliminary results within the originally anticipated time

limit, July 3, 2007, is impracticable because the Department must analyze complex issues regarding Ivaco Rolling Mills 2004 L.P.'s and Sivaco Ontario's corporate structures, their affiliations and corporate relationships, levels of trade, and cost of production. Because it is not practicable to complete the review within the time specified under the Act, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results by 120 days to October 31, 2007. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 16, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–9820 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On December 11, 2006, we published in the **Federal Register** the preliminary results of this administrative review. *See Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 71523 (December 11, 2006) (*Preliminary Results*). This review covers imports of subject merchandise from Corus Staal BV (Corus Staal) to the United States during the period November 1, 2004, to October 31, 2005. Based on our analysis of the comments received, we have made changes to the margin calculation. However, the final results do not differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 22, 2007.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0409 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2006, we published in the **Federal Register** the preliminary results of this administrative review. *See Preliminary Results*. In response to the Department's invitation to comment on the preliminary results of this review, Corus (respondent) and domestic interested party Mittal Steel USA Inc. (Mittal Steel) filed case briefs on January 17, 2007. Corus, Mittal Steel and petitioner United States Steel Corporation (U.S. Steel) submitted rebuttal briefs on January 24, 2007, and on January 25, 2007, domestic interested party Nucor Corporation (Nucor) filed a rebuttal brief. On March 23, 2007, the Department extended the final results by 35 days. *See Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit*, 72 FR 13744 (March 23, 2007).

On May 4, 2007, Corus submitted a request for the Department to rescind the review in light of the Department 's *Final Results for the Section 129 Determination: Certain Hot–rolled Carbon Steel from the Netherlands* (April 9, 2007) and the U.S. Trade Representative's instructions to the Department to implement those findings under Section 129 of the Uruguay Round Agreements Act. *See Implementation of the Findings of the WTO Panel in US–Zeroing (EC): Notice of Determinations under Section 129 of the Uruguay Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25, 261 (May 4, 2007). On May 11, 2007, Mittal Steel and Nucor submitted responses to Corus Staal's request. The request for rescission is well past the deadline for such requests and furthermore Corus Staal itself did not request the review, thus making it ineligible to request rescission. *See* 19 CFR 351.213(d)(1). Corus' arguments regarding the section 129 determination are addressed in the Issues and Decisions Memorandum, (Decision Memorandum) which accompanies this Notice, at issue 4.

Period of Review

The period of review (POR) is November 1, 2004, to October 31, 2005.

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided

above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico–manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for AD/CVD Operations, to David M. Spooner, Assistant Secretary for Import Administration, dated May 15, 2007, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly via the Internet at *www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Duty Absorption

In the *Preliminary Results*, the Department found that Corus Staal absorbed antidumping duties on all U.S. sales in accordance with section 751(a)(4) of the Tariff Act of 1930, as amended (the Tariff Act). Corus Staal has failed to provide evidence that the unaffiliated customers in the United States will pay the full duty ultimately assessed on the subject merchandise. *See* Comment 6 of the Issues and Decisions Memorandum. Thus, for the final results of this review, we continue to find that Corus Staal absorbed antidumping duties.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made the following changes to the margin calculation:

- We corrected a clerical error that erroneously compared U.S. control numbers to comparison market product codes.
- We corrected a clerical error involving the CEP profit rate.

These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted–average percentage margin exists for the period November 1, 2004, to October 31, 2005:

Manufacturer/Exporter	Weighted Average Margin (percentage)
Corus Staal BV	2.52

Assessment

The Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The Department will issue appropriate *ad valorem* assessment instructions directly to CBP 15 days after publication of these final results of review. We will direct CBP to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the importer's entries during the POR.

Cash Deposit Requirements

On May 4, 2007, the Department published a FR notice that, *inter alia*, revoked this order, effective April 23, 2007. *See Implementation of the Findings of the WTO Panel in US – Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25,261 (May 4,2007). Therefore, there is no need to issue new cash deposit instructions for this administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information

disclosed under APO in accordance with 19 C.F.R. § 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 15, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix – Issues in Decision Memorandum

1. Simplified Reporting and Further–Manufactured Imports
2. G&A expenses
3. Constructed Export Price (CEP) Profit Rate
4. Offsetting Dumped Sales with Non–Dumped Sales
5. Classification of JIT Deliveries as CEP Sales
6. Duty Absorption
7. Warranty Expenses
8. Clerical Errors

[FR Doc. E7–9815 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent No. 5,620,857 (Application No. 08/473,979), titled ''Optical Trap for Detection and Quantitation of Subzeptomolar Quantities of Analytes,'' NIST Docket No. 94–042US to Haemonetics Corporation, having a place of business at 400 Wood Road, Braintree, Massachusetts 02184–9114. The grant of the license would be for the field of use: Chemical and biological material sensing and measurement for medical diagnostics.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, Phone 301–975–2691.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register** on June 24, 2003.

U.S. Patent No. 5,620,857 is owned by the U.S. government, as represented by the Secretary of Commerce. Tightly focused beams of laser light are used as ''optical tweezers'' to trap and manipulate polarizable objects such as microspheres of glass or latex with diameters on the order of 4.5 .mu.m. When analytes are allowed to adhere to the microspheres, small quantities of these analytes can be manipulated, thus allowing their detection and quantitation even when amounts and concentrations of the analytes are extremely small. Illustrative examples include measuring the strength needed to break antibody-antigen bonds and the detection of DNA sequences.

Dated: May 16, 2007.

James M. Turner,

Deputy Director.

[FR Doc. E7–9826 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 070427102–7103–01]

Request for Technical Input—Standards in Trade Workshops

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Request for workshop recommendations.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to submit recommendations for workshops covering specific sectors and targeted countries or regions of the world where training in the U.S. system of standards development, conformity assessment, and metrology may facilitate trade. Prospective workshops will be scheduled for a one week period. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind. NIST will offer a limited number of workshops, based upon the availability of resources. Recommenders are encouraged to consider Administration priorities outlined in the 2006 National Export Strategy. NIST will consider recommendations based upon which workshops would be most useful to intended audiences.

DATES: All recommendations must be submitted no later than 5 p.m., June 21, 2007.

ADDRESSES: All recommendations must be submitted to Ellen Emard via e-mail(*ellen.emard@nist.gov*) or by mail to 100 Bureau Drive, Mail Stop 2100, Gaithersburg, MD 20899. The National Export Strategy is available at *http://www.ita.doc.gov/media/publications/*. Additional information about the NIST Standards in Trade Workshops, including schedules and summary reports for workshops held to date and participant information, is available at *http://ts.nist.gov/standards/global/sitdescr.cfm.*

FOR FURTHER INFORMATION CONTACT: Ellen Emard (301) 975–4038, *ellen.emard@nist.gov.*

SUPPLEMENTARY INFORMATION: The Standards in Trade Workshops are a major activity of the Global Standards and Information Group in the NIST Standards Services Division. The workshops are designed to provide timely information to foreign standards officials on U.S. practices in standards and conformity assessment. Participants are introduced to U.S. technology and principles in metrology, standards development and application, and conformity assessment systems and procedures.

Each workshop is a one week program offering an overview of the roles of the U.S. Government, private sector, and regional and international organizations engaged in standards development and conformity assessment practices. Specific workshop objectives are to: (1) Familiarize participants with U.S. technology and practices in metrology, standardization, and conformity assessment; (2) describe and understand the roles of the U.S. Government and the private sector in developing and implementing standards; (3) understand the structure of the standards and conformity assessment systems in the invited country or countries and the role and responsibilities of organizations

represented by the invitees; and (4) develop professional contacts as a basis for strengthening technical ties and enhancing trade.

Workshop recommendations (maximum 5 pages) must address at a minimum the following points, *in the order noted and labeled accordingly:*

1. Name and Description of the Recommending Person or Organization

Provide the primary mailing address, and the name, telephone number and e-mail address of the primary point of contact.

2. Industry Sector and Suggested Workshop Title which captures the essence of the recommendation. Consider the goals and potential benefits.

3. Proposed Workshop Objectives

Describe the intended goals to be attained, why they are important, the specific workshop objectives, and U.S. and foreign stakeholders that are likely to participate.

4. Calendar Dates Suggested for Workshop

Provide three or more suggested start dates for the workshop. The first date should be no earlier than 8 months from the publication date of this announcement.

5. Relevant NIST Organizational Link

Workshop topics must be linked to NIST activities and/or research. The appropriate NIST organizational unit, laboratory or program must be identified by the recommender and the relevance of the activity to NIST must be demonstrated. If known, identify the specific NIST staff who could serve as the NIST internal point of contact.

6. Principal Topics

Provide a list of the suggested topics for the workshop.

7. Related Site Visits and Events

Workshops can include visits to relevant business sites or events. Provide a list of suggested site visit locations, events or other areas of interest and discuss the relevance of each to the overall purpose of the proposed workshop's goals.

8. Expected Outcomes/Measures of Success

Include in this section a description of:

a. The anticipated benefit of the workshop for trade and market access;

b. The anticipated economic impacts (in dollars);

c. The potential for future opportunities for collaboration and for trade as a result of the workshop;

d. The measures of success;

e. The desired results of the workshop and how the results will be measured.

All recommendations must address each of the above ten points and be submitted to Ellen Emard via e-mail (*ellen.emard@nist.gov*) or mail 100 Bureau Drive, Mail Stop 2100, Gaithersburg, MD 20899 no later than 5 p.m., June 21, 2007.

Dated: May 16, 2007.

James M. Turner,

Deputy Director.

[FR Doc. 07–2553 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Foreign Fishing Reporting Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Dickinson, 301–713–2276 or *Bob.Dickinson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Foreign fishing activities can be authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The collection of information from permitted foreign vessels is necessary to monitor their activities and whereabouts in U.S. waters. The reports are also necessary to monitor the amounts of fish, if any, such vessels receive from U.S. vessels in joint venture operations, wherein U.S. vessels catch and transfer at-sea to permitted foreign vessels certain species for which U.S. demand is low relative to the abundance of the species.

II. Method of Collection

Activity reports are made by radio when fishing begins or ceases, to report on transfers of fish, and to file weekly reports on the catch or receipt of fish. The foreign vessels are also subject to recordkeeping requirements, recorded and maintained for three years.

III. Data

OMB Number: 0648–0075.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6.

Estimated Time per Response: 6 minutes for a joint venture report; 30 minutes per day for joint venture recordkeeping; and 7.5 minutes per day for recordkeeping by transport vessels.

Estimated Total Annual Burden Hours: 88.

Estimated Total Annual Cost to Public: $500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9765 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Space-Based Data Collection System (DCS) Agreements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kay Metcalf, 301–763–8142 or *kay.metcalf@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA operates two space-based data collection systems (DCS), the Geostationary Operational Environmental Satellite (GOES) DCS and the Polar-Orbiting Operational Environmental Satellite (POES) DCS, known as the Argos system. NOAA allows users access to the DCS if they meet certain criteria. The applicants must submit information to ensure that they meet these criteria. NOAA does not approve agreements where there is a commercial service available to fulfill the user's requirements.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet, facsimile transmission and postal mailing of paper forms.

III. Data

OMB Number: 0648–0157.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; Federal government; state, local or Tribal government; and business or other for-profit organizations.
Estimated Number of Respondents: 390.
Estimated Time per Response: 1 hour and eight minutes per response.
Estimated Total Annual Burden Hours: 440.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9766 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Assessing Institutional Designs for Managing Water Supply To Support Salmon Recovery in Washington State

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karma Norman, 206–302–2418 or *Karma.Norman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Northwest Fisheries Science Center is responsible for research to support recovery planning for Pacific salmon listed under the Endangered Species Act. Fisheries scientists have identified a number of critical habitat features necessary for the recovery of Pacific salmon in Washington State. One of the most important of these habitat elements is ensuring sufficient flows of freshwater for fish passage, spawning, and rearing.

Washington State, in consultation with federal, local, and tribal government partners, has begun establishing in-stream flow rules for a number of watersheds in the state. The new measures that ensure sufficient freshwater flows for salmon have begun implementation across Water Resource Inventory Areas (WRIAs). However, little is understood about the institutional arrangements (laws, policies, and organizational structures) needed to successfully implement the habitat management activities necessary for salmon recovery.

Thus far, research on this topic has focused primarily on watershed planning, rather than on organizational structures or the implementation on water supply rules, controls and agreements. This study will complement these inquiries by examining the institutional design of programs to support salmon recovery. The results from this study will highlight the institutional features that are associated with the effective implementation of water supply control measures. This data will be used to develop a preliminary set of indicators that may help predict the likely success of efforts to implement water supply controls across Washington State.

II. Method of Collection

Secondary sources will be used to collect the information, such as literature reviews, planning documents,

Internet sources, and U.S. Census data. Internet surveys and in-person interviews with key informants, as determined by initial secondary data and analysis, will be utilized to obtain information from original sources to develop the broadest scope of information possible.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not-for-profit institutions; State or Local government, Federal government.

Estimated Number of Respondents: 496 (8 individuals for each of the 62 WRIAs in the state of Washington).

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 165.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9767 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southwest Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Trisha Culver, 562–980–4239 or *trisha.culver@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The owners of vessels that fish out of West Coast ports for highly migratory species such as tuna, billfish and sharks are required to submit information about their fishing activities so that the National Marine Fisheries Service and the Pacific Fishery Management Council will be able to monitor the fisheries and determine the effects and effectiveness of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS).

The catch and effort statistics from logbooks are essential for evaluating if the objectives of the FMP are being achieved and for evaluating the impacts of potential changes in management to respond to new information or new problems in the fisheries. The use of vessel monitoring system units will facilitate enforcement of closures associated with the longline fishery.

II. Method of Collection

Paper logbooks and electronic reports are required from participants.

III. Data

OMB Number: 0648–0498.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profits organizations.

Estimated Number of Respondents: 907.

Estimated Time per Response: 5 minutes for logbooks; 24 seconds for VMS automated position report; 4 hours to install a VMS; and 2 hours per year to maintain a VMS.

Estimated Total Annual Burden Hours: 3,036.

Estimated Total Annual Cost to Public: $1,621 (recordkeeping/reporting costs).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9768 Filed 5–21–07; 8:45 am]

BILLING CODE 3510– 22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Turner, (305)361–4482 or *Steve.Turner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery quotas are established for many species in the fishery management plans developed by both the Gulf of Mexico Reef Fish Fishery Management Council and the South Atlantic Fishery Management Council. The Southeast Fisheries Science Center (SFSC) has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*i.e.*, lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is twice a month; however, some fishery quotas, *e.g.*, the mackerel gill net, necessitates weekly or by the trip.

In addition, information collection included in this family of forms includes interviews with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region. The fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

II. Method of Collection

The SFSC will provide a reporting form to each dealer selected to report the minimum information necessary to monitor the quota(s). This form must be faxed or sent as an e-mail attachment to the SFSC within 5 business days of the end of each reporting period. For dealers that do not have a rapid fax machine or access to e-mail, pre-addressed, pre-paid envelopes will be provided. Fishery biologists that are located a strategic fishing ports throughout the Southeast Region (North Carolina through Texas) intercept fishermen as they are unloading their catch and interview them.

III. Data

OMB Number: 0648–0013.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations (seafood dealers and fishermen).

Estimated Number of Respondents: 13,795.

Estimated Time per Response: Fifteen minutes for a dealer report in the golden crab, rock shrimp and Puerto Rican prohibited coral dealers; 5 minutes to fax or mail a dealer report; 5 minutes for a dealer quota monitoring report in the Coastal Fisheries and mackerel fisheries; 5 minutes for an annual vessel interview; 10 minutes for other interviews; 10 minutes for a dealer and vessel report in the eastern Gulf of Mexico runaround gill mackerel fishery; and 5 minutes for a wreckfish dealer report.

Estimated Total Annual Burden Hours: 1,838.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9769 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 23, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jonathan Cusick, (360) 332–2793 or *Jonathan.Cusick@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service's At-Sea Hake Observer Program defines observer duties, trains and debriefs observers, and manages data and release. The observers, deployed aboard at-sea processing vessels in the U.S. West Coast hake (a.k.a. whiting) fishery, are hired by observer providers who contract with the at-sea processors to provide the required observer coverage (50 CFR part 660). This data collection relates to the response time for observer providers and observers to register for training, debriefing or to respond to suspension or decertification.

II. Method of Collection

Methods of submittal include e-mail, U.S. post, telephone calls, and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0500.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time per Response: Transcripts, 15 minutes; decertification response, 4 hours; training registration, 7 minutes; notification of observer physical examination, 2 minutes; observer assignment information, 7 minutes; weekly deployment report, 7 minutes; debriefing registration, 7 minutes; and reports on observer harassment/safety/performance, 2 hours.

Estimated Total Annual Burden Hours: 51.

Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–9771 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA36

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Report 3.1

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the availability of the draft Report for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products for public comments. This draft Report addresses the following CCSP Topic: Product 3.1 Climate Models: An Assessment of Strengths and Limitations for User Applications

After consideration of comments received on the draft Report, a revised Report along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by July 6, 2007.

ADDRESSES: The draft Report is posted on the CCSP Program Office web site. The web address to access the draft Report is:

Product 3.1

http://www.climatescience.gov/Library/sap/sap3–1/default.php

Detailed instructions for making comments on the draft Report is provided on the SAP 3.1 webpage (see link here). Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Report addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: May 17, 2007.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E7–9810 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA35

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for five scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received nine scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 21, 2007.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer-run (spr/sum), threatened Puget Sound (PS).

Steelhead (*O. mykiss*): threatened middle Columbia River (MCR), threatened Snake River (SR), threatened UCR, threatened PS.

Sockeye salmon (*O. nerka*): endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et. seq) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1341 – Renewal

The Shoshone-Bannock Tribes (Tribes) are seeking to renew and modify their permit to take SR sockeye salmon and SR spr/sum Chinook salmon while conducting research designed to estimate overwinter survival and downstream migration survival and timing with the goal of evaluating various release strategies and calculating smolt-to-adult return rates. SR steelhead may also be taken. This research would provide information on the relative success of the Pettit and Alturas Lakes sockeye salmon reintroduction programs and thereby benefit the listed fish by improving those programs. Juvenile SR sockeye salmon, spr/sum Chinook salmon, and steelhead would be collected at Pettit and Alturas Lakes, ID, using rotary screw traps and weirs. The fish would be sampled for biological information and released or tagged with passive integrated transponders and released. In addition, to determine trap efficiencies, a portion of the captured juvenile SR sockeye salmon would be marked with a small cut on their caudal fins, released upstream of the traps, captured at the traps a second time, and released. The Tribes do not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1345 – Renewal

The WDFW is asking to renew its permit to take adult and juvenile MCR steelhead, UCR steelhead, UCR spring Chinook salmon, SR steelhead, SR spr/sum Chinook salmon, PS Chinook salmon, and PS steelhead during the course of Washington State's annual warmwater fish stock assessment surveys. They are also asking to add a study in the Cedar River that would increase the number of PS Chinook salmon they take. The purpose of the warmwater surveys is to gather data on the State's fish species and thereby allow the WDFW to manage them in the best way possible. The research would benefit listed fish by giving managers more information on their abundance, distribution, and health. The surveys would be conducted using boat electrofishing equipment in the backwater sloughs, oxbow lakes, and ponds associated with major river systems throughout Washington State. The purpose of the Cedar River study is to monitor predation by trout and other species on listed Chinook in the Cedar River. The research would benefit listed fish by helping managers set fishing regulations in a manner that would reduce predators and therefore predation on the local PS Chinook populations. This research, too, would employ boat electrofishing.

Any juvenile listed salmonids captured during the research would be sampled for biological information and immediately released. If adult listed salmonids are seen, the electrofishing equipment would be turned off and the fish allowed to escape. The WDFW does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1365 – Renewal

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are seeking to modify and renew their permit to annually take MCR steelhead while conducting research designed to (1) monitor and evaluate the species' status and detect changes in salmonid abundance, productivity, spatial structure, and diversity; (2) determine if recovery strategies are helping improve natural production and viability in the Walla Walla subbasin, Washington; and (3) provide technical support for salmonid planning and modeling. The research would benefit MCR steelhead by helping continuously update and adapt subbasinwide recovery strategies for the listed fish. The researchers plan to capture the adult MCR steelhead using a variety of techniques: barbless hook-and-line angling, trapping, seining, and dip netting. Some of the fish would simply be measured and released, but some would also be fitted with radio tags before being released. These fish would then be tracked with both permanent and mobile tracking units to determine where in the subbasin they go. The CTUIR does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1423 – Renewal

The USFWS is seeking to renew and modify its permit to annually take UCR steelhead and UCR Chinook while conducting research designed to determine if there are any interactions between wild and hatchery fish in terms of disease transmission and to gather baseline information on pathogen presence in the local fish populations. The research would take place in the Methow and Entiat River subbasins, Washington. The research would benefit listed fish by increasing our knowledge of disease presence and transmission in the Upper Columbia River and thereby help managers reduce the risks associated with those diseases. The fish would be captured using a variety of methods: nets, traps, electrofishing, and hook-and-line angling. The captured fish would be killed and sampled for pathogens.

Permit 1601

The U.S. Fish and Wildlife Service (USFWS) is requesting a 5–year research permit to take juvenile PS Chinook salmon and PS steelhead. The purpose of this research is to document the overall effectiveness of habitat restoration projects in Thornton, Piper's, and Venema Creeks, Seattle, WA. The goal is to help resource managers determine which types of restoration projects are most affective at mitigating the effects of urbanization. The information would be used to prioritize restoration projects. The USFWS proposes to capture fish in selected habitats using the three-pass electrofishing method. Block nets would be placed at the upper and lower end of a habitat site and three sequential passes wold be conducted using a backpack electrofishing unit. Listed fish would be captured, enumerated, placed in aerated containers, and held until the survey is complete. The USFWS does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1605

Windward Environmental seeking a 5–year research permit to take juvenile PS Chinook salmon and steelhead. The purpose of the research is to characterize chemical concentrations in fish and crab tissues following activities designed to remediate contaminated sediments in the Lower Duwamish Waterway and East Waterway Operable Unit of the Harbor Island Superfund Sites. The long-term goal is to help determine if the remediation activities have successfully reduced the concentrations of chemical contaminants in animal tissues. An additional goal is to characterize the Lower Duwamish Waterway environment and determine if contaminated sediments continue to pose risks to the organisms living in it and humans using it. The applicant proposes to capture fish and crabs using trawl nets and traps. Listed fish would be captured, identified, enumerated, and released. The applicant does not intend to kill any listed species, but a small number may die as an unintended result of the activities.

Permit 1609

R2 Resource Consultants, Inc. is requesting a 2–year research permit to take juvenile PS Chinook salmon and steelhead. The purpose of this study is to determine the relative abundance of juvenile salmonids and map their distribution in the Sultan River, Puget Sound, Washington. Information gathered by this study would be used to help develop the Henry M. Jackson Hydroelectric Project management plan. The study would thus help resource managers design water management strategies and habitat protection/restoration projects to benefit salmonids. The applicant proposes to conduct snorkeling and electrofishing surveys for juvenile salmonids. Supplemental sampling may also be conducted using minnow traps. The fish would be captured, anesthetized, measured, checked for hatchery marks, allowed to recover, and released. The applicant does not intend to kill any listed species, but a small number may die as an unintended result of the activities.

Permit 1611

The Confederated Tribes of Warm Springs Reservation, Oregon (CTWSRO) are seeking a 5–year permit to annually capture MCR steelhead during the course of research directed at non-listed fall Chinook salmon in the lower Deschutes River, Oregon. The information gained from this action would be used to determine the status of the fall Chinook stocks in the Columbia River basin and that information, in turn, would be used to set appropriate harvest levels and inform other management actions relating to fall Chinook salmon both in the United States and Canada. The research would benefit listed steelhead by helping reduce the number of them being incidentally caught during Chinook harvest. The CTWSRO would capture the fish using an 8–inch (12.7 cm) stretch-mesh gillnet placed in the lower Deschutes River (Rkm 32). Any captured MCR steelhead would be measured, assessed as to their condition, and released immediately. The CTWSRO does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1612

Washington Trout is seeking a 5–year permit to capture juvenile UCR Chinook and steelhead during the course of research designed to generate data on (1) the relationships among physical and ecological processes governing aquatic food webs; (2) juvenile salmonid habitat use, growth, and survival; and (3) population structure and dynamics among resident salmonids reintroduced to the influence of anadromy. The research would take place in Icicle Creek, Chiwaukum Creek, and the Chiwiwa River, Washington. The research would benefit fish by increasing our knowledge about the ecology of native resident and migratory salmonids in the upper Columbia basin, and thereby help managers make better decisions regarding salmonid recovery. The fish would be captured using a variety of methods: traps, nets, electrofishing and angling. Some fish would be captured, measured, and released, others would be tagged with passive integrated transponders and tissue-sampled before being released. Washington Trout does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: May 16, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–9805 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Safety Interoperable Communications Grant Program Public Meeting

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: NTIA will hold a public meeting on June 4, 2007, in connection with its Public Safety Interoperable Communications (PSIC) Grant Program to provide information on the proposed program policies related to the program.

DATES: The meeting will be held on June 4, 2007, from 10 a.m. to 12 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce Auditorium, 1401 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sallianne Schagrin at (202) 482–1885 or sschagrin@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: NTIA will host a public meeting for all interested parties to discuss proposed program policies related to the PSIC Grant Program. A copy of a presentation on the proposed program policies and an agenda will be available on NTIA's website prior to the public meeting at www.ntia.doc.gov/psic. The meeting will be webcast. Instructions on how to access the webcast will also be available on NTIA's website at www.ntia.doc.gov/psic.

Section 3006 of the Digital Television Transition and Public Safety Act of 2005, Pub. L. No. 109-171, provides that the Assistant Secretary for Communications and Information of the Department of Commerce, in consultation with the Secretary of Homeland Security, shall make payments not to exceed $1 billion in the aggregate through fiscal year 2010 to carry out the PSIC Grant Program. As required in the recently enacted Call Home Act of 2006, the grants will be awarded by September 30, 2007.

The Grant Program, which covers public safety agencies in all 50 states, the District of Columbia, Puerto Rico

and four U.S. territories, will assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that can utilize or enable interoperability with communications systems that can utilize, certain frequencies in the 700 MHz band for radio communication.

Public attendance at the meeting is limited to space available. Due to security requirements and to facilitate entry to the Department of Commerce building, attendees must present photo identification and/or a U.S. Government building pass, if applicable. The meeting will be physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, must indicate this to Sallianne Schagrin at (202) 482–1885 or sschagrin@ntia.doc.gov at least two (2) business days prior to the meeting.

Dated: May 17, 2007.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E7–9829 Filed 5–21–07; 8:45 am]

BILLING CODE 3510–60–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0055, Privacy of Consumer Financial Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of misuse of customer information.

DATES: Comments must be submitted on or before July 23, 2007.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Deputy Director, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, (202) 418–5439; FAX (202) 418–5536; e-mail *lpatent@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 Section 3506(c)(2)(A), requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Privacy of Consumer Financial Information OMB Control No. 3038–0055—Extension

Section 124 of the Commodity Futures Modernizations Act of 2000 (''CFMA'') amended the Commodity Exchange Act (the ''Act'') and added a new section 5g to the Act to make the Commission a Federal functional regulator for purposes of applying the provisions of Title V, Subtitle A of the Gramm-Leach-Bliley Act (''GLB Act'') addressing consumer privacy to any futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker that is subject to the Commission's jurisdiction with respect to any financial activity. In general, Title V requires financial institutions to provide notice to consumers about the institution's privacy policies and practices, to restrict the ability of a financial institution to share nonpublic personal information about consumers to nonaffiliated third parties, and to permit consumers to prevent the institution from disclosing nonpublic personal information about them to certain non-affiliated third parties by ''opting out'' of that disclosure. These regulations implement the mandates of Section 124 and Title V of the GLB Act.

The Commission estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden

Number of Respondents: 4,500.
Total Annual Responses: 346,500.
Hours per Response: .27.
Total Annual Hours: 93,420.

Dated: May 16, 2007.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2526 Filed 5–21–07; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0054, Establishing Procedures To Implement the Notification Requirements for Entities Operating as Exempt Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before July 23, 2007.

ADDRESSES: Comments may be mailed to Riva Adriance, Division of Market Oversight, U.S. Commodity Futures

Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Riva Adriance, (202) 418–5495; FAX (202) 418–5527; e-mail: *rshiltz@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor, ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 350(c)(2)(A) of the PRA, 44 Section 3506(c)(2)(A), requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Establishing Procedures To Implement the Notification Requirements for Entities Operating as Exempt Markets OMB Control No. 3038–0054—Extension

Sections 2(h)(3) through (5) of the Commodity Exchange Act (Act) add exempt commercial markets as markets excluded from the Act's other requirements. The rules implement the qualifying conditions of the exemption. Rule 36.3(a) implements the notification requirements, and rule 36.3(b)(1) establishes information requirements for exempt commercial markets consistent with sections 2(h)(5)(B) of the Act. An exempt commercial markets consistent with section 2(h)(5)(B) of the Act. An exempt commercial market may provide the Commission with access to transactions conducted on the facility or it can satisfy its reporting requirements by complying with the Commissions's reporting requirements. The Act affirmatively vests the Commission's reporting requirements. The Act affirmatively vests the Commission with comprehensive antimanipulation enforcement authority over these trading facilities. The Commission is charged with monitoring these markets for manipulation and enforcing the antimanipuation provisions of the Act. The informational requirements imposed by proposed rules are designed to ensure that the Commission can effectively perform these functions. Section 5d of the Act establishes a category of market exempt from Commission oversight referred to as an ''exempt board of trade.'' Rule 36.2 implements regulations that define those commodities that are eligible to trade on an exempt board of trade. Rule 36.2(b) implements the notification requirements of section 5d of the Act. Rule 36.2(b)(1) requires exempt boards of trade relying on this exemption to disclose to traders that the facility and trading on the facility is not regulated by the Commission. This requirement is necessary to make manifest the nature of the market and to avoid misleading the public.

The Commission estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden

Number of Respondents: 20.

Total Annual Responses: 20.

Total Annual Hours: 200.

Dated: May 16, 2007.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–2527 Filed 5–21–07; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Federal Acquisition Regulation; Information Collection; Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a revision to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning rights in data and copyrights. A request for public comments was published in the **Federal Register** at 72 FR 10178, on March 7, 2007. No comments were received. This OMB clearance expires on June 30, 2007.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 21, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Contract Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in data regulations concern the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.The information collection burdens and recordkeeping requirements included in the regulations fall into the following four categories:

(a) A provision which is to be included in solicitations where the offeror would identify any proprietary data he/she would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

The Rights in Data–General clause (FAR 52.227–14(d)), outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

Respondents: 1,100.

Responses Per Respondent: 1.

Annual Responses: 1,100.

Hours Per Response: .95.

Total Burden Hours: 1,045.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows:

Recordkeepers: 1,100.

Hours Per Recordkeeper: 2.

Total Recordkeeping Burden Hours: 2,200.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: May 14, 2007.

Al Matera,

Acting Director,Contract Policy Division.

[FR Doc. 07–2524 Filed 5–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Substitutions for Military or Federal Specifications and Standards (OMB Control Number 0704–0398)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through September 30, 2007. This proposal also includes 1,124 burden hours related to alternate preservation, packaging, and packing, presently approved under OMB Control Number 0704–0187 for use through February 28, 2009. DoD proposes that OMB extend its approval for these collections for 3 additional years.

DATES: DoD will consider all comments received by July 23, 2007.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0398, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0398 in the subject line of the message.
- *Fax:* (703) 602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy

Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Sections 211.272, Alternate Preservation, Packaging, and Packing, and 211.273, Substitutions for Military or Federal Specifications and Standards, and related clauses at DFARS 252.211–7004 and 252.211–7005; OMB Control Number 0704–0398.

Needs and Uses: This information collection permits offerors to propose alternatives to military preservation, packaging, or packing specifications. DoD uses the information in the offeror's proposal to determine if the alternate preservation, packaging, or packing will meet the Government's needs. In addition, this information collection permits offerors to propose Single Process Initiative (SPI) processes as alternatives to military or Federal specifications and standards cited in DoD solicitations for previously developed items. DoD uses the information in the offeror's proposal to verify Government acceptance of an SPI process as a valid replacement for a military or Federal specification or standard.

Affected Public: Businesses or other for-profit institutions.

Annual Burden Hours: 1,724.

Number of Respondents: 581.

Responses per Respondent: Approximately 3.

Annual Responses: 1,762.

Average Burden per Response: Approximately 1 hour.

Frequency: On occasion.

Summary of Information Collection

The provision at DFARS 252.211–7004, Alternate Preservation, Packaging, and Packing, is used in solicitations that include military preservation, packaging, or packing specifications, when it is feasible for DoD to evaluate and award using commercial or industrial preservation, packaging, or packing. If the offeror chooses to propose alternate preservation, packaging, or packing, the provision requires the offeror to submit information sufficient to allow evaluation of the proposed commercial or industrial preservation, packaging, or packing.

The clause at DFARS 252.211–7005, Substitutions for Military or Federal Specifications and Standards, is used in solicitations and contracts for previously developed items. The clause encourages offerors to propose management or manufacturing processes, that have been previously accepted by DoD under the SPI program, as alternatives to military or Federal specifications and standards cited in the solicitation. An offeror proposing to use an SPI process must—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted;

(2) Identify each facility at which the offeror proposes to use the SPI process in lieu of military or Federal specifications or standards cited in the solicitation;

(3) Identify the contract line items, subline items, components, or elements affected by the SPI process; and

(4) If the proposed SPI process has been accepted at the facility at which it is proposed for use, but is not yet listed at the SPI Internet site, submit documentation of DoD acceptance of the SPI process.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–9745 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Occupational Safety and Drug-Free Work Force (OMB Control Number 0704–0272)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2007. This proposal also includes the information collection requirements presently approved under OMB Control Number 0704–0336 for use through December 31, 2007. DoD proposes that OMB extend its approval for these collections for 3 additional years.

DATES: DoD will consider all comments received by July 23, 2007.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0272, using any of the following methods:

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

• *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0272 in the subject line of the message.

• *Fax:* (703) 602–7887.

• *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062

Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 223, Occupational Safety and Drug-Free Work Force, and related clauses in DFARS 252.223; OMB Control Number 0704–0272.

Needs and Uses: This information collection requires that an offeror or contractor submit information to DoD in response to DFARS solicitation provisions and contract clauses relating to occupational safety. DoD contracting officers use this information to—

- Verify compliance with requirements for labeling of hazardous materials;
- Ensure contractor compliance and monitor subcontractor compliance with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of mishaps;
- Identify the place of performance of all ammunition and explosives work; and
- Ensure contractor compliance and monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

In addition, this information collection requires DoD contractors to maintain records regarding drug-free work force programs provided for contractor employees. The information is used to ensure reasonable efforts to eliminate the unlawful use of controlled substances by contractor employees.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 989,544 (9,448 response + 980,096 recordkeeping).

Number of Respondents: 1,519.

Responses per Respondent: Approximately 9.

Annual Responses: 13,507.

Average Burden per Response: .7 hours.

Frequency: On occasion.

Number of Recordkeepers: 18,012.

Average Annual Burden per Recordkeeper: 54.4 hours.

Summary of Information Collection

This information collection includes the following requirements:

1. *DFARS 252.223–7001, Hazard Warning Labels.* Paragraph (c) requires all offerors to list which hazardous materials will be labeled in accordance with certain statutory requirements instead of the Hazard Communication Standard. Paragraph (d) requires only the apparently successful offeror to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of the clause.

2. *DFARS 252.223–7002, Safety Precautions for Ammunition and Explosives.* Paragraph (c)(2) requires the contractor, within 30 days of notification of noncompliance with DoD 4145.26–M, to notify the contracting officer of actions taken to correct the noncompliance. Paragraph (d)(1) requires the contractor to notify the contracting officer immediately of any mishaps involving ammunition or explosives. Paragraph (d)(3) requires the contractor to submit a written report of the investigation of the mishap to the contracting officer. Paragraph (g)(4) requires the contractor to notify the contracting officer before issuing a subcontract for ammunition or explosives.

3. *DFARS 252.223–7003, Changes in Place of Performance—Ammunition and Explosives.* Paragraph (a) requires the offeror to identify, in the Place of Performance provision of the solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of the solicitation. Paragraphs (b) and (c) require the offeror or contractor to obtain written permission from the contracting officer before changing the place of performance after the date set for receipt of offers or after contract award.

4. *DFARS 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.* Paragraph (e) requires the contractor to notify the cognizant Defense Security Service field office within 10 days after award of any subcontract involving sensitive conventional arms, ammunition, and explosives within the scope of DoD 5100.76–M.

5. *DFARS Section 223.570 and the associated clause at DFARS 252.223–7004, Drug-Free Work Force.* This section and clause require contractors to institute and maintain programs for achieving the objective of a drug-free work force, but do not require contractors to submit information to the Government. This information collection requirement reflects the public burden of maintaining records related to a drug-free work force program.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–9747 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Provision of Information to Cooperative Agreement Holders (OMB Control Number 0704–0286)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use throughSeptember 30, 2007. DoD proposes that OMB extend its approval for use for 3 additional years.

DATES: DoD will consider all comments received by July 23, 2007.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0286, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0286 in the subject line of the message.
- *Fax:* (703) 602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Gary Delaney, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal

Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Delaney, (703) 602–8384. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Mr. Gary Delaney, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 205.4, Release of Information, and the associated clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

Needs and Uses: This information collection requires DoD contractors to provide information to cooperative agreement holders regarding employees or offices that are responsible for entering into subcontracts under DoD contracts. Cooperative agreement holders furnish procurement technical assistance to business entities within specified geographic areas. This policy implements 10 U.S.C. 2416.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 7,247.

Number of Respondents: 6,588.

Responses per Respondent: 1.

Annual Responses: 6,588.

Average Burden per Response: 1.1 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS Subpart 205.4 and the clause at DFARS 252.205–7000 require DoD contractors with contracts exceeding $1,000,000 to provide to cooperative agreement holders, upon their request, a list of those appropriate employees or offices responsible for entering into subcontracts under DoD contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office. The contractor need not provide the list to a particular cooperative agreement holder more frequently than once a year.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E7–9748 Filed 5–21–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

National Mathematics Advisory Panel

AGENCY: U.S. Department of Education, National Mathematics Advisory Panel.

ACTION: Notice of open meeting & public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting, including a public hearing, with members of the National Mathematics Advisory Panel. The notice also describes the functions of the Panel. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Wednesday, June 6, 2007. *Time:* 8:30 a.m.–12:30 p.m.

ADDRESSES: Miami Dade College, Wolfson Campus, Building 3, Room 3210—Chapman Conference Center on the 2nd floor. The Wolfson Campus address is 300 NE., 2 Ave., Miami, FL 33132–2296.

FOR FURTHER INFORMATION CONTACT: Tyrrell Flawn, Executive Director, National Mathematics Advisory Panel, 400 Maryland Avenue, SW., Washington, DC 20202; telephone: (202) 260–8354. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Panel was established by Executive Order 13398. The purpose of this Panel is to foster greater knowledge of and improved performance in mathematics among American students, in order to keep America competitive, support American talent and creativity, encourage innovation throughout the American economy, and help State, local, territorial, and tribal governments give the Nation's children and youth the education they need to succeed.

The meeting will be hosted by Miami Dade College, a state-supported college with eight campuses and approximately 160,000 students. The meeting begins at 8:30 a.m. with introductory remarks by Dr. Larry Faulkner, Chair of the National Mathematics Advisory Panel, and Dr. Eduardo J. Padrón, President of Miami Dade College. The Panel will meet from 8:45 a.m. to 9:45 a.m. to receive public comment on the Executive Order and the Panel's work. Following the public comment session, from 10 a.m. to 12:30 p.m., the five task groups—Conceptual Knowledge and Skills, Learning Processes, Instructional Practices, Teachers, and Assessment—will present progress reports on their work to date. Individuals interested in attending the meeting are advised to register in advance to ensure space availability. Please contact Jennifer Graban at (202) 260–1491 or by e-mail at *Jennifer.Graban@ed.gov* by Wednesday, May 30, 2007.

If you are interested in giving testimony during the public comment session on June 6, please contact Jennifer Graban at (202) 260–1491 or *Jennifer.Graban@ed.gov* by Wednesday, May 30, 2007, to reserve time on the agenda. Presenters are encouraged to address one or more of the topics covered in the Executive Order. (Please refer to the Web site at *http://www.ed.gov/mathpanel* for more information on the elements of the Executive Order.) Please include your name, the organization you represent, and a brief description of the issue you would like to present. Presenters will be allowed three to five minutes to make their comments. Presenters are requested to submit three written copies and an electronic file (CD or diskette) of their comments at the meeting, which should be labeled with their name and contact information. Individuals solely interested in attending the meeting are advised to register in advance to ensure space availability.

Given the expected number of individuals interested in providing comments at the meeting, reservations for presenting comments should be made as soon as possible. Reservations will be processed on a first-come, first-served basis. Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments. Written comments will be accepted at the meeting site or via e-mail at *NationalMathPanel@ed.gov.* If you will be emailing written comments, please do so by Wednesday, May 30, 2007. Please note that comments submitted to the National Mathematics Advisory Panel in any format—through e-mail, the U.S. postal service and/or provided in person during the public comment sessions at meetings—are considered to be part of the public record of the Panel's deliberations, and will be posted on the Web site.

The Panel has submitted its Preliminary Report to the President, through the U.S. Secretary of Education. The Preliminary Report is available at *http://www.ed.gov/mathpanel.* The final report will be submitted not later than February 28, 2008, and will, at a minimum, contain recommendations on improving mathematics education based on the best available scientific evidence.

The meeting site is accessible to individuals with disabilities.

Individuals who will need accommodations in order to attend the meeting, such as interpreting services, assistive listening devices, or materials in alternative format, should notify Jennifer Graban at (202) 260–1491 or *Jennifer.Graban@ed.gov* no later than Wednesday, May 30, 2007. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability.

Records are kept of all Panel proceedings and are available for public inspection at the staff office for the Panel, from the hours of 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

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/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 16, 2007.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. E7–9800 Filed 5–21–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. The purpose of this meeting is to provide the Secretary of Energy with the report which he requested on June 26, 2006. This report is titled ''Technology Based Framework for Mitigating Greenhouse Gases from Coal-Based Electricity Plants.'' Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: June 7, 2007, 9 a.m. to 12 Noon.

ADDRESSES: Fairmont Hotel,2401 M St., NW.,Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kane, Phone (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendation to the Secretary of Energy on matters relating to coal and coal industry issues:

Public Participation: The meeting is open to the public. The Chair of the NCC will conduct the meeting to facility orderly business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane at the address and telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10-minute rule.

Minutes: The minutes will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 17, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–9830 Filed 5–21–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted the ''Voluntary Reporting of Greenhouse Gases,'' form EIA–1605 to the Office of Management and Budget (OMB) for review and a reinstatement for a three-year period under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*)

DATES: Comments must be filed by June 21, 2007. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by Fax (202–395–7285) or e-mail, *Paul_Balserak@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1605, ''Voluntary Reporting of Greenhouse Gases''.
2. Energy Information Administration.
3. OMB Number 1905–0194.
4. Reinstatement for three years of a previously approved request.
5. Voluntary.
6. EIA–1605 form is designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and

carbon fixation. Data are used to establish a publicly available database. Respondents are participants in a domestic or foreign activity that either reduces greenhouse gas emissions or increases sequestration.

7. Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government; State, Local or Tribal Government.

8. 9,000 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*)

Issued in Washington, DC, May 16, 2007.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E7–9831 Filed 5–21–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0042; FRL–8316–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan (Renewal), EPA ICR No. 1664.06, OMB Control No. 2050–0141

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 21, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2007–0042 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *Nichols.nick@epa.gov* or by mail to: EPA Docket Center (Superfund), Environmental Protection Agency, Mail code: 5104A, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William ''Nick'' Nichols, Office of Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–1970; fax number: 202–564–2625; e-mail address: *Nichols.nick@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 14, 2007 (72 FR 7027), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPA–2007–0042, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket Center is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: National Oil and Hazardous Substances Pollution Contingency Plan (Renewal).

ICR Numbers: EPA ICR Number 1664.06, OMB Control Number 2050–0141.

ICR Status: This ICR is scheduled to expire on June 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal supports activities to implement the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart J (40 CFR 300.900), ''Use of Dispersants and Other Chemicals.'' Subpart J requirements include criteria for listing oil spill mitigating agents on the NCP Product Schedule. Under Subpart J, respondents who want to add a product to the Schedule must submit technical product data to the U.S. Environmental Protection Agency. Specifically, Subpart J requires the manufacturer to conduct specific toxicity and effectiveness tests and submit the corresponding technical product data along with other detailed information to the EPA Office of Emergency Management. EPA uses product information when responding to oil spills in accordance with the NCP.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 26 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this include, but are not limited to, manufacturers of bioremediation agents, dispersants, surface collecting agents, surface washing agents and other chemical agents and biological additives used as countermeasures against oil spills.

Estimated Number of Respondents: 14.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 390 hours.

Estimated Total Annual Cost: $100,493, which comprises an estimated $17,693 in labor costs and $82,800 for operating & maintenance costs. There are no startup/capital costs.

Changes in the Estimates: EPA does not anticipate any changes in the annual burden hours or capital and O&M costs under this ICR renewal.

Dated: May 14, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–9812 Filed 5–21–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to guarantee approximately $54in commercial bank financing for the export of approximately $54 million in U.S. equipment and services to a hot briquetted iron (HBI) plant in Russia. This project is not associated with an increase in steel production capacity. The U.S. exports will enable the facility to produce approximately 1.4 million metric tons of HBI as a steel scrap substitute. Initial production of HBI at this facility is expected to commence in 2008.

Available information indicates that the HBI will be consumed primarily in the Ukraine, with smaller amounts being consumed in Russia and Holland. Interested parties may submit comments on this transaction by e-mail to *xeconomic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. E7–9803 Filed 5–21–07; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010714–041.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; and Hapag-Lloyd USA, LLC.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street; Suite 1117, New York, NY 10005.

Synopsis: The amendment changes the address of American Roll-On Roll-Off Carrier, LLC.

Agreement No.: 011426–040.

Title: West Coast of South America Discussion Agreement.

Parties: APL Co. Pte Ltd.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Hapag-Lloyd AG; King Ocean Services Limited, Inc.; Maruba S.C.A.; Mediterranean Shipping Company, S.A.; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment would add Mediterranean Shipping Company as a participant in the Colombia Section of the agreement.

Agreement No.: 011733–021.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM; Hamburg-Süd; Hapag-Lloyd AG; Mediterranean Shipping Company S.A.; and United Arab Shipping Company (S.A.G.) as shareholder parties, and Alianca Navegacao e Logistica Ltda.; Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; Emirates Shipping Lines; Hyundai Merchant Marine Co. Ltd; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha; Safmarine Container Lines N.V.; Senator Lines GmbH; Norasia Container Lines Limited; and Tasman Orient Line C.V. as non-shareholder parties.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment adds COSCO Container Lines Co., Ltd. as a non-shareholder party to the agreement.

Agreement No.: 011839–006.

Title: Med-Gulf Space Charter Agreement.

Parties: Hapag-Lloyd AG and Compania Sud Americana de Vapores S.A.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue, New York, NY 10016.

Synopsis: The amendment would expand the geographic scope of the agreement to cover all ports bordering on the Mediterranean Sea. The parties request expedited review.

Agreement No.: 011931–002.

Title: CMA CGM/Marfret Vessel Sharing Agreement.

Parties: CMA CGM S.A., CMA CGM (UK) Limited, and Compagnie Maritime Marfret S.A.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The amendment removes Hapag-Lloyd AG as a party to the agreement.

Agreement No.: 011941–002.

Title: CMA CGM/ELJSA/GSL Amerigo Express 3 MUS Cross Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A. and Evergreen Line Joint Service Agreement.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The amendment removes Gold Star Line Ltd. as a party to the agreement.

Agreement No.: 011999.

Title: Hapag-Lloyd/NYK Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and Nippon Yusen Kaisha.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The agreement would authorize the parties to exchange slots between ports in Singapore, Thailand, India, Sri Lanka, Saudi Arabia, Egypt, and Italy and ports on the U.S. East

Coast. The parties request expedited review.

Agreement No.: 012000.

Title: CMA CGM/Maruba Amerigo Express Space Charter Agreement.

Parties: CMA CGM S.A. (''CMA CGM'') and Maruba S.A. (''Maruba'').

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The agreement authorizes CMA CGM to charter space to Maruba for the carriage of container cargo between the U.S. Atlantic Coast and the Mediterranean.

Agreement No.: 012001.

Title: Maruba/Zim USED–Med Space Charter Agreement.

Parties: Maruba S.A. (''Maruba'') and Zim Integrated Shipping Services, Ltd. (''Zim'').

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The agreement authorizes Maruba to charter space to Zim for the carriage of container cargo between the U.S. Atlantic Coast and ports in Europe and the Mediterranean.

Dated: May 17, 2007.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–9816 Filed 5–21–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7-9264) published on page 27311 of the issue for Tuesday, May 15, 2007.

Under the Federal Reserve Bank of St. Louis heading, the entry for Atwood Holdings Limited Partnership, Trezevant, Tennessee, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Atwood Holdings Limited Partnership, individually and as part of the Atwood Control Group which consists of George L. Atwood, as general partner, and Suzanne Atwood; to gain control of F & M Bancshares, Inc., and thereby indirectly gain control of Citizens City and County Bank, Trenton, and Farmer's and Merchants Bank, Trezevant, all of Tennessee.

Comments on this application must be received by May 30, 2007.

Board of Governors of the Federal Reserve System, May 17, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–9797 Filed 5–21–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 15, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and Capitol Development Bancorp Limited VI, Lansing, Michigan; to acquire 51 percent of the voting shares of Issaquah Community Bank (in organization), Issaquah, Washington.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Rice Bancshares, Inc., Ennis, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Rice, Texas.

Board of Governors of the Federal Reserve System, May 17, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–9796 Filed 5–21–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of the Consumer Advisory Council.

The Consumer Advisory Council will meet on Thursday, June 21, 2007. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 19, by completing the form found online at *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*.

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

• **Regulation Z/Truth in Lending Act (TILA)**

Members will discuss proposed amendments to Regulation Z, which implements the Truth in Lending Act (TILA). The amendments would revise the disclosure requirements for open–end (revolving) plans that are not home–secured, including credit card accounts.

• **Home Ownership and Equity Protection Act (HOEPA) hearing**

Members will discuss the Board's June 14 public hearing to gather information on how it might use its rulemaking authority under HOEPA to address concerns about abusive lending practices in the home mortgage market.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics

may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake, 202–452–6470.

Board of Governors of the Federal Reserve System, May 16, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–9760 Filed 5–21–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Wednesday May 23, 2007.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Staff Resource Planning Issues.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 18, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 07–2571 Filed 5–18–07; 3:02 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-07–0696]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

HIV Prevention Program Evaluation and Monitoring System for Health Departments and Community-Based Organizations (PEMS)—Reinstatement (0920–0696)—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is an extension of a data collection that is being incrementally implemented. The initial PEMS OMB request was approved October 6, 2005 for one year. However, delays in the development of the data collection software and requests by grantees for additional time to modify their data collection procedures have prevented the initial data collection originally anticipated for 2006.

The purpose of this data collection is to collect HIV prevention evaluation data from health department and community-based organization (CBO) grantees using the electronic Program Evaluation and Monitoring System (PEMS). This data collection incorporates data elements from two previously approved data collections: Evaluating CDC Funded Health Department HIV Prevention Programs, OMB No. 0920–0497 (discontinued 4/31/2006); and Assessing the Effectiveness of CBOs for the Delivery of HIV Prevention Programs, OMB No. 0920–0525 (discontinued 12/17/2004).

Per HIV prevention cooperative agreements, CDC requires non-identifying, client-level, standardized evaluation data from health department and CBO grantees to: (1) More accurately determine the extent to which HIV prevention efforts have been carried out, what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet these data needs; and (3) be accountable to stakeholders by informing them of efforts made and use of funds in HIV prevention nationwide.

Although CDC receives evaluation data from grantees, the data received to date are insufficient for evaluation and accountability. Furthermore, there has not been standardization of required evaluation data from both health departments and CBOs. Changes to the evaluation and reporting process have become necessary to ensure CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed PEMS and consulted with representatives from health departments, CBOs, and national partners (e.g., The National Alliance of State and Territorial AIDS Directors, Urban Coalition of HIV/AIDS Prevention Services, and National Minority AIDS Council).

Respondents will collect, enter, and report general agency information, program model and budget data, and client demographics and behavioral characteristics. (After initial set-up of the PEMS, data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry into the web-based system.) Agents will submit data quarterly. There are no costs to respondents. The total estimated annual burden hours are 181,512.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Form name	Number of responses per respondent	Average burden per response (in hours)
Health jurisdictions	59	PEMS Data Variables and Values (HD)	4	137
Health jurisdictions (CTR-scan)	30	Counseling, Testing and Referral Form	4	509
Health jurisdictions (CTR non-scan)	30	PEMS Data Variables and Values (HD)	4	165
Health jurisdictions (Training)	59	PEMS Data Variables and Values (HD)	4	10
Community-Based Organizations	160	PEMS Data Variables and Values (CBO)	4	84
Community-Based Organizations (CTR)	70	Counseling, Testing and Referral Form	4	23
Community-Based Organizations (Training)	160	PEMS Data Variables and Values (CBO)	4	10

Dated: May 15, 2007.

Maryam Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–9795 Filed 5–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[FOA IP07–006]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Economic Studies of Vaccines and Immunization Policies, Programs, and Practices, Funding Opportunity Announcement (FOA) IP07–013, and Costs Medical Practices Incur Ordering, Storing, and Delivering Vaccines to Adult Patients: Does Reimbursement Cover Costs?

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

Time and Date: 12 p.m.–4 p.m., June 14, 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 research grant applications in response to FOA IP07–013, ''Economic Studies of Vaccines and Immunization Policies, Programs, and Practices'', and FOA IP07–006, ''Costs Medical Practices Incur Ordering, Storing, and Delivering Vaccines to Adult Patients: Does Reimbursement Cover Costs?''.

Contact Person for More Information: Trudy Messmer, Ph.D., Designated Federal Official, 1600 Clifton Road, Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 15, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–9794 Filed 5–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH) Advisory Board on Radiation and Worker Health (ABRWH orAdvisory Board)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health and Subcommittee for Dose Reconstruction Reviews (SDRR).

Committee Meeting Times and Dates:

9 a.m.–5 p.m., June 11, 2007.

8 a.m.–3 p.m., June 12, 2007.

Public Comment Times and Dates:

5:30 p.m.–6:30 p.m., June 11, 2007.

Place: Westin Westminster, 10600 Westminster Boulevard, Westminster, Colorado 80020, Phone 303.410.5000, Fax 303.410.5005.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such

radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes Selection of 8th Round of Dose Reconstruction Cases for Review; SEC Petitions for Rocky Flats, Bethlehem Steel, Sandia Livermore, Chapman Valve, and Dow-Madison; Use of Data from Other Sites; Timeliness of Program Activities; and Board Schedule and Board Working Time.

The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513.533.6825, Fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 15, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–9798 Filed 5–21–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Medicaid Program; Notice of Single Source Grant Award to the State of Louisiana for the Grant Entitled ''Deficit Reduction Act—Hurricane Katrina Healthcare Related Professional Workforce Supply''

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

Funding Amount: $15,000,000.

Period of Performance: March 1, 2007–September 30, 2009.

SUMMARY: On March 1, 2007, this grant program was made available to the State of Louisiana to fund State payments for professional healthcare workforce fulfillment in Greater New Orleans, which has continued to face unique health professional shortages as a result of Hurricane Katrina and its subsequent floods. With nearly 4,500 doctors displaced and approximately 50 percent of the physicians who worked in Region 1 before Hurricane Katrina, no longer practicing there, Greater New Orleans is experiencing a shortage of primary care doctors to see Medicaid and uninsured patients.

Funding recently awarded under this grant program must be used by the State to make payments for purposes of recruitment and retention of professional healthcare staff for the impacted communities. For purposes of this grant, impacted communities are those four parishes located in the State of Louisiana that comprise Region 1, as defined by the Louisiana Department of Health and Hospitals, namely, Orleans, Jefferson, St. Bernard, and Plaquemines.

The grant funds must be used only for purposes of recruitment or retention of healthcare workforce professionals in Greater New Orleans. The State has been given flexibility in determining the payment methodology, the scope and type of activities, criteria for awarding payment, and the amount of payments to be made to such professionals. Payment recipients are limited to licensed healthcare professionals. Activities include those that were recommended by the Louisiana Health Care Redesign Collaborative (LHCRC) in their concept paper submitted to the Secretary on October 20, 2006. These activities include but are not limited to: Income guarantees, annual medical malpractice payment relief, loan repayments, and incentive payments (relocation expenses and sign-on bonuses). Grant funds may not be distributed to staff who are no longer providing professional healthcare services in the Greater New Orleans area at the time of the disbursement of grant funds. All payments must be made under this grant program by the end of federal fiscal year 2009.

Payments to physicians and other professional healthcare workforce staff under this program are not allowed to be considered payments for Medicare, Medicaid or other specific services, and are not available as the non-Federal share of expenditures or for supplemental disproportionate share hospital payments. Payments cannot be made conditional on the provision of any particular items or services by the professionals. Grant applications requesting funds to be used for the non-Federal share of Medicaid or other federal grant expenditures or for supplemental Medicaid disproportionate share hospital payments will not be considered.

This award was made based on the authority granted by section 6201 of the Deficit Reduction Act (DRA). In particular, section 6201(a)(4) of the DRA provides authority to the Secretary, Department of Health and Human Services (DHHS), to make payments to States to restore access to healthcare in communities impacted by Hurricane Katrina.

Justification For Exception To Competition: The Secretary invoked his authority to restore healthcare in impacted communities affected by Hurricane Katrina by offering this unique funding opportunity which will give further incentive to the retention and recruitment of healthcare workforce professionals in Greater New Orleans. Louisiana is the only State with knowledge and ability to administer a grant designed to affect impacted Louisiana communities. For this reason, the Secretary has directed the Centers for Medicare & Medicaid Services to issue a single-source award to the State of Louisiana to increase access to healthcare services and to relieve economic pressures suffered by healthcare providers resulting from both the hurricane and its subsequent flooding.

FOR FURTHER INFORMATION CONTACT: Wendy J. Taparanskas, Ph.D., Health Insurance Specialist, Office of the Center Director, Centers for Medicaid and State Operations, Centers for Medicare & Medicaid Services, Mail Stop S2–26–12, 7500 Security Boulevard, Baltimore, MD 21244, (410) 786–5245.

Authority: Section 6201(a)(4) of the Deficit Reduction Act of 2005 (DRA).

Dated: May 7, 2007.

Leslie V. Norwalk,

Acting Administrator,Centers for Medicare & Medicaid Services.

[FR Doc. E7–9792 Filed 5–21–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Privacy Act of 1974: CMS Computer Match No. 2007–02; HHS Computer Match No. 0701

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974,

as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the Health Administration Center (HAC) of the Department of Veteran Affairs. We have provided background information about the proposed matching program in the ''Supplementary Information'' section below. The Privacy Act provides an opportunity for interested persons to comment on the proposed matching program. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Governmental Affairs, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 05/16/2007. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication in the **Federal Register**, whichever is later. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Walter Stone, CMS Privacy Officer, Division of Privacy Compliance (DPC), Enterprise Architecture and Strategy Group (EASG), Office of Information Services (OIS), CMS, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Cheryl Sample, Senior Privacy Specialist, DPC, EASG, OIS, CMS, Mailstop N2–04–27, 7500 Security Boulevard, N2–04–27, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7185, facsimile (410) 786–5636, or e-mail *cheryl.sample@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

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 (SOR) 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 agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: May 8, 2007.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

Computer Match No. 2007–02
HHS Computer Match No. 0701

NAME:

Computer Matching Agreement Between the Centers for Medicare & Medicaid Services (CMS) and the Health Administration Center (HAC) of the Department of Veterans Affairs for Verification of CHAMPVA Eligibility''.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and Health Administration Center (HAC) of the Department of Veterans Affairs.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This Computer Matching Program (CMP) is executed to comply with the provisions of Public Laws (Pub. L.) 93–82, 94–581, 102–190, and 107–14 (codified at Title 38 United States Code (U.S.C.) 1713, renumbered Title 38 U.S.C. 1781), which restrict CHAMPVA eligibility for benefits dependent upon a beneficiary's Medicare Part A and Part B status. This computer match will match CHAMPVA applicants and beneficiaries with Medicare Parts A and B beneficiaries.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this computer matching agreement is to establish the conditions, safeguards and procedures under which the CMS and HAC will conduct a computer-matching program to determine entitlement to CHAMPVA benefits. Under the terms of this matching agreement, HAC will provide to CMS a list of social security numbers (SSN) for all CHAMPVA eligible beneficiaries who may also be eligible for Medicare benefits. This information is maintained in HAC's System of Records (SOR) entitled ''Health Administration Center Civilian Health and Medical Program Records–VA.'' CMS agrees to conduct a computer match of the SSNs of beneficiaries provided by HAC against the information found in CMS's Enrollment Database (EDB) SOR. HAC will receive the results of the computer match in order to determine a beneficiary's eligibility for care under CHAMPVA.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

Upon establishment of the CHAMPVA program under Public Law 93–82, CHAMPVA entitlement will be terminated when any individual becomes eligible for Medicare Part A (Hospital Insurance) on a non-premium basis. Public Law 94–581 provided for reinstatement of CHAMPVA as second payer for beneficiaries aged 65 and over who exhausted a period of Medicare Part (Hospital Insurance). These beneficiaries must also be enrolled in Medicare Part B (Medical Insurance) in order to retain their CHAMPVA entitlement. Public Law 102–190 extended CHAMPVA benefit to age 65 for any beneficiary eligible for Medicare Part A on the basis of disability/end stage renal disease (ESRD) only if that individual is also enrolled in Medicare Part B. Public Law 107–14 provided for extending benefit coverage for beneficiaries over the age of 65 years if the beneficiary is in receipt of Medicare Part A and Medicare Part B.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

Systems of Records

Records Maintained by HAC

The information used in this matching program is maintained in the HAC system identified as 54VA16, entitled ''Health Administration Center

Civilian Health and Medical Program Records–VA,'' last published at 68 FR 53784 (September 12, 2003). SSNs of CHAMPVA beneficiaries will be released to CMS pursuant to the routine use number 21 as set forth in the system notice.

RECORDS MAINTAINED BY CMS

The matching program will be conducted with data maintained by CMS in the EDB, System No. 09–70–0502, published at 67 FR 3203 (January 23, 2002). Matched data will be released to HAC pursuant to the routine use number 2 as set forth in the system notice.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever 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.

[FR Doc. E7–9789 Filed 5–21–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice To Award a Grant

Program Office: Administration on Children, Youth and Families (ACYF)/ Family and Youth Services Bureau (FYSB).

Recipient Name: Medical Institute for Sexual Health.

Announcement Type: Notice to Award a Grant.

CFDA Number: 93.235.

Amount of Award: $207,400.

Project Period: 5/1/2007–4/30/2008.

Summary: This is a notice to award a grant to the Medical Institute for Sexual Health, Austin, TX, in the amount of $207,400 to support the development of online medical accuracy training for abstinence education providers.

Background: The Medical Institute for Sexual Health proposes to develop an online instructor-led workshop to train abstinence education providers in methods to access medically accurate sexual health information via the internet. Participants will learn to identify credible internet resources for sexual health information, efficiently and effectively search the internet, and answer most questions on sexual health topics.

The proposal is within the scope of technical assistance activities that the Abstinence Education Division of the Family and Youth Services Bureau (FYSB) provides to grantees with regard to integrating medical and scientific information into abstinence education programming. The Congress, in appropriating funds for the program, has directed the Administration for Children and Families (ACF) to devote up to five percent of appropriated funds for technical assistance and capacity-building for abstinence education grantees. In addition, the proposed activities of this awardee are outside the scope of the ACF's previous or proposed abstinence education competitive program announcements and would not qualify for any other existing grant opportunities.

For Further Information Contact: Stanley Koutstaal, Ph.D., Acting Director, Division of Abstinence Education, 1250 Maryland Ave., SW., Washington, DC 20024, (202) 401–9205, *Nina.Degeorge@ACF.hhs.gov.*

Dated: May 16, 2007.

Harry Wilson,

Associate Commissioner, Family and Youth Services Bureau.

[FR Doc. E7–9824 Filed 5–21–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0248]

Determination of Regulatory Review Period for Purposes of Patent Extension; FOSRENOL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FOSRENOL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FOSRENOL (lanthanum carbonate hydrate). FOSRENOL is indicated to reduce serum phosphate in patients with end stage renal disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FOSRENOL (U.S. Patent No. 5,968,976) from Shire International Licensing, B.V., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FOSRENOL represented the first permitted commercial marketing or use of the product. Shortly thereafter,

the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FOSRENOL is 2,449 days. Of this time, 1,538 days occurred during the testing phase of the regulatory review period, while 911 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: February 13, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 13, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 30, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for FOSRENOL (NDA 21–468) was initially submitted on April 30, 2002.

3. *The date the application was approved*: October 26, 2004. FDA has verified the applicant's claim that NDA 21–468 was approved on October 26, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 951 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 23, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–9787 Filed 5–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: June 13, 2007, 9 a.m.–5 p.m. June 14, 2007, 8:30 a.m.–3 p.m.

Place: Four Points by Sheraton Washington DC Downtown Hotel, 1201 K Street, NW.,Washington, DC 20005,(202)–289–7600.

Status: The meeting is open to the public with attendance limited to space availability.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department of Health and Human Services' programs that focus on reducing infant mortality and improving the health status of pregnant women and infants, and factors affecting the continuum of care with respect to maternal and child health care. It includes outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start Program and *Healthy People 2010* infant mortality objectives.

Agenda: Topics that will be discussed include the following: Cesarean section and its effect on pre-term and infant mortality, SIDS and related causes of infant death and Preconceptional care. Proposed agenda items are subject to change as priorities indicate.

Time will be provided for public comments limited to five minutes each; comments are to be submitted no later than June 1, 2007.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM,Health Resources and Services Administration (HRSA), Room 18–05, ParklawnBuilding, 5600 Fishers Lane, Rockville, MD 20857, *Telephone:* (301) 443–2170.

Individuals who are submitting public comments or who have questions regarding the meeting and location should contact David S. de la Cruz, PhD, M.P.H., HRSA, Maternal and Child Health Bureau, *telephone:* (301) 443–6332, *e-mail: David.delaCruz@hrsa.hhs.gov.*

Dated: May 15, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–9784 Filed 5–21–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605–56606 as amended November 6, 1995; and as last amended at 72 FR 19540–19544, April 18, 2007.)

This notice reflects organizational changes in the Health Resources and Services Administration, Bureau of Primary Health Care (RC). Specifically, this notice updates the mission statement of the Bureau of Primary Health Care (RC) and the functional statement of the Office of the Associate Administrator (RC), and deleted the Office of Administrative Management (RCM).

Chapter RC, Bureau of Primary Health Care

Section RC, 00 Mission

Delete in its entirety and replace with the following:

The mission of the Bureau of Primary Health Care is to improve the health of the Nation's underserved communities and vulnerable populations by assuring access to comprehensive, culturally competent, quality primary health care services.

Section RC–10, Organization

Delete in its entirety and replace with the following:

The Bureau of Primary Health Care (BPHC) is headed by an Associate Administrator, who reports directly to

the Administrator, Health Resources and Services Administration. The Bureau of Primary Health Care includes the following components:

(1) Office of the Associate Administrator (RC);

(2) Office of Minority and Special Populations (RCG);

(3) Office of Policy and Program Development (RCH);

(4) Office of Quality and Data (RCK);

(5) Eastern Division (RCN);

(6) Central Mid-Atlantic Division (RCP);

(7) Western Division (RCQ);

(8) Division of National Hansen's Disease Programs (RC7); and

(9) Division Immigration Health Service (RC9).

Section RC–20, Functions

(1) Delete the functional statement for the Office of the Associate Administrator (RC) and replace in its entirety; and (2) Delete the functional statement for the Office of Administrative Management (RCM).

Office of the Associate Administrator (RC)

Provides overall leadership, direction, coordination, and planning in support of Bureau of Primary Health Care programs that are designed to improve the health of the Nation's underserved communities and vulnerable populations by assuring access to comprehensive, culturally competent, quality primary health care services. Specifically, (1) Establishes program goals, objectives and priorities, and provides oversight as to their execution; (2) plans, directs, coordinates and evaluates Bureau-wide management activities; (3) maintains effective relationships within HRSA and with other Department of Health and Human Services (HHS) organizations, other Federal agencies, State and local governments, and other public and private organizations concerned with primary health care, eliminating health disparities, and improving the health status of the Nation's underserved and vulnerable populations; and (4) plans, directs, and coordinates Bureau-wide administrative management activities, *i.e.*, budget, finance, personnel, procurements, delegations of authority, emergency planning, training, executive secretariat, and has responsibilities related to the awarding of BPHC grant and contract funds.

Section RC–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon the date of signature.

Dated: May 15, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–9786 Filed 5–21–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Compositions and Methods for Increasing Recombinant Protein Yields Through the Modification of Cellular Properties

Description of Technology: This technology relates to compositions and methods for improving the growth characteristics of cells engineered to produce biologically active products such as antibodies or glycosylated proteins. Featured is a method that uses gene candidates (e.g., cdkl3, siat7e, or lama4), or their expressed or inhibited products in cell lines, such as Human Embryonic Kidney (including HEK–293), HeLa, or Chinese Hamster Ovary (CHO). The gene expression modulates growth characteristics, such as adhesion properties, of the cell lines thereby increasing recombinant protein yields and reducing product production costs.

Applications: This technology may be used to improve production of therapeutic and/or diagnostic compounds, including therapeutic proteins or monoclonal antibodies from mammalian cells. Optimization of mammalian cells for use as expression systems in the production of biologically active products is very difficult. For certain applications, anchorage-independent cell lines may be preferred, whereas for other applications, a cell line that adheres to a surface, e.g. is anchorage-dependent, may be preferable. This technology provides a method for identifying a gene whose expression modulates such cellular adhesion characteristics. This method thus leads to an increase in the expression or yield of polypeptides, including therapeutic biologicals, such as antibodies, cytokines, growth factors, enzymes, immunomodulators, thrombolytics, glycosylated proteins, secreted proteins, and DNA sequences encoding such polypeptides and a reduction in the associated costs of such biological products.

Advantages: This technology offers the ability to improve yields and reduce the cost associated with the production of recombinant protein products through the selection of cell lines having: Altered growth characteristics; altered adhesion characteristics; altered rate of proliferation; improvement in cell density growth; improvement in recombinant protein expression level.

Market: Biopharmaceuticals, including recombinant therapeutic proteins and monoclonal antibody-based products used for in vivo medical purposes and nucleic acid based medicinal products now represent approximately one in every four new pharmaceuticals on the market. The market size has been estimated at $33 billion in 2004 and is projected to reach $70 billion by the end of the decade. The list of approved biopharmaceuticals includes recombinant hormones and growth factors, mAB-based products and therapeutic enzymes as well as recombinant vaccines and nucleic acid based products.

Mammalian cells are widely used expression systems for the production of biopharmaceuticals. Human embryo kidney (including HEK–293) and Chinese hamster ovary (CHO) are host cell of choice. The genes identified in this technology (e.g., cdkl3, sia7e, or lama4) can be used to modify these important cell based systems.

This technology is ready for use in drug/vaccine discovery, production and development. The technology provides

methods for identification of specific gene targets useful for altering the production properties of either existing cell lines to improve yields or with new cell lines for the production of therapeutic and or diagnostic compounds from mammalian cells.

Companies that are actively seeking production platforms based on mammalian cell lines that offer high efficiency, high throughput systems for protein production or analysis at lower cost and ease of scale-up would be potential licensors of this technology.

Development Status: Late Stage—Ready for Production.

*Inventors:*Joseph Shiloach (NIDDK), Pratik Jaluria (NIDDK).

Related Publication: P Jaluria et al.Application of microarrays to identify and characterize genes involved in attachment dependence in HeLa cells. Metab Eng. 2006 Dec 13, Epub ahead of print, doi:10.1016/j.ymben.2006.12.001.

Patent Status: U.S. Provisional Application No. 60/840,381 filed 24 Aug 2006 (HHS Reference No. E–149–2006/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Biotechnology Core Laboratory, is seeking parties interested in collaborative research projects directed toward the use of this technology with cells for drug and vaccine production and development, including growth optimization, production and product recovery processes. For more information, please contact Dr. Joseph Shiloach, *josephs@intra.niddk.nih.gov,* or Rochelle S. Blaustein at Rochelle.Blaustein@nih.gov.

In Vitro Model for Hepatitis C Virion Production

Description of Technology: This invention provides an in vitro hepatitis C virus (HCV) replication system that is capable of producing viral particles in a culture medium. Hepatitis C is a major public health problem, the development of therapeutics for which has been hampered by a lack of a robust model system to study the complete viral life cycle. This invention provides a new model system for the complete replication cycle of hepatitis C virus and virion production, assembly and release. The model is useful for screening antiviral agents against HCV.

A full length HCV construct, CG1b of genotype 1b which is known to be infectious, was placed between two ribozymes designed to generate the exact 5′ and 3′ ends of HCV when cleaved. Using this system, HCV proteins and positive and negative RNA strands have been shown to reproduce intracellularly, and viral particles that resemble authentic HCV virions are produced and secreted into the culture medium.

The patent application includes claims directed toward the following: a construct comprising specific nucleic acid sequences including HCV genotype 1b, genotype 1a, genotype 2a or potentially other genotypes; a method for identifying a cell line that is permissive for infection with HCV; a method for propagating HCV in vitro; a method for screening agents capable of modulating HCV replication or activity; a method for testing the level of HCV replication or activity; a HCV vaccine comprising HCV virus particles.

Applications: The model offers a novel method for investigating the entire HCV life cycle including replication and pathogenesis and is useful for high-throughput antiviral screening. This technique may also be useful for making infectious particles that are useful in the production of HCV vaccines.

Advantages: This system provides a new, stable and efficient cell culture model to further study the life cycle and biology of HCV, and to test potential therapeutic targets for hepatitis C. This model has also been used to generate in cell culture HCV strains infectious for chimpanzees, the only experimental animal susceptible to infection with the hepatitis C virus, a critical step in the development of new vaccines for Hepatitis C.

Market: Hepatitis C virus (HCV) chronically infects approximately 200 million people worldwide and increases the risk of developing cirrhosis and hepatocellular carcinoma. This technology would be useful for studying the HCV life cycle, screening for therapeutic agents against multiple HCV strains, including Genotype 1a, 1b and 2a, and the development of HCV vaccines. HCV genotypes 1 and 2 are the major genotypes with worldwide distribution; they are known to be associated with different clinical profiles and therapeutic responses. Hence, the model may be used to screen for varying levels of effectiveness of therapeutics against the major HCV genotypes.

Development Status: This technology is available for use in diagnostics, drug/vaccine discovery, production and development. Current work is directed toward studies into the HCV life cycle and replication and the pathogenesis of HCV screening for antiviral agents against multiple HCV strains. This model has been used to generate in cell culture HCV strains infectious for chimpanzees, the only experimental animal susceptible to infection with the hepatitis C virus, a critical step in the development of new vaccines for Hepatitis C. Future work may be directed toward the use of this system for development of vaccine candidates against HCV.

Inventors: T. Jake Liang (NIDDK), Theo Heller (NIDDK)

Related Publications:

1. Z Hu *et al.* Altered proteolysis and global gene expression in hepatitis B virus X transgenic mouse liver. J Virol. 2006 Feb;80(3):1405–1413.

2. T Heller *et al.* An in vitro model of hepatitis C virion production. Proc Natl Acad Sci USA. 2005 Feb 15;102(7):2579–2583.

Patent Status: PCT Application No. PCT/US2005/035487 filed 30 Sep 2005 (HHS Reference No. E–324–2004/3–PCT–01), based on: U.S. Provisional Application No. 60/615,301 filed 30 Sep 2004 (HHS Reference No. E–324–2004/0–US–01), now abandoned; U.S. Provisional Application No. 60/642,210 filed 06 Jan 2005 (HHS Reference No. E–324–2004/1–US–01), now abandoned; and U.S. Provisional Application No. 60/720,692 filed 26 Sep 2005 (HHS Reference No. E–324–2004/2–US–01), now abandoned.

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Liver Diseases Branch, is seeking parties interested in collaborative research directed toward molecular strategies for vaccine and antiviral development, and animal models of viral hepatitis C. Please contact Dr. T. Jake Liang at 301–496–1721, *jliang@nih.gov* or Rochelle S. Blaustein at *Rochelle.Blaustein@nih.gov* for more information.

Dated: May 14 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer,Office of Technology Transfer,National Institutes of Health.

[FR Doc. E7–9845 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Comprehensive Minority Institution Cancer Center Partnership.

Date: June 10–12, 2007.

Time: 7 p.m. to 11 p.m. (June 10), 8 a.m. to 5 p.m. (June 11 and 12).

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301–496–7897, *lovingeg@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Clinical Studies Special Emphasis Panel.

Date: June 18–19, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Majed M. Hamawy, PhD, MBA, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8135, Bethesda, MD 20852, 301–594–5659, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Sample Preparation/Detection and Diagnosis.

Date: June 21, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7141, Bethesda, MD 20892–7405, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovations in Cancer Sample Preparation.

Date: June 21, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7141, Bethesda, MD 20892–7405, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Early Clinical Trials of New Anti-Cancer Agents with Phase I Emphasis (U01).

Date: July 10–11, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8057, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 15, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2541 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, May 15, 2007, 1 p.m. to May 15, 2007, 4 p.m. National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3258, Bethesda, MD 20817 which was published in the **Federal Register** on April 18, 2007, 72 FR 74, page 19546.

The meeting of the Special Emphasis Panel ZAI1 MMT M (S1), Tuberculosis Epidemiology, will be held on June 5, 2007, instead of May 15, 2007, at 1 p.m. and will end at 4 p.m. The meeting is closed to the public.

Dated: May 16, 2007.

Jennifer Spaeth,

Director, Office of Special Advisory Committee Policy.

[FR Doc. 07–2539 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: June 11, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Katrin Eichelberg, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–0818, *keichelberg@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: May 16, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2540 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Pediatrics Subcommittee.

Date: June 14–15, 2007.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Child Health Research Career Development.

Date: June 15, 2007.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2542 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee, 07–50, Review RO3s, Fs, Ks.

Date: June 7–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raj K Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 15, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2543 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR–C (01) R Quantum Grants 2007 Review.

Date: June 19–20, 2007.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Rd., North Bethesda, MD 20852.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR–B (01) S Training and Career Award Review.

Date: July 12, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ruixia Zhou, PhD, Scientific Review Administrator, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

Dated: May 15,2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2544 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and skin Diseases special Grants Review Committee.

Date: June 19–20, 2007.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Courtyard, Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2545 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 12, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2546 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: June 11–12, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovative Ultrasound and Imaging.

Date: June 12, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Antonio Sastre, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: June 14–15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Bo Hong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: June 14–15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7847, Bethesda, MD 20892, 301–435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hypersensitivity, Autoimmune, and Immune-mediated Diseases; Overflow Meeting.

Date: June 14–15, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Immunology.
Date: June 18, 2007.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Child Psychopathology.
Date: June 19, 2007.
Time: 1 p.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6702 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: GCMB.
Date: June 20, 2007.
Time: 3 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pain
Date: June 20, 2007.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Science, Education and Communication.
Date: June 26–27, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: HBPP and GMPB Study Sections.
Date: June 26, 2007.
Time: 11 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Electromagnetic Devices.
Date: June 26, 2007.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Antonio Sastre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear Dynamics and Transport.
Date: June 28, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Cell Death in Neurodegeneration Study Section.
Date: June 28–29, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–435–1278, *simpsond@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodevelopment, Synaptic Plasticity and Neurodegeneration.
Date: June 28–29, 2007.
Time: 8 a.m. to 5 p.m.,
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7279, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemical and Bioanalytical Sciences.
Date: June 28, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, 30–452–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene, Genomes, Genetics Fellowships.
Date: June 28–29, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301–435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oncology Fellowship.
Date: June 28–29, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Lambratu Rahman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Anti-infective Therapeutics.
Date: June 28, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Rossana Berti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Sciences Small Business Activities.

Date: June 28, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Lawrence E. Boerbom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, 301–435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomes, and Genetics Specials.
Date: June 28–29, 2007.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Contact Person: Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health; 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, 301–435–0601, *marinomi@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.
Date: June 28–29, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Christopher T. Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, 301–451–1329, *semposch@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.
Date: June 28–29, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population SBIR.
Date: June 28–29, 2007.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria, 1767 King Street, Alexandria, VA 22314.
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.
Date: June 28–29, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.
Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.
Date: June 28–29, 2007.
Time: 8:30 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.
Contact Person: Alexander Yakolev, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; LCMI Member Conflict Applications.
Date: June 28, 2007.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 16, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2537 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 14, 2007, 8 a.m. to June 15, 2007, 5 p.m., The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037, which was published in the **Federal Register** on May 4, 2007, 72 FR 25325.

The meeting will be held June 14, 2007, 8 a.m. to 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 16, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2538 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Enabling Bioanalytical and Biophysical Technologies Study Section, June 11, 2007, 8:30 a.m. to June 12, 2007, 5 p.m. The River Inn, 924 25th Street, NW., Washington, DC 20037 which was published in the **Federal Register** on April 20, 2007, 72 FR 19941–19942.

The meeting will be held one day only June 11, 2007, 8:30 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 16, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2547 Filed 5–21–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1700–DR]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–1700–DR), dated May 11, 2007, and related determinations.

EFFECTIVE DATE: May 11, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 11, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from severe storms and flooding during the period of April 15–27, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared major disaster:

Fairfield and Litchfield Counties for Public Assistance.

All counties within the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9781 Filed 5–21–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

EFFECTIVE DATE: May 11, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2007:

Edwards, Pratt, and Stafford Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–9782 Filed 5–21–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before June 21, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (we) solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–003483

Applicant: U.S. Geological Survey, Hawaii National Park, Hawaii.

The permittee requests an amendment to take (capture and take into captivity) the palila (*Loxioides bailleui*), on the island of Hawaii, in the State of Hawaii, in conjunction with captive propagation for the purpose of enhancing its survival.

Permit No. TE–146777

Applicant: Arleone Dibben-Young, Kaunakakai, Hawaii.

The applicant requests a permit to take (capture, band, mark, and release) the Hawaiian stilt (*Himantopus mexicanus knudseni*) and the Hawaiian coot (*Fulica alai*) in conjunction with life history and disease studies on the island of Maui, in the State of Hawaii for the purpose of enhancing their survival.

Permit No. TE–056557

Applicant: Bureau of Reclamation, Burley, Idaho.

The permittee requests an amendment to take (capture, collect, and sacrifice) the Snake River physa snail (*Physa natricina*) in conjunction with demographic, hydrologic, and genetic research throughout the range of the species for the purpose of enhancing its survival.

Public Review of Comments

We solicit public review and comment on each of these recovery permit applications.

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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 15, 2007.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–9802 Filed 5–21–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–40308; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Bering Straits Native Corporation. The lands are in the vicinity of Mary's Igloo, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 5 S., R. 30 W.,
Sec. 13, lots 1 and 2;
Tracts V thru Z, inclusive;
Tracts AA, BB, and CC.

Containing 453.52 acres.

Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 21, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

D. Kay Erben,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–9790 Filed 5–21–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–ES; WYW–156111]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or conveyance to the City of Rock Springs under the provisions of the Recreation and Public Purposes Act, as amended, 7.8 acres of public land in Sweetwater County, Wyoming. The City of Rock Springs proposes to use the land for a Senior Citizens Center.

ADDRESSES: Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

DATES: Interested persons may submit written comments to the BLM at the address stated above. Comments must be received by not later than July 6, 2007.

FOR FURTHER INFORMATION CONTACT: Patricia Hamilton, Realty Specialist, at the above address or at 307–352–0334.

SUPPLEMENTARY INFORMATION: The following described public land in Sweetwater County, Wyoming, has been examined and found suitable for classification for lease or conveyance under provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*) and is hereby classified accordingly:

Sixth Meridian, Wyoming

T. 19 N., R. 105 W.,
Sec. 28, lots 32, 33, and 35.

The land described contains 7.80 acres in Sweetwater County.

In accordance with the R&PP Act, the City of Rock Springs has filed an application and plan of development in which it proposes to use the above described public land for a Senior Citizen Center. The land is not needed for Federal purposes. Lease or conveyance pursuant to the R&PP Act is consistent with the BLM Green River Resource Area Management Plan, dated August 8, 1997, and would be in the public interest. The lease or conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations, policy and guidance including but not limited to the regulations stated in 43 CFR 2740, of the Secretary of the Interior.

2. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals under applicable laws and regulations established by the Secretary of the Interior, including all necessary access and exit rights.

4. Provided, that the land conveyed shall revert to the United States upon a finding, and after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date 5 years after the date of conveyance.

5. All valid existing rights of record, including those documented on the official public land records at the time of lease or patent issuance.

Detailed information concerning the proposed action, including but not limited to documentation relating to

compliance with applicable environmental and cultural resource laws, is available for review at the BLM, Rock Springs Field Office at the address stated above, telephone: 307–352–0334.

On May 22, 2007, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Interested parties may submit written comments regarding the proposed lease or conveyance or classification of the land for a Senior Citizen Center to the Field Manager, BLM Rock Springs Field Office, at the address stated above. Comments must be received by July 6, 2007.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Senior Citizen Center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and Plan of Development, whether the BLM followed proper administrative procedures in reaching the decision; or any other factor not directly related to the suitability of the land for a Senior Citizen Center.

Confidentiality of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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.

Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective July 23, 2007.

(Authority: 43 CFR part 2741)

Michael R. Holbert,

Field Manager.

[FR Doc. E7–9844 Filed 5–21–07; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. NAFTA–103–018]

Certain Textile Articles: Probable Effect of Modification of NAFTA Rules of Origin for Goods of Canada and Mexico (Sanitary Articles and Nonwoven Wipes) and for Goods of Canada (Chenille Fabrics)

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for written submissions; extension of date for written submissions.

SUMMARY: Following receipt of a request on April 17, 2007, from the United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted investigation No. NAFTA–103–018, Certain Textile Articles: Probable Effect of Modification of NAFTA Rules of Origin for Goods of Canada and Mexico (Sanitary Articles and Nonwoven Wipes) and for Goods of Canada (Chenille Fabrics).

DATES: May 16, 2007: Original deadline for filing written submissions.

May 29, 2007: Extended deadline for filing written submissions.

June 15, 2007: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis Rapkins, Office of Industries (202–205–3406; *dennis.rapkins@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Commission issued an earlier version of this notice on May 3, 2007, and sent copies to parties believed to have an interest in the matter. The notice requested that parties with an interest in the matter file any written submissions by May 16, 2007. However, due to a technical error, the notice was not published in the **Federal Register**. In view of that error, the Commission has extended to the close of business May 29, 2007, the due date for filing any written submissions. Parties that have already filed submissions may amend or supplement such submissions, provided they do so on or before the close of business May 29, 2007, and in the manner provided for below.

Annex 300–B, Chapter 4, and Annex 401 of the NAFTA contain the rules of origin for textiles and apparel for application of the tariff provisions of the NAFTA. These rules are set forth for the United States in general note 12 to the Harmonized Tariff Schedule (HTS). According to the USTR's letter, U.S. negotiators have recently reached agreements in principle with representatives of the Governments of Canada and Mexico concerning proposed modifications to the NAFTA rules of origin for certain sanitary articles and nonwoven wipes, and the Government of Canada only concerning a proposed modification to the NAFTA rule of origin for certain chenille fabrics. If implemented, the proposed rules changes would apply only to U.S. imports from and U.S. exports to the NAFTA parties in agreement with the rules changes. Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300–B of the Agreement. One of the requirements of section 103 of the Act is that the President obtain advice regarding the proposed actions from the Commission.

The USTR requested that the Commission provide advice on the probable effect of the proposed modifications of the NAFTA rules of origin for the specified articles on U.S. trade under the NAFTA, on total U.S.

trade, and on domestic producers of the affected articles. As requested, the Commission will provide its advice to the USTR by June 15, 2007, and will issue a public version of its report shortly thereafter, with any confidential business information deleted.

The goods of Canada and Mexico covered by this investigation, as presented in part I of the attachment to the USTR's letter, are sanitary towels or tampons classified in HTS subheading 5601.10 and nonwoven wipes classified in HTS subheadings 5603.91–5603.94 that are made from viscose rayon staple fibers of HTS subheading 5504.10. The goods of Canada only that are covered by this investigation, as presented in part II of the USTR's attachment, are chenille fabrics classified in HTS subheading 5801.36 and made from acrylic fibers classified in HTS subheading 5503.30. The USTR's letter and attachment can be viewed on the Commission's Internet server at *http://www.usitc.gov/edis.htm.* The current NAFTA rules of origin applicable to U.S. imports can be found in general note 12 of the 2007 HTS (see ''General Notes'' link at *http://www.usitc.gov/tata/hts/bychapter/index.htm).*

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary to the Commission. To be assured of consideration by the Commission, written statements related to the investigation should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 29, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. However, the Commission will not publish such confidential business information in the public version of its report in a manner that would reveal the operations of the firm supplying the information.

Issued: May 18, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–9894 Filed 5–21–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0018]

Justice Management Division; Agency Information Collection Activities

ACTION: 30-Day Notice of Information Collection Under Review: Extension of Previously Approved Collection, Department of Justice Procurement Blanket Clearance.

The Department of Justice, Justice Management Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 72, Number 52, page 12831) on March 19, 2007 allowing for a 60 day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 21, 2007 This process is conducted in accordance with 5 CFR 3120.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs: Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile on 202–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

—*Type of Information Collection:* Extension of a currently approved collection.

—*Title of the Form/Collection:* Department of Justice Procurement Blanket Clearance.

—*The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. *Sponsor:* Justice Management Division.

—*Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Commercial organizations and individuals who voluntarily submit offers and bids to compete for contract awards to provide supplies and services

required by the Government. All work statements and pricing data are required to evaluate the contractors bid or proposal.

—*An estimate of the total number of respondents and the amount of time for an average respondent to respond:* 5,996 respondents, 20 hours average response time.

—*An estimate of the total public burden (in hours) associated with this collection:* 119,920 hours annually.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 16, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–9788 Filed 5–21–07; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Office on Violence Against Women; Agency Information Collection Activities: New Collection

ACTION: 30-Day Notice of Information Collection Under Review: Semi-annual Progress Report for the Technical Assistance Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 51, page 12634 on March 16, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 21, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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 agency's 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:* New collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Technical Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None yet. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 100 programs providing technical assistance as recipients under the Technical Assistance Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 100 respondents (Technical Assistance providers) approximately one hour to complete a semi-annual progress report twice a year. The semi-annual progress report for the Technical Assistance Program is divided into sections that pertain to the different types of activities in which Technical Assistance Providers are engaged.

The primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and their subgrantees to enhance the success of local projects they are implementing with VAWA grant funds. In addition, OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence, and stalking and to foster partnerships between organizations that have not traditionally worked together to address violence against women, such as faith- and community-based organizations.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the semi-annual progress report form is 200 hours. It will take approximately one hour for the grantees to complete the form twice a year.

If additional information is required contact: Lynn Bryant, Department Clearance Officer,U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 16, 2007.

Lynn Bryant,

Department Clearance Officer, PRA United States Department of Justice.

[FR Doc. E7–9793 Filed 5–21–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of charter renewal.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, the North American Agreement on Labor Cooperation (NAALC), and the Labor Provisions of U.S. Free Trade Agreements, the Secretary of Labor has determined that the renewal of the charter of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements is necessary and in the public interest. The committee shall provide its views to the Secretary of Labor through the Bureau of International Labor Affairs of the U.S. Department of Labor, which is the point of contact for the NAALC and the Labor Provisions of U.S. Free Trade Agreements. The committee is to be comprised of twelve members, four representing the labor community, four representing the business community, and four representing the public.

Purpose: In accordance with the provisions of the Federal Advisory Committee Act, Article 17 of the NAALC, Article 17.4 of the United States-Singapore Free Trade Agreement, Article 18.4 of the United States-Chile Free Trade Agreement, Article 18.4 of the United States-Australia Free Trade Agreement, Article 16.4 of the United States-Morocco Free Trade Agreement, Article 16.4 of the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR), and Article 15.4 of the United States-Bahrain Free Trade Agreement, the Secretary of Labor has determined that the renewal of the charter of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements is necessary and in the public interest.

The Bureau of International Labor Affairs is the point of contact within the U.S. Department of Labor for the NAALC and the labor provisions of the United States-Singapore, United States-Chile, United States-Australia Free Trade Agreements, United States-Morocco Free Trade Agreement, the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR), and the United States-Bahrain Free Trade Agreement.

The committee shall provide its views to the Secretary of Labor through the Bureau of International Labor Affairs of the U.S. Department of Labor on the implementation of the NAALC and the labor chapters of the United States-Singapore Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Australia Free Trade Agreement, United States-Morocco Free Trade Agreement, the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR), and the United States-Bahrain Free Trade Agreement. The committee may be asked to provide advice on labor provisions of other free trade agreements to which the United States may be a party or become a party. The committee should provide advice on issues within the scope of the NAALC and the labor provisions of the free trade agreements, including cooperative activities and the labor cooperation mechanism of each free trade agreement as established in the labor provisions and the corresponding annexes. The committee may provide advice on these and other matters as they arise in the course of administering the NAALC and the labor provisions of other free trade agreements to which the United States may be a party or become a party.

The committee is to be comprised of twelve members, four representing the labor community, four representing the business community, and four representing the public. Unless already employees of the United States Government, none of these members shall be deemed to be employees of the United States Government.

FOR FURTHER INFORMATION CONTACT: Celeste Helm, Division Chief, Division of Trade Agreement Administration and Technical Cooperation, Bureau of International Labor Affairs, U.S. Department of Labor, telephone (202) 693–4775.

Signed at Washington, DC this 16th day of May 2007.

James Carter,

Deputy Undersecretary, International Labor Affairs.

[FR Doc. E7–9778 Filed 5–21–07; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Notice of Meeting

AGENCY: U.S. National Commission on Libraries and Information Science (NCLIS).

SUMMARY: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Topics will include: (1) Digital Information; (2) Emergency Management, (3) Literacy; (4) Open Access and related topics.

Dates and Times: NCLIS Business Meeting—June 4, 9 a.m.–3 p.m.; June 5, 9 a.m.–12 p.m., 2007.

ADDRESSES: Room 642 (June 4–5), Madison Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–1099.

Status: Open meeting.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Madeleine McCain, Director of Operations, 1800 M Street, NW., Suite 350 North Tower, Washington, DC 20036, e-mail *mmccain@nclis.gov,* fax 202–606–9203 or telephone 202–606–9200.

FOR FURTHER INFORMATION CONTACT: Madeleine McCain, Director of Operations, U.S. National Commission on Libraries and Information Science, 1800 M Street, NW., Suite 350 North Tower, Washington, DC 20036, e-mail *mmccain@nclis.gov;* fax 202–606–9203 or telephone 202–606 9200.

Dated: May 17, 2007.

Madeleine C. McCain,

NCLIS Director of Operations.

[FR Doc. E7–9811 Filed 5–21–07; 8:45 am]

BILLING CODE 7528–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (07–037): NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Tuesday, June 12, 2007, 8 a.m. to 5 p.m. and Wednesday, June 13, 2007, 8 a.m. to 4 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Earth Science Division Update.
—Planning the Implementation of the Decadal Survey (Continuing Discussions).
—Technology Program Management Discussion.
—Review of the Fiscal Year 2007 Earth Science Performance Report.
—Compatibility of the Earth Science Objectives for the Lunar Architecture and the Decadal Survey.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign

nationals attending this meeting will be required to provide the following information no less than 5 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 5 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: May 16, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–9776 Filed 5–21–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, May 30, 2007.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7756B—Aircraft Accident Report—In-flight Separation of Right Wing, Flying Boat, Inc., doing business as Chalk's Ocean Airways Flight 101, Grumman G–73T, N2969, Port of Miami, Florida, December 19, 2005.

7883—Marine Accident Brief and Safety Recommendation Letters—Grounding of Hong Kong-Registered Container Ship New Delhi Express, Kill Van Kull Waterway, New York Harbor, April 15, 2006.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, May 25, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: Friday, May 18, 2007.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07–2565 Filed 5–18–07; 1:58 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–1151]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Renewal for Westinghouse Electric Corporation, Columbia Fuel Fabrication Facility, Columbia, SC

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8F42, Washington, DC 20555. *Telephone:* (301) 415–7249; *fax number:* (310) 415–5955; *e-mail: mta@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License SNM–1107 for the continued operation of the Westinghouse Electric Corporation, Columbia Fuel Fabrication Facility (CFFF) located near Columbia, South Carolina. This renewal would authorize the licensee to receive and possess nuclear materials at CFFF in order to fabricate and assemble nuclear fuel components under the provisions of 10 CFR part 70, Domestic Licensing of Special Nuclear Material. If approved, the renewed license term would be for 20 years. The NRC has prepared an environmental assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate. If approved, the renewed license would be issued following the publication of this Notice.

II. EA Summary

Proposed Action

The proposed action is to renew the SNM–1107 license for a 20-year period, thereby authorizing WEC to continue manufacturing nuclear fuel at CFFF. The current license authorizes WEC to receive, possess, use, and transfer special nuclear material at the CFFF in accordance with the requirements of 10 CFR part 70. The renewed license would provide the same continued authorization to WEC. WEC's request for the renewal was previously noticed in the **Federal Register** on December 29, 2005, (70 FR 249) with an opportunity to request a hearing. No hearing requests were received.

Need for the Proposed Action

CFFF is one of several facilities that fabricates fuel assemblies for commercial light-water cooled nuclear reactors. Continued production of the fuel assemblies is needed to meet the anticipated steady or increasing demand for electricity generated by these nuclear power reactors. WEC plans to continue to be a major supplier of this type of fuel through continued operations at the CFFF under its renewed NRC license.

Environmental Impacts of the Proposed Action

The NRC staff concluded that the proposed renewal, for a 20-year period, of license SNM–1107, involving the continued operations at the WEC CFFF, will not result in a significant impact to the environment. No significant impacts to site ecology are anticipated because of the proposed action. The proposed action will not adversely affect federal or state-listed threatened or endangered species nor other flora and fauna in the site vicinity. No significant impacts to regional historic and cultural resources are anticipated because of the proposed action. The license renewal request does not require altering undeveloped portions of the site. The proposed action can be viewed as a continuation of impacts and can be evaluated based on the previous impacts from past operations.

Airborne effluents released through stacks and liquid effluents released in the Congaree River are below and are anticipated to remain below regulatory limits for nonradiological and radiological contaminants. No significant impacts to air quality from radiological contaminants are anticipated because of the proposed action. The CFFF radiological gaseous emissions are within the 10 CFR part 20 limits. The levels of radioactive material in the discharged liquid effluent from CFFF are monitored and have historically remained below 10 CFR part 20 limits. Finally, doses to the general public have been a small fraction of the annual limit in 10 CFR 20.1301 and occupational exposures are also below the annual limit in 10 CFR 20.1201.

Agencies and Persons Consulted

The NRC staff consulted with other agencies regarding the proposed action. These agencies include the U.S. Fish and Wildlife Service (FWS), the South Carolina Department of Health and Environmental Control (SCDHEC), the South Carolina Department of Archives and History, i.e. the State Historic Preservation Office (SHPO), and the Catawba Indian Nation, i.e. the local Tribal Historic Preservation Office (THPO). These consultations were intended to ensure that the requirements of Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act were met and provided the designated state liaison agency the opportunity to comment on the proposed action.

Conclusion

The NRC staff concludes that the renewal of license SNM–1107 involving the continued operation of the CFFF site near Columbia will not result in a significant impact to the environment. The facility already exists, and no substantial changes to the facility or its operation are associated with the license renewal. The proposed action can be considered a continuation of impacts and was evaluated based on impacts from past operations. Gaseous emissions and liquid effluents are within regulatory limits for nonradiological and radiological components. Public and occupation radiological dose exposures are below 10 CFR part 20 regulatory limits.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for renewal and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document	ADAMS accession No.
License Renewal Application.	ML052990073
NRC Letter to THPO	ML063120174
NRC Letter to SHPO	ML063050373
NRC Letter to SCDHEC	ML063040417
NRC Letter to FWS	ML063060187
Request for Additional Information (RAI).	ML062020156
RAI Responses	ML061880362/ ML061460118
THPO letters to NRC	ML0634901270/ ML070710156
SHPO letter to NRC	ML070030536
SCDHEC letter to NRC	ML063610016
FWS letter to NRC	ML070050255
Environmental Assessment	ML070510647

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 27th day of April 2007.

For the U.S. Nuclear Regulatory Commission.

Gregory Suber,

Acting Chief, Environmental Review Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–9846 Filed 5–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

DATES: Weeks of May 21, 28, June 4, 11, 18, 25, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 21, 2007

There are no meetings scheduled for the Week of May 21, 2007.

Week of May 28, 2007—Tentative

Tuesday, May 29, 2007

1:30 p.m. NRC All Hands Meeting (Public Meeting). (*Contact:* Rickie Seltzer, 301–415–1728), Marriott Bethesda North Hotel, Salons A–E, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, May 30, 2007

9:25 a.m. Affirmation Session (Public Meeting) (Tentative):

a. USEC Inc. (American Centrifuge Plant), LBP–07–06 (Initial Decision Authorizing License), Geoffrey Sea Letter ''in preparation of late-filed contentions'' (Tentative).

b. Shieldalloy Metallurgical Corp. (Licensing Amendment Request for Decommissioning of the Newfield, New Jersey Facility), Docket No. 40–7102–MLA, Appeal of Loretta Williams from LBP–07–05 (Tentative).

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)—Materials (Public Meeting). (*Contact:* Duane White, 301–415–6272).

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

10:15 a.m. Discussion of Security Issues (Closed—Ex.1).

Thursday, May 31, 2007

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)—Reactors (Public Meeting). (*Contact:* Mark Tonacci, 301–415–4045).

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of June 4, 2007—Tentative

Thursday, June 7, 2007

1:30 p.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS). (Public Meeting). (*Contact:* Frank Gillespie, 301–415–7360).

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of June 11, 2007—Tentative

There are no meetings scheduled for the Week of June 11, 2007.

Week of June 18, 2007—Tentative

There are no meetings scheduled for the Week of June 18, 2007.

Week of June 25, 2007—Tentative

There are no meetings scheduled for the Week of June 25, 2007.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with

disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: May 17, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–2559 Filed 5–18–07; 11:28 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 27, 2007, to May 10, 2007. The last biweekly notice was published on May 8, 2007 (72 FR 26173).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 12, 2006.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.3.1.1.8 and SR 3.3.1.3.2 to increase the interval between local power range monitor (LPRM) calibrations from 1000 megawatt-days per ton (MWD/T) average core exposure to 2000 MWD/T average core exposure. The proposed increase in the interval between required LPRM calibrations is acceptable due to improvements in fuel analytical bases, core monitoring processes, and nuclear instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises the surveillance interval for the LPRM calibration from 1000 MWD/T average core exposure to 2000 MWD/T average core exposure. Increasing the frequency interval between required LPRM calibrations is acceptable due to improvements in fuel analytical bases, core monitoring processes, and nuclear instrumentation. Therefore, the revised surveillance interval continues to ensure that the LPRM detector signal will continue to be adequately calibrated.

This change will not alter the operation of process variables, structures, systems, or components as described in the CPS [Clinton Power Station] Updated Safety Analysis Report (USAR). The proposed change does not alter the initiation conditions or operational parameters for the LPRM subsystem and there is no new equipment introduced by the extension of the LPRM calibration interval. The performance of the Average Power Range Monitor (APRM) system, Oscillation Power Range Monitor (OPRM) system, Rod Control and Information System (RC&IS) and 3D MONICORE core monitoring system is not significantly affected by the proposed surveillance interval increase. The proposed LPRM calibration interval extension will have no significant effect on the Reactor Protection System (RPS) instrumentation accuracy during power maneuvers or transients and will therefore not significantly affect the performance of the RPS. As such, the probability of occurrence for a previously evaluated accident is not increased.

The radiological consequences of an accident can be affected by the thermal limits existing at the time of the postulated accident; however, LPRM chamber exposure has no significant affect on the calculated thermal limits since LPRM accuracy does not

significantly deviate with exposure. For the LPRM extended calibration interval, the total nodal power uncertainty remains less than the uncertainty assumed in the General Electric BWR [boiling water reactor] Thermal Analysis Basis (GETAB) safety limit, maintaining the accuracy of the thermal limit calculation. Therefore, the thermal limit calculation is not significantly affected by LPRM calibration frequency, and thus the radiological consequences of any accident previously evaluated are not increased.

Based on the above information, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The performance of the APRM, OPRM, RC&IS and 3D MONICORE systems is not significantly affected by the proposed LPRM surveillance interval increase. The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed amendment does not change or introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no impact on equipment design or fundamental operation, and there are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed LPRM surveillance interval increase. The performance of the APRM, OPRM, RC&IS and 3D MONICORE systems is not significantly affected by the proposed change. The proposed LPRM calibration interval extension will have no significant effect on RPS instrumentation accuracy during power maneuvers or transients and will therefore not significantly affect the performance of the RPS. The margin of safety can be affected by the thermal limits existing at the time of the postulated accident; however, uncertainties associated with LPRM chamber exposure have no significant effect on the calculated thermal limits. The thermal limit calculation is not significantly affected since LPRM sensitivity with exposure is well defined. LPRM accuracy remains within the total nodal power uncertainty assumed in the GETAB, therefore maintaining thermal limits and the safety margin. The proposed change does not affect safety analysis assumptions or initial conditions and therefore, the margin of safety in the original safety analyses is maintained.

Based on the above information, the proposed change does not involve a significant reduction in a margin of safety .

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: January 26, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' Table 3.3.1.1–1, ''Reactor Protection System Instrumentation,'' Function 8, ''Scram Discharge Volume Water Level—High,'' item b, ''Float Switches,'' by replacing Surveillance Requirement (SR) 3.3.1.1.9 with SR 3.3.1.1.12. This change will effectively revise the surveillance frequency for the scram discharge volume (SDV) level float switch from every 92 days to every 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change involves a change in the surveillance frequency for the SDV water level float switch channel functional test. The proposed TS change does not physically impact the plant. The proposed change does not affect the design of the SDV water level instruments, the operational characteristics or function of the instruments, the interfaces between the instruments and the RPS, or the reliability of the SDV water level instruments. The proposed TS change does not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. As noted in the Bases to TS 3.3.1.1, even though the two types of SDV Water Level—High Functions are an input to the RPS logic, no credit is taken for a scram initiated from these functions for any of the design basis accidents or transients evaluated in the CPS [Clinton Power Station] Updated Safety Analysis Report (USAR). An inoperable SDV water level instrument is not considered as an initiator of any analyzed event. The proposed TS change does not impact the usefulness of the SRs in evaluating the operability of required systems and components, or the way in which the surveillances are performed. In addition, the frequency of surveillance testing is not considered an initiator of any analyzed accident, nor does a revision to the frequency introduce any accident initiators. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a previously analyzed event are dependent on the initial conditions assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The consequences of a previously evaluated accident are not significantly increased by the proposed change. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in the core damage frequency as well as the total population dose rate. Historical review of surveillance test results and associated maintenance records did not find evidence of failures that would invalidate the above conclusions.

Therefore, the proposed change does not alter the ability to detect and mitigate events and, as such, does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed TS change does not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no change being made to the parameters within which CPS is operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. The change does not alter assumptions made in the safety analysis. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As a result, no new failure modes are being introduced. The way surveillance tests are performed remains unchanged. A historical review of surveillance test results and associated maintenance records indicated there was no evidence of any failures that would invalidate the above conclusions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The

proposed TS change involves a change in the surveillance frequency for the SDV water level float switch channel functional test. There is no change in the design of the affected systems, no alteration of the setpoints at which alarms or actions are initiated, and no change in plant configuration from original design. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not result in any hardware changes or in any changes to the analytical limits assumed in accident analyses. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The proposed change does not significantly impact any safety analysis assumptions or results.

AmerGen has conducted a risk assessment to determine the impact of a change to the SDV water level instrument surveillance frequency from the current once every 92 days to once every 24 months for the risk measures of Core Damage Frequency (CDF) and Large Early Release Frequency (LERF). This assessment indicated that the proposed CPS surveillance frequency extension has a very small change in risk to the public and is an acceptable plant change from a risk perspective.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: April 30, 2007.

Description of amendment request: The amendment will revise the technical specifications to use other narrow range containment sump water level instrumentation rather than the existing redundant instruments to allow installation of new emergency core cooling system recirculation sumps strainers as specified in the Nuclear Regulatory Commission Generic Letter 2004–02, *Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized Water Reactors.*

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated, and it does not change an accident previously evaluated in the Final Safety Analysis Report (FSAR). The use of other narrow range containment sump water level instruments rather than the existing narrow range containment recirculation sump water level instruments, which have level elements located inside the emergency core cooling system (ECCS) recirculation sumps, will continue to ensure that acceptable narrow range containment sump water level monitoring is maintained during post-accident conditions. Operation of the containment spray and residual heat removal systems is unchanged as a result of the proposed amendment. The level elements associated with the existing narrow range containment recirculation sump water level instruments are not accident initiators, and the FSAR does not credit these level elements in the dose analyses for loss-of-coolant accidents. The proposed amendment does not adversely affect the ability of structures, systems, or components (SSCs) to perform their design function. SSCs required for post-accident recirculation remain capable of performing their design functions.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated, and it does not change an accident previously evaluated in the Final Safety Analysis Report (FSAR). The use of other narrow range containment sump water level instruments rather than the existing narrow range containment recirculation sump water level instruments supports the replacement of the existing containment recirculation sump screens with new strainers in accordance with the response to Generic Letter 2004–02, *Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors.* The proposed amendment does not change the design function or the operation of the containment spray and residual heat removal systems associated with the containment recirculation sumps. The proposed amendment does not create new failure mechanisms or malfunctions or accident initiators. The proposed amendment will continue to ensure that acceptable narrow range containment sump water level monitoring is maintained during post-accident conditions, and that SSCs required for post-accident recirculation remain capable of performing their design functions.

Therefore, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed amendment does not adversely affect a plant safety limit or a limiting safety system setting, and does not alter a design basis limit for a parameter evaluated in the FSAR. The use of other narrow range containment sump water level instruments, which meet the requirements of the FSAR, rather than the existing narrow range containment recirculation sump water level instruments, will continue to ensure that acceptable narrow range containment sump water level monitoring is maintained during post-accident conditions. The proposed amendment does not adversely affect the ability of SSCs to perform their design functions or the reliability of equipment to mitigate accidents evaluated in the FSAR. The proposed amendment will continue to ensure that SSCs required for post-accident recirculation remain capable of performing their design functions.

Therefore, this amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 24, 2007.

Description of amendment request: The proposed change will add Optimized ZIRLO™ as an acceptable fuel rod cladding material in the Waterford Steam Electric Station, Unit 3 (Waterford 3), Technical Specification (TS) 5.3.1, ''Fuel Assemblies.'' TS 5.3.1 currently identifies, in part, Zircaloy or ZIRLO™ fuel rod cladding as the allowable fuel rod cladding material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The NRC-approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' prepared by Westinghouse Electric Company, LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO™. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding has been shown to meet all 10 CFR 50.46 design criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical report WCAP–12610–P–A and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO™. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO™, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO™. Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO™ for all normal operating and accident scenarios, including both loss-of-coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard ZIRLO™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will be performed prior to the use of fuel assemblies with fuel rods containing Optimized ZIRLO™. These LOCA analyses will demonstrate that the acceptance criteria of 10 CFR 50.46 will be satisfied when Optimized ZIRLO™ fuel rod cladding is implemented.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Nine Mile Point Nuclear Station (NMPNS), LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP2), Oswego County, New York

Date of amendment request: March 30, 2007.

Description of amendment request: The proposed amendment would change the NMP2 Technical Specifications to reflect an expanded operating domain resulting from implementation of Average Power Range Monitor/Rod Block Monitor/Technical Specifications/Maximum Extended Load Line Analysis (ARTS/MELLLA). The Average Power Range Monitor (APRM) flow-biased simulated thermal power Allowable Value would be revised to permit operation in the MELLLA region. The current flow-biased Rod Block Monitor (RBM) would be replaced by a power dependent RBM, which also would require new Allowable Values. The flow-biased APRM simulated thermal power setdown requirement would be replaced by more direct power and flow dependent thermal limits administration. The Surveillance Requirement for the standby liquid control (SLC) system would be revised to require each SLC pump to deliver required flow at a discharge pressure ≥1325 psig in lieu of ≥1320 psig; the SLC relief valve setpoint would be increased from 1394 psig to 1400 psig. Finally, the proposed amendment employs a new model for performing the anticipated transients without scram (ATWS) analysis for ARTS/MELLLA conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the APRM flow-biased simulated thermal power setdown requirement and substitutes power and flow dependent adjustments to the Minimum Critical Power Ratio (MCPR) and Linear Heat Generation Rate (LHGR) thermal limits. Thermal limits will be determined using NRC [Nuclear Regulatory Commission] approved analytical methods. The proposed change will have no effect upon any accident initiating mechanism. The power and flow dependent adjustments will ensure that the MCPR safety limit will not be violated as a result of any Anticipated Operational Occurrence (AOO), and that the fuel thermal and mechanical design bases will be maintained.

The proposed change also expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased simulated thermal power Allowable Value and the replacement of the current flow-biased RBM with a new power dependent RBM. The APRM and RBM are not involved in the initiation of any accident, and the APRM flow-biased simulated thermal power function is not credited in any NMP2 safety analyses. The proposed change will not introduce any initial conditions that would result in NRC approved criteria being exceeded and the APRM and RBM will remain capable of performing their design functions.

The Standby Liquid Control (SLC) System is provided to mitigate anticipated transients without scram (ATWS) events and, as such, is not considered an initiator of an ATWS event or any other analyzed accident. The revised SLC discharge pump test pressure neither reduces the ability of the SLC system to respond to or mitigate an ATWS event nor increases the likelihood of a system malfunction that could increase the consequences of an accident.

Based on the above discussion, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change eliminates the APRM flow-biased simulated thermal power setdown requirement and substitutes power and flow dependent adjustments to the MCPR and LHGR thermal limits. Because the thermal limits will continue to be met, no analyzed transient event will escalate into a new or different type of accident due to the initial starting conditions permitted by the adjusted thermal limits.

The proposed change also expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased simulated thermal power Allowable Value and the replacement of the current flow-biased RBM with a new power dependent RBM. Changing the formulation for the APRM flow-biased simulated thermal power Allowable Value and changing from a flow-biased RBM to a power dependent RBM does not change their respective functions and manner of

operation. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different [kind] of accident. While not credited, the APRM flow-biased simulated thermal power Allowable Value and associated scram trip setpoint will continue to initiate a scram to protect the MCPR safety limit. The power dependent RBM will prevent rod withdrawal when the power dependent RBM rod block setpoint is reached. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed change. In addition, operating within the expanded power flow map will not require any systems, structures or components to function differently than previously evaluated and will not create initial conditions that would result in a new or different kind of accident from any accident previously evaluated.

The proposed change to the SLC pump test discharge pressure is consistent with the functional requirements of the ATWS rule (10 CFR 50.62). This proposed change does not involve the installation of any new or different type of equipment, does not introduce any new modes of plant operation, and does not change any methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates the APRM flow-biased simulated thermal power setdown requirement and substitutes power and flow dependent adjustments to the MCPR and LHGR thermal limits. Replacement of the APRM setdown requirement with power and flow dependent adjustments to the MCPR and LHGR thermal limits will continue to ensure that margins to the fuel cladding Safety Limit are preserved during operation at other than rated conditions. Thermal limits will be determined using NRC approved analytical methods. The power and flow dependent adjustments will ensure that the MCPR safety limit will not be violated as a result of any AOO, and that the fuel thermal and mechanical design bases will be maintained.

The proposed change also expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased simulated thermal power Allowable Value and the replacement of the current flow-biased RBM with a new power dependent RBM. The APRM flow-biased simulated thermal power Allowable Value and associated scram trip setpoint will continue to initiate a scram to protect the MCPR safety limit. The RBM will continue to prevent rod withdrawal when the power dependent RBM rod block setpoint is reached. The MCPR and LHGR thermal limits will be developed to ensure that fuel thermal mechanical design bases remain within the licensing limits during a control rod withdrawal error event and to ensure that the MCPR safety limit will not be violated as a result of a control rod withdrawal error event. Operation in the expanded operating domain will not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. AOOs and postulated accidents within the expanded operating domain will continue to be evaluated using NRC approved methods. The 10 CFR 50.46 acceptance criteria for the performance of the ECCS [emergency core cooling system] following postulated LOCAs [loss-of-coolant accidents] will continue to be met.

The proposed change to the SLC pump discharge test pressure does not alter the results of any accident analyses. The proposed change is consistent with the functional requirements of the ATWS rule (10 CFR 50.62). The ability of the SLCS to respond to and mitigate an ATWS event is not affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: April 17, 2007.

Description of amendment requests: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant-specific technical specifications (TS), to strengthen TS requirements regarding control room envelope (CRE) habitability by changing the action and surveillance requirements associated with the limiting condition for operation operability requirements for the CRE emergency ventilation system, and by adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS change are appropriate conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. The proposed revision to the TS and associated Bases is consistent with STS as revised by TS Task Force (TSTF)–448, Revision 3, ''Control Room Envelope Habilitability.''

The proposed amendment would revise the TS Improvement To Modify Requirements Regarding CRE Habitability using the Consolidated Line Item Improvement Process, based on the NRC-approved to TSTF–448, Revision 3. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments adopting TSTF–448, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the following NSHC determination in its application dated April 17, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a

significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Thomas G. Hiltz.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 28, 2007.

Brief description of amendments: The proposed amendment request would revise the language of Technical Specification (TS) 3.7.1.2, ''Auxiliary Feedwater System,'' Action b from ''MODE 3 may be entered with an inoperable turbine-driven auxiliary feedwater pump for the purposes of performing Surveillance Requirement 4.7.1.2.1a.2'' to ''MODE 3 may be entered with an inoperable turbine-driven auxiliary feedwater pump.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed deletion of the existing words in TS 3.7.1.2 Action b is an administrative change that will clarify the Licensing Basis for the turbine-driven auxiliary feedwater pump. Since this change does not change the Licensing Basis for TS 3.7.1.2, this change cannot affect the probability or consequence of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed deletion of the existing words in TS 3.7.1.2 Action b is an administrative change that will clarify the Licensing Basis for the turbine-driven auxiliary feedwater pump. Since this change does not change the Licensing Basis for TS 3.7.1.2, this change cannot affect the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed deletion of the existing words in TS 3.7.1.2 Action b is an administrative change that will clarify the Licensing Basis for the turbine-driven auxiliary feedwater pump. Since this change does not change the Licensing Basis for TS 3.7.1.2, this change cannot involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Thomas G. Hiltz.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: April 5, 2007.

Description of amendment request: The proposed amendments would revise technical specifications (TSs) to change the surveillance frequency for the turbine trip functions of the reactor trip system instrumentation. The current frequency is prior to each reactor startup and the proposed change will revise this to be prior to exceeding the Permissive P–9 interlock whenever the unit has been in hot standby. The proposed change is consistent with NRC-approved Technical Specification Task Force Traveler TSTF–311, as incorporated into the latest revision of Standard TSs (NUREG–1431, Revision 3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the surveillance frequency for reactor trip functions from a turbine trip event. These changes do not alter these functions physically or how they are maintained. Delaying the performance of the surveillance up to the P–9 interlock will continue to ensure operability of the function before the plant is in a condition that would benefit from the associated actuation. The incorporation of a surveillance frequency that is consistent with the applicability for the function eliminates potential misapplication of the TS requirements. The frequency changes support turbine trip operability during plant startup and are consistent with their ability to perform the reactor trip functions. Since these changes will not affect the ability of these trips to perform the initiation of reactor trips when appropriate, the off-site dose consequences for an accident will not be impacted. Equally, the potential to cause an accident is not affected because no plant system or component has been altered by the proposed changes. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes only affect the surveillance frequency requirement for the turbine trip functions. This does not affect

any physical features of the plant or the manner in which these functions are utilized. The proposed surveillance frequency will require the functions to be verified operable before the turbine trip functions are applicable and able to perform their trip functions. Delaying the performance of the surveillance up to the P–9 interlock will continue to ensure operability of the function before the plant is in a condition that would benefit from the associated actuation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter any plant setpoints or functions that are assumed to actuate in the event of postulated accidents. In fact, the proposed changes do not alter any plant feature and only alter the requirements for when the function must be verified to be operable through surveillance testing. The proposed changes ensure the functionality of the turbine trips when assumed in the analysis for accident mitigation. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 19, 2006.

Brief description of amendments: The proposed amendment request would revise the requirements in Technical Specification (TS) 5.5.8, ''Inservice Testing Program,'' to update references to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI, as the source of requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves, and address the applicability of Surveillance Requirement 3.0.2 to other normal and accelerated frequencies specified as 2 years or less in the Inservice Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed [change] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise TS 5.5.8, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes revise TS 5.5.8, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f) regarding the inservice testing of pumps and valves. The proposed changes incorporate revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, these proposed changes do not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise TS 5.5.8, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves. The proposed changes incorporate revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Thomas G. Hiltz.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209,

(301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Consumers Energy Company, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc., Docket No. 50–155, Big Rock Point Facility, Charlevoix County, Michigan

Date of application for amendment: October 31, 2006.

Brief description of amendment: The license amendment reflects the changes in ownership and operating authority for the Big Rock Facility and its Independent Spent Fuel Storage Installation.

Date of issuance: April 11, 2007.

Effective date: As of the date of issuance.

Amendment No.: 127.

Facility Operating License No. DPR–06: The license amendment reflects the changes in ownership and operating authority for the Big Rock Facility and its Independent Spent Fuel Storage Installation.

Date of initial notice in ***Federal Register:*** January 30, 2007 (72 FR 4302–4303). The Commission's related evaluation of the amendment is contained in a safety evaluation report dated April 6, 2007, which is accessible to members of the public through ADAMS (Accession Number ML070920385).

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: January 10, 2007, as supplemented by letters dated April 5 and 27, 2007.

Brief description of amendment: The amendment modifies the emergency diesel generators short-time load testing requirements.

Date of issuance: May 1, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 191.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2007 (72 FR 5303). The supplemental letters provided clarifying information that did not expand the scope of the original application or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2007.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 11, 2006.

Brief description of amendments: The amendments revised an organizational description in the Technical Specification Section 5.2.1, ''Onsite and Offsite Organizations.'' The change revises the title of Executive Vice President to Group Vice President to reflect title changes made by the licensee following the indirect transfer of the facility operating licenses. The indirect transfer was reviewed and approved by the NRC. This change is solely administrative in nature.

Date of issuance: April 13, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 239, 221.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: March 13, 2007 (72 FR 11387). The Commission's related evaluation, final no significant hazards consideration finding, and State consultation of the amendments is contained in a Safety Evaluation dated April 13, 2007.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 8, 2007, as supplemented March 27, April 13, and May 3, 2007.

Brief description of amendments: The amendments revise the McGuire Nuclear Station, Units 1 and 2, Technical Specification 3.5.2.8, and the associated Bases and authorize changes to the Updated Final Safety Analysis Report (USFAR) concerning modifications to the emergency core cooling system sump.

Date of issuance: May 4, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 240, 222.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications and authorize changes to the UFSAR.

Date of initial notice in ***Federal Register***: March 19, 2007 (72 FR 12835).

The supplements dated March 27, April 13, and May 3, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation, final no significant hazards finding, and state consultation of the amendments are contained in a Safety Evaluation dated May 4, 2007.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 19, 2006, as supplemented by letter dated February 28, 2007.

Brief description of amendment: The amendment revised River Bend Station (RBS), Unit 1, Technical Specifications (TS) Surveillance Requirement (SR) 3.6.1.3.5 to replace the currently specified frequency for leak testing containment purge supply and exhaust isolation valves with resilient seal materials with a requirement to test these valves in accordance with the RBS's Primary Containment Leakage Rate Testing Program. RBS's Primary Containment Leakage Rate Testing Program is implemented in accordance with the Title 10 of the *Code of Federal Regulations*, Part 50, Appendix J, Option B, and Regulatory Guide (RG) 1.163, ''Performance-Based Containment Leak Test Program,'' dated September 1995. RG 1.163 allows a nominal test interval of 30 months for containment purge and vent valves.

Date of issuance: May 3, 2007.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 152.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 24, 2006 (71 FR 62310). The supplement dated February 28, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2007.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: May 31, 2005, as supplemented by letters dated February 8, 2006, and January 5, February 13, February 22, and March 22, 2007.

Brief description of amendment: The amendment modifies Technical Specification (TS) Sections 3.8.1, ''AC [Alternating Current] Sources—Operating,'' 3.8.4, ''DC [Direct Current] Sources—Operating,'' 3.8.5, ''DC Sources—Shutdown,'' 3.8.6, ''Battery Cell Parameters,'' and 5.5, ''Programs and Manuals.'' The change incorporates clarifying requirements in surveillance testing of diesel generators and new actions for an inoperable battery charger. The change includes a revision to the Administrative Program to be consistent with Institute of Electrical and Electronics Engineers Standard 450–2002, and changes consistent with TS Task Force (TSTF) Traveler TSTF–360, Revision 1, ''DC Electrical Rewrite,'' and TSTF–283, Revision 3, ''Modify Section 3.8 Mode Restriction Notes.''

Date of issuance: May 1, 2007.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 204.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 27, 2007 (72 FR 8803). The supplemental letters dated February 8, 2006, and January 5, February 13, February 22, and March 22, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts.

Date of amendment request: October 18, 2005, as supplemented by letter dated February 23, 2007.

Description of amendment request: The proposed amendment revised applicability requirements related to single control rod withdrawal allowances in shutdown modes. The amendment also corrected a typographical error and administratively relocated the existing TS 3/4.10.D, ''Multiple Control Rod Removal,'' to TS 3/4.14.E to be consistent with the intent and presentation of special operations.

Date of issuance: April 25, 2007.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment No.: 228.

Facility Operating License No. DPR–35: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 3, 2006 (71 FR 148). The February 23, 2007, supplemental letter provided additional information that clarified the application, but did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendments: January 16, 2007, as supplemented by letter dated April 10, 2007.

Brief description of amendment: The amendment revises the values of the safety limit minimum critical power ratio (SLMCPR) in the Quad Cities Nuclear Power Station (Quad Cities), Unit 1, Technical Specification (TS) Section 2.1.1, ''Reactor Core SLs [Safety Limits].'' Specifically, the proposed change would require that for Unit 1, the minimum critical power ratio shall be greater than or equal to 1.11 for two recirculation loop operation, or greater than or equal to 1.13 for single recirculation loop operation. This change is needed to support the next cycle of operation for Quad Cities, Unit 1.

Date of issuance: May 2, 2007.

Effective date: As of the date of issuance and shall be implemented prior to startup from Q1R19 Refueling Outage.

Amendment No.: 234.

Renewed Facility Operating License No. DPR–29: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** March 13, 2007 (71 FR 11388). The supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 2, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: February 14, 2006, as supplemented by letters dated October 17, 2006, and February 8, 2007.

Brief description of amendment: The amendment revised Perry Nuclear Power Plant, Unit No. 1, Technical Specifications (TSs) to change the frequency of the Mode 5 Intermediate Range Monitoring Instrumentation CHANNEL FUNCTIONAL TEST contained in TS 3.3.1.1 from 7 days to 31 days.

Date of issuance: April 27, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 141.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** March 28, 2006 (71 FR 15484) The October 17, 2006 and February 8, 2007 supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: November 21, 2005, as supplemented by letter dated February 22, 2007.

Brief description of amendment: This amendment revised the acceptance criteria of technical specification (TS) surveillance requirements associated with TS 3.8.1, to modify the emergency diesel generator start tests to provide minimum voltage and frequency limits and clarified other limits as steady state parameters.

Date of issuance: April 30, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 142.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** January 17, 2006 (71 FR 2591) The February 22, 2007, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2007.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: April 27, 2006, as supplemented December 5, 2006 and March 1, 2007.

Brief description of amendments: These amendments revised the existing steam generator tube surveillance program to be consistent with the Technical Specification Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

Date of issuance: April 27, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos: 233 and 228.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 18, 2006 (71 FR 40748). The supplements dated December 5, 2006, and March 1, 2007, provided additional information clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 2007.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: June 6, 2006.

Brief description of amendments: The amendments revise information in the Final Safety Analysis Report (FSAR) regarding the reactor pressure vessel Charpy upper shelf energy (USE) requirements of Title 10 of the *Code of Federal Regulations* Part 50, Appendix G, Section IV.A.1.c. The change updates the analysis for satisfying the RPV Charpy USE requirements through the end of the current operating licenses.

Date of issuance: May 10, 2007.

Effective date: As of the date of issuance and shall be incorporated into the FSAR during the next update of the FSAR, as required by 10 CFR 50.71(c).

Amendment Nos.: 227 and 232.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revise the Final Safety Analysis Report and the Licenses.

Date of initial notice in ***Federal Register:*** July 18, 2006 (71 FR 40750).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated May 10, 2007.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: May 31, 2006.

Brief description of amendments: The amendments correct administrative errors in the SSES 1 and 2 Technical Specifications (TSs) by adding a logical ''AND'' connector in Condition B of TS 3.8.1 for SSES 1, ''AC Sources—Operating,'' and correct the routing of Interstate Route 80 on Figure 4.1–2 of TSs 4.1.2, ''Low Population Zone,'' for SSES 1 and 2.

Date of issuance: April 26, 2007.

Effective date: As of the date of issuance and to be implemented within 30 days.

Amendment Nos.: 243 and 221.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the TSs and License.

Date of initial notice in ***Federal Register:*** December 19, 2006 (71 FR 75996).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 2007.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: November 15, 2006 January 11, 2007, as supplemented by letters dated January 11, and April 24, 2007.

Description of amendment request: The amendments revised the Fire Protection License Condition numbers (13), (14), and (7) for Units 1, 2, and 3, respectively, to accommodate operation.

Date of issuance: April 25, 2007.

Effective date: Date of issuance, to be implemented within 30 days.

Amendment Nos.: 271, 300, and 259.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register:*** December 19, 2006 (71 FR 76000). The supplements dated January 11, and April 24, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2007.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 22, 2006, supplemented by letter dated September 12, 2006.

Brief description of amendments: The amendments revised the Technical Specification (TS) 3.8.1 entitled, ''AC Sources—Operating.'' Specifically, the proposed change would revise the completion time for TS 3.8.1, Condition F, Required Action F.1 from 12 hours to 24 hours.

Currently, TS 3.8.1, Condition F requires that an inoperable safety injection (SI) sequencer must be restored to operable status within 12 hours. If this completion time is not met, Condition G becomes applicable and the plant must be shutdown to at least Mode 3 within the following 6 hours. The proposed change to the completion time for TS 3.8.1, Condition F, Required Action F.1 provides more time to complete necessary repairs and required post-work testing to restore an inoperable SI sequencer to operable status prior to commencing a plant shutdown to Mode 3.

Date of issuance: April 27, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: NPF–87—138, NPF–89—138.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments

revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** March 28, 2007 (72 FR 14623).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 2007.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 7, 2006.

Brief description of amendment: The amendment deleted Required Action D.1.2 in Technical Specification (TS) 3.7.10, ''Control Room Emergency Ventilation System (CREVS),'' and Required Action C.1.2 in TS 3.7.11, ''Control Room Air Conditioning System (CRACS).'' For TS 3.7.13, ''Emergency Exhaust System (EES),'' the amendment also deletes the phrase ''in MODE 1, 2, 3, or 4'' from Condition A (one EES train inoperable) and revised Condition D to state the following: ''Required Action and associated Completion Time of Condition A not met during movement of irradiated fuel assemblies in the fuel building.''

Date of issuance: May 9, 2007.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 184.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 1, 2006 (71 FR 43536)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2007.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: January 31, 2007.

Brief Description of amendments: These amendments revised the Technical Specification surveillance requirements for addressing a missed surveillance, and is consistent with the Nuclear Regulatory Commission approved Revision 6 of Technical Specification Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF–358, ''Missed Surveillance Requirements.''

Date of issuance: May 3, 2007.

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 253, 252.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments changed the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** February 27, 2007 (72 FR 8806).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 3, 2007.

Dated at Rockville, Maryland, this 11th day of May, 2007.

For the Nuclear Regulatory Commission.

Timothy McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–9523 Filed 5–21–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Supplements to Revision 9 of NUREG–1021, ''Operator LicensingExamination Standards for Power Reactors,'' and to Revision 2 of NUREG–1122 [and –1123] ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized [Boiling] Water Reactors''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed supplements for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued for public comment draft supplements to Revision 9 of NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' and to Revision 2 of NUREG–1122 [and –1123] ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized [Boiling] Water Reactors.'' These NUREGs provide policy and guidance for the development, administration, and grading of examinations used for licensing operators at nuclear power plants pursuant to the Commission's regulations in 10 CFR Part 55, ''Operators'' Licenses.'' NUREG–1021 also provides guidance for maintaining operators' licenses, and for the NRC to conduct requalification examinations, when necessary.

The draft supplement to Revision 9 of NUREG–1021 includes a number of minor changes that are intended to: (1) Clarify licensed operator medical requirements, including the use of prescription medications; (2) clarify the use of surrogate operators during dynamic simulator scenarios; (3) clarify the selection process for generic knowledge and ability (K/A) statements; (4) qualify the NRC review of post-examination comments; (5) provide additional guidance for maintaining an active license (watchstander proficiency) and license reactivation; and (6) conform with proposed updates to NUREGs–1122 and –1123, which are concurrently available for public comment. The proposed changes are summarized in the Record of Proposed Changes, and identified by highlight/redline and strikeouts.

The draft supplements to NUREGs–1122 and –1123 propose to reword and reorganize Section 2, ''Generic Knowledge and Abilities,'' and add a new K/A topic to Section 4, ''Emergency/Abnormal Plant Evolutions,'' to address generator voltage and electric grid disturbances. The proposed changes are summarized in the Record of Changes, and identified by highlight/redline and strikeouts.

Availability: The draft supplements are available electronically via the NRC's Public Electronic Reading Room (*http://www.nrc.gov/public-involve/doc-comment.html*) and in the NRC's Public Document Room located at 11555 Rockville Pike, Rockville, Maryland. If you do not have electronic access to NRC documents, single copies of the draft supplements are available upon request, by contacting David S. Muller by phone at (301) 415–1412 or by e-mail at *dsm3@nrc.gov*.

DATES: Comments must be provided by July 23, 2007. Comments received after this date will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

ADDRESSES: Submit written comments to the Chief, Rules, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and specify the report number in your comments. You may also provide comments via the NRC's Public Electronic Reading Room by following the instructions at *http://www.nrc.gov/public-involve/doc-comment/form.html*.

FOR FURTHER INFORMATION CONTACT: David S. Muller, Operator Licensing and Human Performance Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001. *Telephone:* (301) 415–1412; *e-mail*: *dsm3@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of May 2007.

For the Nuclear Regulatory Commission.

Nancy L. Salgado,

Chief, Operator Licensing and Human Performance Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E7–9848 Filed 5–21–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. NAFTA/DS–USA–Mex–2007–2008–01]

NAFTA Dispute Settlement Proceeding by Mexico Regarding U.S. Measures Affecting Sweetener Trade With Mexico and Related NAFTA Dispute Settlement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on March 15, 2007, Mexico requested consultations, under Article 2006 of the North American Free Trade Agreement (''NAFTA''), regarding certain U.S. measures, proposed measures, and actions alleged to be affecting the markets for sugar, syrup goods and high fructose corn syrup or alleged to be inconsistent with NAFTA dispute settlement obligations. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before June 4, 2007 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0710@ustr.eop.gov*, with ''U.S. Sugar Measures (USA–Mex–2007–2008–01)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Amy A. Karpel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that Mexico has requested consultations pursuant to Chapter Twenty of the NAFTA ''Institutional Arrangements and Dispute Settlement Procedures'' (Chapter Twenty).

Major Issues Raised by Mexico

On March 15, 2007, Mexico requested consultations with the United States regarding certain U.S. measures, proposed measures, and actions alleged to be affecting the markets for sugar, syrup goods and high fructose corn syrup or alleged to be inconsistent with NAFTA dispute settlement obligations. The measures at issue include, but are not limited to: (i) The alleged refusal of the United States to grant Mexican origin sugar access to the U.S. market in accordance with the provisions of Annex 703.2 and (ii) the alleged U.S. declining to appoint panelists and otherwise refusing to cooperate in the establishment of a panel and the operation of the dispute settlement mechanism of Chapter Twenty.

Mexico cites to the provisions of Chapters Three, Seven and Twenty of the NAFTA relating to trade in sugar, syrup goods and high fructose corn syrup.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0710@ustr.eop.gov*, with ''U.S. Sugar Measures (USA–Mex–2007–2008–01)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and ''Business Confidential'' must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if an arbitral panel is convened, the U.S. submissions, the submissions or non-confidential summaries of submissions received from other participants in the dispute; and the report of the panel. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket NAFTA/DS–USA–Mex–2007–2008–01 U.S. Sugar Measures Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 07–2554 Filed 5–21–07; 8:45 am]

BILLING CODE 3190–W7–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Regulatory Commission

TIME AND DATE: Tuesday, May 22, 2007 at 10 a.m.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel matters—selection of Inspector General.

2. Docket No. R2006–1—reconsideration of Standard Mail recommendation.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6818.

Dated: May 17, 2007.

Steven W. Williams,

Secretary.

[FR Doc. 07–2556 Filed 5–17–07; 4:49 pm]

BILLING CODE 7710–FW–M

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:

Rule 303, SEC File No. 270–450, OMB Control No. 3235–0505.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the 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 extension and approval.

Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 303 of Regulation ATS describes the record preservation requirements for alternative trading systems that are not national securities exchanges.

Alternative trading systems that register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries and order information. Such alternative trading systems are also required to preserve records of any notices communicated to subscribers, a copy of the system's standards for granting access to trading and any documents generated in the course of complying with the capacity, integrity and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS. Rule 303 also describes how such records must be kept and how long they must be preserved.

The information contained in the records required to be preserved by the Rule will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. Without the data required by the proposed Rule, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 65 respondents.

An estimated 65 respondents will spend approximately 260 hours per year (65 respondents at 4 burden hours/respondent) to comply with the record preservation requirements of Rule 303. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $22,500.00 per year (260 burden hours multiplied by $86.54/hour; a slight discrepancy is due to arithmetic rounding).

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Comments should be directed 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.* Comments must be submitted within 60 days of this notice.

Dated: May 16, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9806 Filed 5–21–07; 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:

Rule 301 and Forms ATS and ATS–R, SEC File No. 270–451, OMB Control No. 3235–0509.

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 extension and approval.

Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that only apply to alternative trading systems with significant volume. Rule 301 describes the conditions with which a registered broker-dealer operating an alternative trading system must comply. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires

information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS–R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

Alternative trading systems with significant volume are required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301, such alternative trading systems are required to establish standards for granting access to trading on its system. In addition, upon a decision to deny or limit an investor's access to the system, an alternative trading system is required to provide notice to the investor of the denial or limitation and their right to an appeal to the Commission. Regulation ATS requires alternative trading systems to preserve any records made in the process of complying with the systems' capacity, integrity and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Rule to monitor the growth and development of alternative trading systems to confirm that investors effecting trades through the systems are adequately protected, and that the systems do not impede the maintenance of fair and orderly securities markets or otherwise operate in a manner that is inconsistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that will allow it to determine whether such systems have adequate safeguards.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 65 respondents.

An estimated 65 respondents will file an average total of 465 responses per year, which corresponds to an estimated annual response burden of 1,982.5 hours. At an average cost per burden hour of approximately $95.57, the resultant total related cost of compliance for these respondents is $189,458.15 per year (1,982.5 burden hours multiplied by $95.57 per hour; a slight discrepancy is due to arithmetic rounding).

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Comments should be directed 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.* Comments must be submitted within 60 days of this notice.

Dated: May 16, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9808 Filed 5–21–07; 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:

Rule 302, SEC File No. 270–453, OMB Control No. 3235–0510.

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 extension and approval.

Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides a regulatory structure that directly addresses issues related to alternative trading systems' role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 302 of Regulation ATS describes the recordkeeping requirements for alternative trading systems that are not national securities exchanges. Under Rule 302, alternative trading systems are required to make a record of subscribers to the alternative trading system, daily summaries of trading in the alternative trading system, and time-sequenced records of order information in the alternative trading system.

The information required to be collected under the Rule should increase the abilities of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. If the information is not collected or is collected less frequently, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 65 respondents.

An estimated 65 respondents will spend approximately 2,340 hours per year (65 respondents at 36 burden hours/respondent) to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $202,504.00 per year (2,340 burden hours multiplied by $86.54/hour; a slight discrepancy is due to arithmetic rounding).

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Comments should be directed 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.* Comments must be submitted within 60 days of this notice.

Dated: May 16, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9809 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, May 17, 2007 at 9:45 a.m.

CHANGE IN THE MEETING: Cancellation of Meeting.

The Closed Meeting scheduled for Thursday, May 17, 2007 has been cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: May 17, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–9779 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55772; File No. SR–CBOE–2007–45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Implementation of a ''Holdback Timer''

May 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 amend CBOE Rule 6.23A pertaining to the implementation of a ''holdback timer.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to implement an additional quote mitigation strategy. Specifically, CBOE intends to systematically limit the dissemination of quotations and other changes to CBOE's best bid and offer (*e.g.*, orders that improve CBOE's best bid and offer) according to prescribed time criteria (''holdback timer''). For instance, if there is a change in the price of a security underlying an option, multiple market participants may adjust the price or size of their quotes. Rather than disseminating each individual change, the holdback timer permits CBOE to wait until multiple market participants have adjusted their quotes and then to disseminate a new quotation. This mechanism helps to prevent the ''flickering'' of quotations. CBOE proposes to codify the holdback timer in Rule 6.23A.

CBOE will utilize a holdback timer that delays quotation updates to OPRA for no longer than one (1) second, and will only be used in option classes trading on the Hybrid Trading System and Hybrid 2.0 Platform. CBOE may vary the holdback timer by option class. If the holdback timer is not being utilized in an option class trading on the Hybrid Trading System or Hybrid 2.0 Platform, CBOE will notify its members. CBOE does not intend to disclose the length of the holdback timer to its members or non-members. CBOE notes that the holdback timer addresses the dissemination to OPRA of quotation updates and other changes to CBOE's best bid and offer, and not the execution of orders.

The Commission recently approved the International Securities Exchange's (''ISE'') and the American Stock Exchange's (''Amex'') usage of a holdback timer as a quote mitigation strategy.[5] Additionally, and as noted in the approval orders codifying the ISE's and Amex's usage of a holdback timer, the Securities Information and Financial Markets Association strongly endorsed the usage of a holdback timer as a quote mitigation strategy.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act

[5] *See* Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (order approving SR–ISE–2006–62); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (order approving SR–Amex–2006–106).

[6] *Id.*

and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative immediately. The Commission hereby grants that request.[11] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay so that the CBOE may immediately begin using the holdback timer in an effort to mitigate quotes on the CBOE. The Commission does not believe that implementation of the holdback timer raises any novel issues of regulatory concern as the Commission previously approved the use of substantively similar quote mitigation strategies by the ISE and Amex.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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–CBOE–2007–45 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–CBOE–2007–45.* 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 CBOE. 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–CBOE–2007–45* and should be submitted on or before June 12, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–9807 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the proposed rule change.

[11] 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. *See* 15 U.S.C. 78c(f).

[12] *See* note 5, *supra.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55767; File No. SR–NASDAQ–2007–051]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Shares of the PowerShares DB Commodity Index Tracking Fund Pursuant to Unlisted Trading Privileges

May 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileged (''UTP''), shares (''Shares'') of the PowerShares DB Commodity Index Tracking Fund (the ''Fund'').

The text of the proposed rule change is available from Nasdaq's Web site at *nasdaq.complinet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to trade the Shares on a UTP basis. The Shares are currently trading on Nasdaq on a three-month pilot basis.[3] Approval of this filing will allow the Shares to continue to trade after the expiration of the pilot. The Commission previously approved the listing and trading of the Shares on the American Stock Exchange (''Amex'').[4]

The Shares of the Fund represent beneficial ownership interests in the Fund's net assets, consisting solely of the common units of beneficial interests of the DB Commodity Index Tracking Master Fund (''Master Fund''). Each Share of the Fund correlates with a Master Fund share issued by the Master Fund and held by the Fund. The investment objective of each of the Fund and the Master Fund is to reflect the performance of the Deutsche Bank Liquid Commodity IndexTM (''DBLCI'' or ''Index''), less the expenses of the operations of the Fund and the Master Fund. The Fund pursues its investment objective by investing substantially all of its assets in the Master Fund. The Fund holds no investment assets other than Master Fund shares. The Master Fund pursues its investment objective by investing primarily in a portfolio of futures contracts in the commodities comprising the Index, which are crude oil, heating oil, aluminum, gold, corn, and wheat (''Index commodities''). The Master Fund also holds cash and U.S. Treasury securities for deposit with futures commission merchants for margin purposes, and other high-credit-quality short-term fixed income securities.

A description of the DBLCI, commodity futures contracts and related options, operation of the Fund, and the Shares is set forth in the Amex Order. To summarize, an issuance of Shares is made only in a basket of 200,000 Shares (''Basket Aggregation'' or ''Basket'') or multiples thereof. The Fund issues and redeems the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[5] with the Fund and its Managing Owner,[6] at the net asset value (''NAV'') per Share determined shortly after 4 p.m. Eastern Time (''ET'') or the closing of the last to close of the futures exchanges on which the Index commodities are traded, whichever is later, on the business day on which an order to purchase the Shares in one or more Baskets is received in proper form.

Shortly after 4 p.m. ET each business day, The Bank of New York (''Administrator'') determines the NAV for the Fund and Master Fund, utilizing the current day's settlement value of the particular commodity futures contracts in the Master Fund's portfolio and the value of the Master Fund's cash and high-credit-quality, short-term fixed income securities. However, if a futures contract on a trading day cannot be liquidated due to the operation of daily limits or other rules of an exchange upon which such futures contract is traded, the settlement price on the most recent trading day on which the futures contract could have been liquidated would be used in determining the Fund's and the Master Fund's NAV. Accordingly, for both U.S. and non-U.S. futures contracts, the Administrator typically uses that day's futures settlement price for determining the NAV. The calculation methodology for the NAV is described in more detail in the Amex Order.

A Basket is issued in exchange for an amount of cash equal to the NAV per Share times 200,000 Shares (''Basket Amount'') on the purchase order date. The Basket Amount and NAV are usually determined on each business day by the Administrator shortly after 4 p.m. ET. Baskets are issued as of 12 noon ET, on the business day immediately following the purchase order date (T+1) at the NAV per Share on the purchase order date if the required payment has been timely received. An Authorized Participant that wishes to purchase a Basket must transfer the Basket Amount to the Fund in exchange for a Basket. A Basket is then separable upon issuance into the Shares that will be traded on Nasdaq on a UTP basis.

The Shares are not individually redeemable but are redeemable only in Baskets. To redeem Shares, an Authorized Participant is required to accumulate enough Shares to constitute a Basket (*i.e.*, 200,000 Shares). An Authorized Participant that wishes to redeem a Basket would receive the Basket Amount in exchange for each Basket surrendered. The operation of the Fund and creation and redemption process is described in more detail in the Amex Order.

The value of the Index is calculated and published by its sponsor, Deutsche Bank AG London (''DB London''), at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET through Bloomberg, Reuters, and other market data vendors. In addition, the Index value is available on DB London's Web site at *https://index.db.com* and on the Fund's Web site at *http://www.dbcfund.db.com* on a 20-minute delayed basis.[7] The closing Index level is similarly provided by DB London and the Fund. In addition, any adjustments or changes to the Index are also provided by DB London and the Fund on their respective Web sites.[8]

The closing prices and daily settlement prices for the futures contracts held by the Master Fund are

[3] Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR–NASDAQ–2007–016).

[4] *See* Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex–2005–059) (the ''Amex Order'').

[5] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets: (i) Is a registered broker-dealer; (ii) is a Depository Trust Company participant or indirect participant; and (iii) has in effect a valid Participant Agreement with the Fund issuer.

[6] The Managing Owner is DB Commodity Services LLC, a Delaware limited liability company that is registered with the Commodity Futures Trading Commission as a commodity pool operator and commodity trading advisor. The Managing Owner is an affiliate of Deutsche Bank AG, the sponsor of the Fund and Master Fund. The Managing Owner serves as the commodity pool operator and commodity trading advisor of the Fund and the Master Fund and manages and controls all aspects of the business of the Funds.

[7] Nasdaq provides a hyperlink from its Web site at *http://www.nasdaq.com* to the Fund's Web site at *http://www.dbcfund.db.com* and the DB London Web site at *https://index.db.com.* The Fund also maintains a Web site at *http://www.powershares.com,* to which Nasdaq also provides a link from its Web site.

[8] According to the Amex Order, DB London, the sponsor of the Index, has in place procedures to prevent the improper sharing of information between different affiliates and departments. Specifically, an information barrier exists between the personnel within DB London that calculate and reconstitute the Index and other personnel of DB London, including but not limited to the Managing Owner, sales and trading, external or internal fund managers, and bank personnel who are involved in hedging the bank's exposure to instruments linked to the Index, in order to prevent the improper sharing of information relating to the recomposition of the Index. The Index is not calculated by a broker-dealer.

publicly available on the Web sites of the futures exchanges trading the particular contracts. The particular futures exchange for each futures contract with Web site information is as follows: (i) Aluminum—London Metal Exchange (''LME'') at *http://www.lme.com;* (ii) corn and wheat—Board of Trade of the City of Chicago, Inc. (''CBOT'') at *http://www.cbot.com;* and (iii) crude oil, heating oil, and gold—New York Mercantile Exchange (''NYMEX'') at *http://www.nymex.com.* DB London's Web site at *https://index.db.com* also contains futures contract pricing information.

The Web site for the Fund at *http://www.powershares.com* contains the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the prospectus; and (f) other applicable quantitative information. Quotations for and last-sale information regarding the Shares are disseminated via the CTA/CQS.

As described above, the NAV for the Fund is calculated and disseminated daily. Amex also disseminates, from 9:30 a.m. to 4:15 p.m. ET, for the Fund on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Fund Value (''IFV''), recent NAV, and Shares outstanding. Amex also makes available on its Web site daily trading volume, closing prices, and the NAV.

In addition to calculating the NAV of the Fund on a daily basis, the Administrator causes to be made available on a daily basis the amount of cash to be deposited in connection with the issuance of the Shares in Basket Aggregations. Other investors can request such information directly from the Administrator.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities, including Nasdaq Rule 4630. The trading hours for the Shares on Nasdaq will be 9:30 a.m. to 4:15 p.m. ET.

Nasdaq would halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IFV or the value of the Index. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq would stop trading the Shares if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq facilities is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.[9] Nasdaq is able to obtain information regarding trading in the Shares and the underlying futures contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including the CBOT, and Nasdaq has information-sharing agreements in place with NYMEX and LME. Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[10] in general and Section 6(b)(5) of the Act[11] in particular, in that in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act[12] because it deems the Shares to be an equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NASDAQ–2007–051 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–NASDAQ–2007–051. 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

[9] NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.12f–5.

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–NASDAQ–2007–051 and should be submitted on or before June 12, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[15] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[16] The Commission notes that it previously approved the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP.[17] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[18] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IFV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the Shares. In addition, if the listing market halts trading when the IFV is not being calculated or disseminated, the Exchange would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has represented that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the Shares on the Exchange pursuant to UTP for a pilot period of three months.[20] In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance arrangements and expected to do so ''in the near future.'' The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the continued trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by continuing the additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NASDAQ–2007–049), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9738 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

[13] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78*l*(f).

[16] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[17] *See supra* note 4 (approving listing and trading of Shares on Amex). *See also* Securities Exchange Act Release No. 53736 (April 27, 2006) 71 FR 26582 (May 5, 2006) (approving UTP trading of Shares on Pacific Exchange, Inc. n/k/a NYSE Arca).

[18] 17 CFR 240.12f–5.

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[20] *See supra* note 3.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55760; File No. SR–NASDAQ–2007–046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Three iPath Exchange-Traded Notes Pursuant to Unlisted Trading Privileges

May 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileges (''UTP''), index-linked securities (''Securities'') of Barclays Bank PLC (''Barclays'') linked to the performance of certain commodities indexes. The specific Securities to be traded are the iPath Exchange-Traded Notes (''GSCI Securities'') Linked to the Performance of the GSCI Total Return Index (''GSCI Index''); the iPath Exchange-Traded Notes (''AIG Securities'') Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return (''AIG Index''); and the iPath Exchange Traded Notes (''Oil Securities'') Linked to the Performance of the Goldman Sachs Crude Oil Total Return Index (''Oil Index'') (the GSCI Index, the AIG Index, and the Oil Index collectively, ''Indexes''). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://nasdaq.complinet.com.*

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 4630, Nasdaq proposes to trade the Securities pursuant to UTP. The Securities are currently trading on Nasdaq on a three-month pilot basis.[3] Approval of this filing would allow the Securities to continue to trade after the expiration of the pilot.

The Securities are medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the applicable Index. The AIG Index is designed to be a diversified benchmark for commodities as an asset class; the AIG Index is currently composed of the prices of 19 exchange-traded futures contracts on physical commodities, namely aluminum, coffee, copper, corn, cotton, crude oil, gold, heating oil, hogs, live cattle, natural gas, nickel, silver, soybeans, soybean oil, sugar, unleaded gasoline, wheat, and zinc. The GSCI Index is also designed as a diversified benchmark for physical commodities as an asset class; the composition of the GSCI is modified on a monthly basis by Goldman, Sachs & Co., its sponsor. The Oil Index is a sub-index of the GSCI Index that reflects a portion of the crude oil component of the GSCI Index (currently the WTI Crude Oil future contract traded on the New York Mercantile Exchange (''NYMEX'')). The Commission previously approved the original listing and trading of the Securities by the New York Stock Exchange LLC (''NYSE'').[4]

Nasdaq deems the Securities to be equity securities, thus rendering trading in the Securities subject to its existing rules governing the trading of equity securities, including Nasdaq Rule 4630, which governs the trading of Commodity-Related Securities such as the Securities. The primary trading hours for the Securities on Nasdaq will be 7 a.m. to 8 p.m. Eastern Time (''ET'').

Quotations for and last-sale information regarding the Securities are disseminated through the Consolidated Quotation System. An ''Intraday Indicative Value'' (''IIV'') meant to approximate the intrinsic economic value of the Securities is calculated and published via the facilities of the Consolidated Tape Association every 15 seconds from 9:30 a.m. to 4 p.m. ET on each day on which the Securities are traded on NYSE. Additionally, Barclays or an affiliate calculates and publishes the closing IIV of the Securities on each trading day at *http://www.ipathetn.com.* The providers of the Indexes disseminate updated Index values approximately every 15 seconds during applicable portions of the trading day and publish a daily Index value between 4 p.m. and 6 p.m. ET, in each case through Reuters.

Nasdaq would halt trading in the Securities under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Securities will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IIV or Indexes. Additionally, Nasdaq may cease trading the Securities if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq would stop trading the Securities if the listing market delists them.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Securities on Nasdaq. Trading of the Securities through Nasdaq systems is currently subject to NASD's surveillance procedures for equity securities in general and index-linked securities in particular.[5]

Nasdaq is able to obtain information regarding trading in the Securities and the underlying Index components through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Finally, Nasdaq is party to Information Sharing Agreements with NYMEX, ICE Futures, the London Metal Exchange, and the Kansas Board of Trade relating to the trading of commodity-based instruments on those markets. In connection with trading the Securities on a pilot basis, Nasdaq has informed its members in an Information Circular of the special characteristics and risks associated with trading the Securities.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent

[3] *See* Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR–NASDAQ–2007–016).

[4] *See* Securities Exchange Act Release Nos. 53849 (May 22, 2006), 71 FR 30706 (May 30, 2006) (SR–NYSE–2006–20); 53876 (May 25, 2006), 71 FR 32158 (June 2, 2006) (SR–NYSE–2006–16); and 54177 (July 19, 2006), 71 FR 42700 (July 27, 2006) (SR–NYSE–2006–19) (''NYSE Orders'').

[5] NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

with Rule 12f-5 under the Act[8] because it deems the Securities to be equity securities, thus rendering trading in the Securities subject to Nasdaq's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NASDAQ–2007–046 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–NASDAQ–2007–046. 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–NASDAQ–2007–046 and should be submitted on or before June 12, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Securities.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[11] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[12] The Commission notes that it previously approved the listing and trading of the Securities on NYSE.[13] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[14] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Securities to be equity securities, thus rendering trading in the Securities subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[15] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of this proposal, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange. In addition, the Exchange represents that it is party to Information Sharing Agreements with NYMEX, ICE Futures, the London Metal Exchange, and the Kansas Board of Trade relating to the trading of commodity-based instruments on those markets. This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Securities by NYSE is consistent with the Act. In addition, the Commission previously found that the trading of the Securities by Nasdaq pursuant to UTP on a three-month pilot basis was consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit these earlier findings or would preclude the trading of the Securities on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for the Securities. For these reasons, the Commission finds good cause to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the

[8] 17 CFR 240.12f–5.

[9] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[13] *See* NYSE Orders, *supra* note 4.

[14] 17 CFR 240.12f–5.

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASDAQ–2007–046), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55761; File No. SR–NASDAQ–2007–045]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto To Trade the United States Oil Fund, LP Pursuant to Unlisted Trading Privileges

May 15, 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 April 30, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 1, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileged (''UTP''), units (''Units'') of the United States Oil Fund, LP (''USOF'' or ''Partnership''). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://nasdaq.complinet.com.*

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade pursuant to UTP the Units, which represent ownership of a fractional undivided interest in the net assets of USOF.[3] The Units are currently trading on Nasdaq on a three-month pilot basis.[4] Approval of this filing will allow the Units to continue to trade after the expiration of the pilot. The investment objective of USOF is for its net asset value (''NAV'')[5] to reflect the performance of the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma (the ''WTI light, sweet crude oil''), as represented by the performance of the price of the ''Benchmark Oil Futures Contract,'' less the expense of operation of USOF. The ''Benchmark Oil Futures Contract'' is the near-month (*i.e.*, spot month) futures contract for delivery of WTI light, sweet crude oil traded on the New York Mercantile Exchange (''NYMEX'').[6] The Commission previously approved the original listing and trading of the Units by the American Stock Exchange LLC (''Amex'').[7]

Issuances of the Units of USOF are made only in baskets of 100,000 Units or multiples thereof (''Basket''). A basket would be issued in exchange for Treasuries and/or cash in an amount equal to the NAV per Unit times 100,000 Units (''Basket Amount''). An Authorized Purchaser[8] that wishes to purchase a Basket must transfer the Basket Amount to the Administrator (''Deposit Amount''). An Authorized Purchaser that wishes to redeem a Basket would receive an amount of Treasuries and cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (''Redemption Amount'').

On each business day, the administrator for USOF makes available, prior to 9:30 a.m. Eastern Time (''ET''), the estimated Basket Amount for the creation of a Basket based on the prior day's NAV. According to the Amex Order, Amex disseminates at least every 15 seconds from 9:30 a.m. to 4:15 p.m., via the facilities of the Consolidated Tape Association (''CTA''), an amount representing, on a per-Unit basis, the current indicative value of the Basket Amount (''Indicative Partnership Value'').[9] Shortly after 4 p.m. ET, the administrator determines the NAV for USOF as described below. At or about 4 p.m. ET on each business day, the administrator determines the Actual Basket Amount for orders placed by Authorized Purchasers received before 12 p.m. ET that day.

Quotations for and last-sale information regarding USOF is disseminated through the Consolidated Quotation System. The daily settlement prices for the NYMEX-traded oil futures contracts held by USOF are publicly available on the NYMEX Web site at *http://www.nymex.com.* Nasdaq's Web site at *http://www.nasdaq.com* will include a hyperlink to the NYMEX Web site for the purpose of disclosing futures contract pricing. According to the Amex Order, last-sale information for the Benchmark Oil Futures Contract is updated and disseminated at least every 15 seconds by one or more major market data vendors during the time the Units trade. However, from 2:30 p.m. ET to the opening of NYMEX ACCESS at 3:15 p.m. ET, the pricing for the Benchmark Oil Futures Contract is not updated.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] USOF, a Delaware limited partnership, is a commodity pool. USOF is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940. The offering of the Units of the Partnership is registered with the Commission under the Securities Act of 1933.

[4] *See* Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR–NASDAQ–2007–016).

[5] NAV is the total assets, less total liabilities, of USOF determined on the basis of generally accepted accounting principles. NAV per Unit is the NAV of USOF divided by the number of outstanding Units.

[6] USOF will primarily purchase WTI light, sweet crude Oil Futures Contracts traded on the NYMEX, but may also purchase Oil Futures Contracts on other exchanges, including the Intercontinental Exchange, which operates its futures business through ICE Futures (''ICE Futures'') and the Singapore Oil Exchange.

[7] *See* Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (''Amex Order'').

[8] An ''Authorized Purchaser'' is a person who, at the time of submitting to the general partner of USOF an order to create or redeem one or more Baskets, (i) is a registered broker-dealer or other market participant, such as a bank or other financial institution that is exempt from broker-dealer registration; (ii) is a Depository Trust Company Participant; and (iii) has in effect a valid Authorized Purchaser Agreement.

[9] The Indicative Partnership Value is calculated based on the Treasuries and cash required for creations and redemptions (*i.e.*, NAV per Unit x 100,000) adjusted to reflect the price changes of the current Benchmark Oil Futures Contract.

The Web site for USOF (*http://www.unitedstatesoilfund.com*), which is publicly accessible at no charge and to which Nasdaq will provide a hyperlink on its Web site (*http://www.nasdaq.com*), will include the following information: (1) The prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price''); (3) calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the Commodity Futures Trading Commission; (6) USOF's daily portfolio holdings; and (7) other applicable quantitative information. In addition, according to the Amex Order, Amex disseminates for USOF on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Partnership Value, recent NAV, Units outstanding, the estimated Basket Amount, and the Deposit Amount.

Nasdaq would halt trading in the Units under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Units will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the Indicative Partnership Value (which is comparable to the IIV or IOPV of an ETF) or the value of the underlying Benchmark Oil Futures Contract. Additionally, Nasdaq may cease trading the Units if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq would stop trading the Units if the listing market delists them.

Nasdaq deems the Units to be equity securities, thus rendering trading in the Units subject to its existing rules governing the trading of equity securities, including Rule 4630, which governs trading of Commodity-Related Securities. The trading hours for the Units will be 9:30 a.m. to 4:15 p.m. ET.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Units on Nasdaq. Trading of the Units through Nasdaq facilities is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.[10]

Nasdaq is able to obtain information regarding trading in the Units and the underlying Oil Futures Contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including the Chicago Board of Trade. Finally, Nasdaq is party to Information Sharing Agreements with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to oil futures contracts traded on those markets. To the extent that USOF invests in oil interests traded on other exchanges, Nasdaq would enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges.[11] Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the Units.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f 5 under the Act[14] because it deems the Units to be equity securities, thus rendering trading in the Units subject to Nasdaq's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NASDAQ–2007–045 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–NASDAQ–2007–045. 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–NASDAQ–2007–045 and should be submitted on or before June 12, 2007.

[10] NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

[11] In such event, Nasdaq would file a proposed rule change pursuant to Rule 19b-4 of the Act, indicating such surveillance arrangements.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 240.12f–5.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Units.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[17] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[18] The Commission notes that it previously approved the listing and trading of the Units on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of this proposal, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units on the Exchange. In addition, the Exchange represents that it is party to Information Sharing Agreements with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to oil futures contracts traded on those markets, and that, to the extent that USOF invests in oil interests traded on other exchanges, the Exchange would enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges. This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Units by Amex is consistent with the Act. In addition, the Commission previously found that the trading of the Units by Nasdaq pursuant to UTP on a three-month pilot basis was consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit these earlier findings or would preclude the trading of the Units on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for the Units. For these reasons, the Commission finds good cause to approve the amended proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASDAQ–2007–045), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9740 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

[15] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78*l*(f).

[18] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[19] *See* Amex Order, *supra* note 7.

[20] 17 CFR 240.12f–5.

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55759; File No. SR–NASD–2007–032]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASD's Exemptive Authority Relating to Regulation NMS Trade Reporting Requirements

May 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD. NASD has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt new NASD Rule 5150 to provide NASD with authority to exempt members from certain new NASD trade reporting requirements for the Alternative Display Facility (''ADF'') and the NASD Trade Reporting Facilities (''TRFs'') relating to Regulation NMS. The text of the proposed rule change is available at NASD, the Commission's Public Reference Room, and *http://www.nasd.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 29, 2005, the Commission published its release adopting Regulation NMS,[5] which established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Pursuant to Regulation NMS, the Commission, among other things, adopted Rule 611 (''Order Protection Rule'') to establish protection against trade-throughs for NMS stocks.[6] There currently are nine exceptions and two exemptions to the Order Protection Rule.[7]

NASD does not qualify as a trading center within the meaning of Regulation NMS.[8] However, NASD has a responsibility to enforce requirements under the Act that apply to activity within its regulatory authority. Unlike exchanges that have direct Regulation NMS obligations with respect to the self-regulatory organization trading facilities, NASD has indirect Regulation NMS obligations with respect to all over-the-counter market activity in NMS stocks, including post-trade regulation for compliance with the Order Protection Rule with respect to trading centers that trade report through the ADF or a TRF.

Consistent with Regulation NMS, NASD amended its rules governing trade reporting to the ADF and TRFs to require reporting members to append applicable modifiers to last-sale transaction reports for trades that fall within Rule 611 exceptions and exemptions.[9] The amendments to the ADF trade reporting rules (specifically, Rule 4632A) became operative on March 5, 2007. The amendments to the trade reporting rules relating to the TRFs (specifically, Rules 4632, 4632C, 4632D, and 4632E) will become operative on the Regulation NMS Pilot Stocks Phase Date, which is scheduled to occur on July 9, 2007.[10]

The Financial Information Forum (''FIF'') submitted a comment letter in response to these rule changes.[11] The FIF Letter states that implementation of the new NASD trade reporting modifiers relating to Regulation NMS (specifically, the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders) will require additional development efforts and will present a challenge to certain member firms. The FIF Letter further asserts that implementation of the self-help modifiers in particular will be a time-consuming and costly effort and, without substantial development changes, some firms may be forced to not implement self-help to the detriment of their customers. Finally, the FIF Letter states that, if NASD determines that it must have this information for regulatory reasons, firms should be given more time to modify their systems and requests that the compliance date for the new trade report modifiers for purposes of reporting to a TRF be moved to the Regulation NMS Completion Date, which is currently anticipated to be October 8, 2007.

In response to the FIF Letter and in recognition of the technological burdens that the new NASD trade report requirements may impose on some members, NASD is proposing to adopt new Rule 5150 to provide NASD with exemptive authority. Specifically, Rule 5150 would allow members that are unable to complete necessary systems changes by the applicable compliance date to seek a temporary exemption from the new trade report requirements related to Regulation NMS found in Rules 4632, 4632A, 4632C, 4632D, and 4632E. NASD will grant such an exemption only on a firm-by-firm basis, for good cause shown after taking into consideration all relevant factors and only if it is consistent with the protection of investors and the public interest.

In general, the new trade reporting requirements provide critical information for purposes of NASD's Regulation NMS regulatory program. As such, NASD does not intend to grant exemptions under the proposed rule except in exceptional circumstances and only where the requester has demonstrated that it has made best efforts to comply in a timely fashion with the new trade reporting requirements related to Regulation NMS and there is a specific, limited problem or issue preventing the member from achieving full compliance. A member requesting an exemption will be required, among other things, to: (1) Explain why it is unable to complete the necessary systems changes by the applicable compliance date; (2) identify the specific new Regulation NMS-related trade reporting modifier(s) (*e.g.*, self-help) that the firm is unable to implement in a timely manner; and (3) provide an estimated completion date for the outstanding systems work and full compliance. As set forth in the proposed rule, NASD will determine the duration of any exemption, which shall not exceed six months. Moreover, since concerns raised by the industry relate only to certain Regulation NMS-related trade modifiers (the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders), NASD will exercise exemptive authority under this rule proposal only to address implementation issues related to these particular modifiers.

NASD intends to exercise the exemptive authority proposed herein on a temporary basis and, as such, the proposed rule change will automatically

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] NMS stock is defined in Rule 600(b)(47) of Regulation NMS as ''any NMS security other than an option.'' Rule 600(b)(46) of Regulation NMS defines NMS security as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.''

[7] *See* 17 CFR 242.611; Securities Exchange Act Release Nos. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) and 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006) (Order Exempting Certain Sub-Penny Trade-Throughs from Rule 611 of Regulation NMS).

[8] It should be noted that while NASD is not a trading center, market participants that quote in NMS stocks in the ADF are trading centers.

[9] *See generally,* Securities Exchange Act Release Nos. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (SR–NASD–2006–091, amending ADF rules); 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (SR–NASD–2007–001, amending ADF rules); 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (SR–NASD–2007–002, amending NASD/Nasdaq TRF rules); and 55346 (February 26, 2007), 72 FR 9807 (March 5, 2007) (SR–NASD–2007–014, amending NASD/NSX TRF rules, NASD/BSE TRF rules, and NASD/NYSE TRF rules).

[10] Members may submit trade reports to the TRFs in compliance with the Regulation NMS requirements on a voluntary basis prior to the Pilot Stocks Phase Date.

[11] *See* letter from Manisha Kimmel, Executive Director, FIF, on behalf of the FIF Regulation NMS Working Group, to Nancy M. Morris, Secretary, Commission, dated February 7, 2007, submitted in response to SR–NASD–2007–002 (''FIF Letter'').

sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007. NASD has filed the proposed rule change for immediate effectiveness.[12] The proposed rule change will become operative upon filing with the Commission.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed exemptive authority is appropriate because it will allow NASD to address certain implementation issues as they arise.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

While NASD did not solicit comments on the proposed rule change, as discussed above, NASD did receive a comment letter in connection with SR–NASD–2007–002.[14] NASD is filing the proposed rule change specifically to address this comment letter and the concerns raised by the commenter about the burdens associated with implementation of the new Regulation NMS-related trade report modifiers. As noted above, NASD has determined that the Regulation NMS-related modifiers required under the NASD trade reporting rules are crucial to its regulatory program and does not agree with the commenter that the self-help modifier should be optional. NASD believes that the proposed exemptive authority strikes a fair balance between the needs of NASD's regulatory program and member concerns regarding the timing and burdens of the necessary systems changes. The proposed rule change should alleviate such burdens by affording members additional time, if needed, to make the necessary systems changes relating to the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish inbound and outbound intermarket sweep orders.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[15] and subparagraph (f)(1) of Rule 19b–4 thereunder,[16] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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–NASD–2007–032 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–NASD–2007–032. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–032 and should be submitted on or before June 12, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

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[12] NASD is filing this proposed rule change for immediate effectiveness to allow NASD to address exemptive requests immediately without regard to when the changes to the underlying trade reporting rules are operational.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] *See* FIF Letter, *supra* note 11.

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(1).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55765; File No. SR–NASD–2006–044]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Interpretive Material to NASD Rule 3060 To Require Members To Adopt Policies and Procedures Addressing Business Entertainment

May 15, 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 April 11, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On April 17, 2007, NASD filed Amendment No. 1 to the proposed rule change.[3] On May 1, 2007, NASD filed Partial Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[5]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt Interpretive Material (''IM'') to NASD Rule 3060 to require members to adopt policies and procedures addressing business entertainment. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

IM–3060. Business Entertainment

The NASD Board of Governors is issuing this interpretation concerning the obligations of a member in connection with any business entertainment of a customer representative. This interpretation does not apply to any non-cash compensation that falls within Rule 2820(g) or Rule 2830(l) (i.e., entertainment provided by offerors to associated persons of a member in connection with the sale and distribution of variable contracts or investment company securities). This interpretation does not apply to any member that does not engage in business entertainment. For any member that engages in business entertainment, this interpretation applies only with respect to business entertainment provided to customer representatives. This interpretation supersedes any prior interpretive letters or statements of NASD staff regarding business entertainment under Rule 3060.

(a) General Requirements

No member or person associated with a member shall, directly or indirectly, provide any business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with:

(1) The best interests of the customer; or

(2) The best interests of any person to whom the customer owes a fiduciary duty.

(b) Definitions

For purposes of this interpretation, the following definitions shall apply:

(1) The term ''customer'' means:

(A) A person that maintains a business relationship with a member via the maintenance of an account, through the conduct of investment banking, or pursuant to other securities-related activity; or

(B) A person whose customer representative receives business entertainment for the purpose of encouraging such person to establish a business relationship with the member by opening an account with the member or by conducting investment banking or other securities-related activity with the member.

(2) The term ''customer representative'' means a person who is an employee, officer, director, or agent of a customer, unless such person is a family member of the customer.

(3) The term ''family member'' means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children.

(4) The term ''business entertainment'' means any social event, hospitality event, sporting event, entertainment event, meal, leisure activity, or event of like nature or purpose, including business entertainment offered in connection with a charitable event, educational event or business conference, as well as any transportation or lodging related to such activity or event, in which an associated person of a member accompanies a customer representative.

(A) If a customer representative is not accompanied by an appropriate associated person of the member, any expenses associated with the business entertainment will be considered a gift under Rule 3060 unless exigent circumstances make it impractical for an associated person of the member to attend. All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, in very limited circumstances where such prior approval cannot reasonably be obtained, to a prompt post-event review to be conducted and documented by such supervisory person.

(B) Anything of value given or provided to a customer representative that does not fall within the definition of ''business entertainment'' is a gift under Rule 3060.

(C) In valuing business entertainment expenses pursuant to this interpretation, a member's written policies and procedures must specify the methodology to be used by the member to calculate the value of business entertainment. In general, business entertainment expenses should be valued at the higher of face value or cost to the member.

(c) Written Policies and Procedures

(1) Each member must have written policies and supervisory procedures that:

(A) Define forms of business entertainment that are appropriate and inappropriate using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodations or transportation provided in connection with such business entertainment; and

(B) Make clear that anything of value given or otherwise provided to a customer representative that does not fall within the definition of ''business entertainment'' is a gift under Rule 3060; and

(C) Impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds; and

(D) Are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest or undermine the performance of a customer representative's duty to a customer or any person to whom the customer owes a fiduciary duty; and

(E) Establish standards to ensure that persons designated to supervise and administer the written policies and procedures are sufficiently qualified; and

(F) Require appropriate training and education for all personnel who supervise, administer, or are subject to the written policies and procedures.

(2) A member's written policies and procedures may distinguish, and set specifically tailored standards for, business entertainment in connection with events that are deemed to be primarily educational, charitable, or philanthropic in nature, provided that such standards comply with the requirements of this interpretation and

[4] Partial Amendment No. 2 attached Exhibit 4 of Amendment No. 1, which shows changes of the proposed rule text from the immediately preceding filing.

[5] The Commission also is separately publishing a notice by the New York Stock Exchange LLC (''NYSE'') to propose new NYSE Rule 350A on business entertainment, which is substantially similar to NASD's proposed rule text. *See* Securities Exchange Act Release No. 55766 (May 15, 2007) (SR–NYSE–2006–06). The NYSE proposal and the NASD proposal primarily differ in that the NYSE proposal contains a ''Notice to Customers'' provision. *See* discussion *infra* Part IV, Solicitation of Comments section.

are explicitly addressed in the written policies and procedures.

(d) Recordkeeping

(1) Each member's written policies and procedures must require the maintenance of detailed records of business entertainment expenses provided to any customer representative. The member is not required to maintain records of:

(A) Business entertainment when the total value of the business entertainment, including all expenses associated with the business entertainment, does not exceed $50 per day; or

(B) Additional expenses incurred in connection with otherwise recorded business entertainment that do not, in the aggregate, exceed $50 per day.

(2) Each member's written policies and procedures must include provisions reasonably designed to prevent associated persons of the member from circumventing the recordkeeping requirements in contravention of the spirit and purpose of this interpretation (e.g., a pattern of providing a customer representative with business entertainment valued at $48).

(3) Each member's written policies and procedures must require that, upon a customer's written request, the member will promptly make available to the customer any business entertainment records regarding business entertainment provided to customer representatives of that customer.

(e) Exemption for Members With Business Entertainment Expenses Below $7,500

A member whose business entertainment expenses in the course of its fiscal year are below $7,500 shall be subject only to paragraphs (a), (b), and (c)(1)(D) and (E) of this interpretation, and shall be exempt from paragraphs (c) (other than (c)(1)(D) and (E) as noted above) and (d). Each member that relies on this exemption must evidence that its business entertainment expenses are below the $7,500 threshold.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(A) Background: NASD Rule 3060 prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of $100 per year to any person where such payment is in relation to the business of the recipient's employer. In 1999, NASD staff issued an interpretive letter stating that Rule 3060 does not prohibit ''ordinary and usual business entertainment'' (such as an occasional meal, sporting event, theater production, or comparable entertainment event) provided that the entertainment ''is neither so frequent nor so extensive as to raise any question of propriety.'' [6] The 1999 Letter noted that the interpretation was based, in part, on NASD's rules governing non-cash compensation in connection with the offer and sale of investment company shares and variable annuities.

Recently, NASD members have requested more guidance on the rules concerning gifts and business entertainment in the wake of press reports of enforcement actions regarding gifts and gratuities.[7] In response to these requests, NASD is proposing interpretive material to NASD Rule 3060 to outline the policies and procedures that a member must adopt in connection with its business entertainment practices.[8] The proposed rule change would supersede any prior guidance of NASD staff regarding business entertainment under Rule 3060, including the 1999 Letter. The proposed rule change would not supersede any guidance provided under other NASD rules.[9] NASD has also clarified that any non-cash compensation falling under Rule 2820(g) or Rule 2830(l) would be subject to the standards imposed by those rules.[10]

Rule 3060 is intended to prevent improprieties that may arise when a member or an associated person of a member gives gifts or gratuities to employees of a customer. To guard against these improprieties, Rule 3060 imposes a $100 annual limit on gifts and gratuities that a member or person associated with a member can give to an employee of a customer in relation to the employer firm's business. However, ordinary and usual business entertainment is not considered a gift or gratuity and is permitted ''so long as it is neither so frequent nor so extensive as to raise any question of propriety.'' [11] The proposed rule change is intended to replace this statement regarding business entertainment with an approach that permits each member to adopt specific policies and procedures tailored to its business needs. The proposed rule change also seeks to provide members with general guidance concerning the types of issues that a firm's policies and procedures must address and mandates that each member maintain appropriate records to ensure that persons associated with the member are complying with the written policies and procedures.

In general, NASD, working closely with the New York Stock Exchange (the ''NYSE''), concluded that, in clarifying a member's obligation under Rule 3060, a specific standard was unworkable and impractical.[12] As NASD noted in the *Notice to Members* seeking comment on the proposed rule change, ''the proposed IM does not impose hard limits, nor does it require that all members adopt the same limits or even treat all recipients equally.'' [13] Rather, the proposed rule change requires that each member assess its use of business entertainment, determine what limitations are appropriate and meet the general guidelines set forth in the proposed rule change, and adopt written

[6] Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc., from R. Clark Hooper, NASD, dated June 10, 1999 (''1999 Letter''), *available at http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_002715.*

[7] *See, e.g.,* Jenny Anderson, *Fidelity Disciplines 16 Traders Over Gifts From Brokers,* N.Y. Times, Dec. 17, 2004, at C5; Andrew Caffrey & Jeffrey Krasner, *Probe of Gifts Said to Focus on Fidelity,* Boston Globe, Dec. 7, 2004, at A1; *Probe on Gifts to Fund Officials Is Said to Include Jefferies,* Los Angeles Times, Dec. 3, 2004, at C4; Jenny Anderson, *On Wall Street, A Closer Look At Giving Gifts,* N.Y. Times, Nov. 24, 2004, at C1; Greg Farrell, *Brokerages' gifts to mutual fund managers scrutinized,* USA Today, Nov. 24, 2004, at B2.

[8] In addition, NASD also recently published guidance concerning gifts and gratuities under Rule 3060. *See Notice to Members* 06–69 (December 2006).

[9] For example, the proposed rule change would not supersede the guidance given by NASD staff in *Notice to Members* 99–55 (July 1999) concerning NASD Rules 2820 and 2830.

[10] NASD published a *Notice to Members* requesting comment on a proposed rule change to replace Rules 2820(g) and 2830(l), among others, with a new Rule 2311. *See Notice to Members* 05–40 (June 2005). If such a rule change is proposed and approved, NASD will amend the language of proposed IM–3060 to reflect the change.

[11] *See* 1999 Letter.

[12] The NYSE also has filed a proposed rule change with the Commission addressing business entertainment. *See supra* note 5.

[13] *See Notice to Members* 06–06 (January 2006).

policies and procedures to ensure that persons associated with the member are following those limitations. The introductory paragraph in the proposed interpretation also makes clear that the interpretation does not apply to any member that does not engage in business entertainment.

While, as discussed below, some commenters criticized a general, principles-based approach as lacking clarity and uniform standards, NASD and the NYSE both concluded that such an approach was more appropriate. The proposed rule change expands upon the existing principles-based approach to business entertainment established in the 1999 Letter but specifically addresses the content of a member's written policies and procedures.

(B) *General Requirements:* The observance of ''high standards of commercial honor and just and equitable principles of trade'' required of a member in the conduct of its business under NASD Rule 2110 includes the obligation of a member not to act in a manner contrary to the best interests of a customer in the conduct of business with or for such customer. Consequently, when a member interacts with an employee—or any other agent—of a customer, the member should not give that person anything of value that is intended or designed to cause, or otherwise would be reasonably judged to have the likely effect of causing, such person to act in a manner that is inconsistent with the best interests of the customer or any person to whom the customer owes a fiduciary duty.[14] Paragraph (a) of the proposed rule change codifies this concept by explicitly setting forth the general purpose behind proposed IM–3060.

NASD believes that the guiding principle in navigating the concern of placing a customer representative in conflict with his duty to a customer is that members should compete for business on the basis of providing the best professional services. While it is not inappropriate for business entertainment to foster an environment for the member to promote or educate the customer representative with respect to such professional services, it is inconsistent with the terms of proposed IM–3060 to use business entertainment to provide incentives to customer representatives to conduct customer business with and/or through the member without due consideration as to whether the nature and terms of such professional services meet the objectives and are in the best interests of the account.

(C) *Definitions:* There are three defined terms that are integral to an understanding of the proposed rule change.[15] First, ''customer'' is defined as (1) ''a person that maintains a business relationship with a member via the maintenance of an account, through the conduct of investment banking, or pursuant to other securities-related activity'' or (2) ''a person whose customer representative receives business entertainment for the purpose of encouraging such person to establish a business relationship with the member by opening an account with the member or by conducting investment banking or other securities-related activity with the member.'' [16] The definition of ''customer'' has been amended from the previous rule filing; however, the changes do not affect those persons considered ''customers'' for the purpose of the proposed rule change.

Second, for purposes of the proposed rule change, a ''customer representative'' means ''a person who is an employee, officer, director, or agent of a customer, unless such person is a family member of the customer.'' The term ''customer representative'' replaces the term ''employee'' in the previous rule filing to clarify that the term includes persons other than employees. The term also now conforms to the terminology in the NYSE's proposed rule change. Moreover, the definition has been amended to exclude certain family members from the definition of customer representative.[17] This exclusion has been added to the definition to address situations where a close family member has power-of-attorney or similar authority over another family member's account (*e.g.*, an adult child with authority over his or her elderly parent's account). NASD believes that these situations are unlikely to result in the types of conflicts of interest the proposed rule change seeks to address.

This definition, when coupled with the general requirements set forth in paragraph (a) of the proposed rule change, limit the proposed rule change to business entertainment provided to a customer representative. This point is explicitly addressed in the preamble to the interpretation, which states: ''This interpretation does not apply to any member that does not engage in business entertainment. For any member that engages in business entertainment, this interpretation applies only with respect to business entertainment provided to customer representatives.'' Thus, the proposed rule change does not address business entertainment provided to a natural person customer.[18] It addresses only business entertainment provided to a customer representative of the customer (although such customer may be a natural or non-natural person).

Third, ''business entertainment'' is defined as ''any social event, hospitality event, sporting event, entertainment event, meal, leisure activity, or event of like nature or purpose, including entertainment offered in connection with a charitable event, educational event or business conference, as well as any transportation or lodging related to such activity or event, in which an associated person of a member accompanies a customer representative.'' This definition codifies NASD's long-standing position that an associated person of a member must accompany or participate in an event for it to be deemed ''business entertainment'' rather than a ''gift.'' In addition, NASD has deleted the portion of the definition that stated that it is not necessary for business to be conducted for an event to be ''business entertainment.'' The definition of business entertainment encompasses all the events enumerated provided that the customer representative is accompanied by an associated person of the member; because the clause did not further define business entertainment, it has been deleted.

As noted above, the definition of ''business entertainment'' generally prescribes that if a customer representative is not accompanied by an appropriate associated person of a member, any expenses associated with the business entertainment will be

[14] NASD Rule 2110 precludes the offering of any thing of value, including but not limited to business entertainment, that comprises conduct that, to any degree, is either illegal under any applicable law or would expose the member, customer, or recipient of the member's business entertainment to any civil liability. For example, any business entertainment that violated the Foreign Corrupt Practices Act or any commercial bribery statutes and laws would, in turn, violate Rule 2110.

[15] Terms used in the interpretation have the same meaning as those defined in NASD's By-Laws and rules unless otherwise specified.

[16] NASD Rule 0120(n) defines the term ''person'' to ''include any natural person, partnership, corporation, association, or other legal entity.''

[17] The term ''family member'' means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children.

[18] As discussed in footnote 5 of *Notice to Members* 06–06, and as noted below, natural persons who are both natural person customers and customer representatives should be treated as customer representatives. That is, associated persons of a member cannot avoid the application of the firm's business entertainment policies by claiming that business entertainment provided to a person who is both a natural person customer and a customer representative was provided to that individual solely in his or her ''personal,'' rather than business, capacity.

considered a gift under Rule 3060. An exception to this requirement is proposed to address instances when exigent circumstances make it impractical for an associated person of a member to attend a business entertainment event. All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, in very limited circumstances where such prior approval cannot reasonably be obtained, to a prompt post-event review to be conducted and documented by such supervisory person.

NASD believes that the ''exigent circumstances'' exception provides necessary flexibility in light of real-world, last minute emergency situations that could arise that would make it difficult, if not impossible, for an appropriate associated person of a member to attend a business entertainment event with a customer representative. Examples of exigent circumstances would be a sick child, an accident, or some other sudden, overriding circumstance. NASD does not believe this provision would lead to circumvention of the spirit or substance of the proposed rule change since all such occurrences are subject to detailed documentation such that any patterns of abuse would become quickly apparent to supervisory personnel.

Paragraph (b)(4)(C) of the proposed rule change provides guidance to members on the valuation of business entertainment. The proposed rule change requires that a member's written policies and procedures specify how the firm will calculate the value of business entertainment. In general, business entertainment items should be valued at the greater of face value or cost to the member.

NASD has been asked about the extent to which the proposed rule change reaches business entertainment conducted outside the United States, particularly entertainment provided by persons who are employed in commonly controlled affiliates of a financial services company operating in the United States and/or foreign jurisdictions. As an initial matter, proposed IM–3060 reaches all business entertainment of a member firm and persons associated with a member, even if such entertainment occurs outside of the United States or is provided to foreign individuals. However, NASD does not believe that all persons who are employed in commonly controlled affiliates of a financial services company operating in the United States and/or foreign jurisdictions are necessarily associated persons of the member, even if they report to a person who, in another capacity, is an associated person of a member.

An associated person of a member may have management and supervisory responsibilities for non-member affiliates of a financial services company, located within or outside of the United States, without the result that the persons being managed and supervised in the non-member affiliates would necessarily be deemed associated persons of the member. It is the view of NASD that in such instances the following factors establish that an employee of a non-member affiliate is not an associated person of the member: (1) The manager/supervisor of that employee is recognized in the organization as having a scope of responsibilities outside of the member firm; (2) the exercise of the management and supervision over that employee by such manager/supervisor is not controlled by the member, is reviewable for purposes of performance and compensation outside of the member, and is not conducted for the benefit of the member; and (3) the employee of the non-member affiliates is not otherwise employed or engaged in the investment banking or securities business of the member and controlled by the member in respect of such activities.

(D) *Written Policies and Procedures:* A member's policies and procedures must be designed to promote conduct consistent with NASD Rule 2110 and should not undermine the performance of a customer representative's duty to a customer. The proposed rule change requires members to adopt written policies and procedures concerning business entertainment that: (1) Define forms of business entertainment that are appropriate and inappropriate using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodation or transportation provided in connection with such business entertainment; (2) impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds; (3) are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest or undermine the performance of a customer representative's duty to a customer; (4) establish standards to ensure that persons designated to supervise and administer the written policies and procedures are sufficiently qualified; and (5) require appropriate training and education for all personnel who supervise, administer, or are subject to the written policies and procedures.

(i) *Define Forms of Appropriate and Inappropriate Business Entertainment:* A member's written policies and procedures concerning business entertainment must define forms of business entertainment that are appropriate and inappropriate using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodations or transportation provided in connection with such business entertainment. A member's policies and procedures should include provisions regarding appropriate venues, nature, frequency, and types and class of accommodation and transportation.

A member may determine that certain activities, though legal, are nevertheless inappropriate for business entertainment. NASD believes that the standards of business entertainment adopted by members must meet the requirements of Rule 2110 that members and persons associated with a member adhere to high standards of commercial honor. Consequently, a member would violate proposed IM–3060 not only if it failed to adopt procedures, but also if the procedures set standards that are so unbounded or vague that no reasonable determination of propriety can be discerned.

The proposed rule change also would allow, but not require, members to establish different standards for business entertainment in connection with events that are educational, charitable, or philanthropic in nature. If a member chooses to distinguish between forms of business entertainment in its policies and procedures, it should ensure that these types of business entertainment nonetheless comply with Rule 2110 and the general requirements set forth in paragraph (a) of the proposed rule change.

(ii) *Impose Either Specific Dollar Limits on Business Entertainment or Require Advance Written Supervisory Approval Beyond Specified Dollar Thresholds:* A member's written policies and procedures must impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds. The proposed rule change does not impose hard dollar limits or require that all

members adopt the same dollar limits or treat all recipients equally.

(iii) *Designed to Detect and Prevent Business Entertainment That Is Intended As, or Could Reasonably Be Perceived To Be Intended As, an Improper Quid Pro Quo:* A member's written policies and procedures must include procedures designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo. For example, members should develop written policies and procedures reasonably designed to preclude providing business entertainment that is so lavish or extensive in nature that a customer representative would likely feel compelled to place order flow on behalf of the customer without due regard to best execution or other transaction pricing considerations. NASD does not intend that this standard would establish a per se violation of the proposed IM if a customer representative who received business entertainment from the member is later found to have violated his or her obligations to his or her employer; however, such actions by a customer representative may warrant further investigation by the member firm as to whether the member's policies and procedures are, in fact, reasonably tailored to prevent these types of violations.[19] While an NASD member is not ultimately responsible for the conduct of its customers' employees or agents, the member is responsible for ensuring that persons associated with the member do not engage in activities that are designed to, or reasonably likely to, cause the recipient to engage in improper conduct. Moreover, a member's compliance with its policies and procedures would not serve to automatically shield the member from all liability under the proposed IM for any misconduct by a customer representative.

(iv) *Supervision:* As is the case with every NASD rule, supervision is a critical component of business entertainment policies and procedures. Members are free to define the approach and method of their written policies and procedures provided they are reasonably designed to comport with the principles stated in the proposed rule filing. Irrespective of the manner in which a member crafts its procedures, it must be clear from the supervisory policies and procedures what factors determine appropriate levels of business entertainment and how those determinations are executed, monitored, and enforced. This is particularly true if members elect to use qualitative, rather than quantitative, standards. In addition, such supervisory procedures should provide a method for evidencing both the breadth of supervisory activities as well as the information upon which such supervision is conducted. For example, a member's policies and procedures must evidence the basis upon which a supervisor will determine that business entertainment does not violate a member's standards as to the nature, frequency, and dollar amounts of entertainment. A member's policies and procedures must establish standards to ensure that persons designated to supervise and administer the member's written policies and procedures are sufficiently qualified. The requirement that the persons designated to supervise business entertainment expenses be ''sufficiently qualified'' is not intended to impose a registration requirement or similar obligation on these individuals; rather, the requirement is intended to ensure that the member's designation is of persons who are familiar with the applicable regulatory requirements and are sufficiently senior and experienced to entrust with the approval obligations envisioned by the member's policies and procedures.

(v) *Training and Education:* A member's business entertainment policies and procedures must require appropriate training and education to all applicable personnel. A member also must be able to demonstrate that it trains persons associated with the member who supervise, administer, and are subject to such written business entertainment policies and procedures in all applicable requirements.

(E) *Recordkeeping:* The only effective way for a member to ensure that persons associated with the member are following the firm's policies and procedures is to establish a system to track their business entertainment expenses. Consequently, a member's policies and procedures are required to include procedures regarding the maintenance of detailed records of business entertainment expenses provided to any customer representative.

NASD recognizes that recordkeeping requirements present compliance burdens for firms, and NASD has sought to address the potential burden by providing a recordkeeping carve-out for small expenditures, none of which would reasonably be expected to influence the behavior of the recipient. Consequently, the proposed rule change provides that members are not required to maintain records of (1) Business entertainment when the total value of the business entertainment, including all expenses associated with the business entertainment, does not exceed $50 per day or (2) additional expenses incurred in connection with otherwise recorded business entertainment that do not, in the aggregate, exceed $50 per day.[20]

The $50 threshold would apply only to events or activities with a total cost that did not exceed $50 per day (*e.g.*, an inexpensive lunch) or to minor expenses related to an otherwise reported business entertainment event (such as a hot dog at an NBA basketball game, where the basketball game ticket is reported as a business entertainment expense). Firms may not allow persons associated with the member to disaggregate business entertainment expenses relating to an activity or event in an effort to avoid recordkeeping obligations. Thus, a dinner expense of $40 followed by a sporting event with a ticket price of $40 would need to be tracked under the member's recordkeeping system.

The proposed rule change also requires that a member's written policies and procedures include provisions reasonably designed to prevent persons associated with the member from circumventing the recordkeeping requirements in contravention of the spirit and purpose of proposed IM–3060. Thus, for example, members should seek to prevent associated persons of the member from engaging in patterns of providing business entertainment that falls below the $50 reporting threshold.

One of the key elements of the proposed rule change is the ability of a customer to request from the member information regarding the business entertainment expenses provided to the customer representatives of the customer. Although members are permitted to establish reasonable guidelines regarding a customer's ability to request this information, such guidelines must not impair the ability of the customer to obtain, on a reasonable and regular basis, information concerning the member's business entertainment expenses pertaining to

[19] NASD Rule 3012(a) requires members to test and verify their supervisory procedures and ''create additional or amend supervisory procedures where the need is identified by such testing and verification.''

[20] Members should be aware, however, that they may need to track such expenses under other NASD or SEC rules. There is no express exclusion from Rule 3060 for gifts given during the course of business entertainment. *See Notice to Members* 06–69 (December 2006). NASD staff has, however, provided guidance that Rule 3060 does not apply to certain promotional items of nominal value that display the firm's logo. *See id.*

the customer representatives of such customer.

(F) *Exemption for Members with Business Entertainment Expenses Below $7,500:* The concerns that the proposed interpretation seeks to address are not presented by those members that, in the aggregate, do not devote significant resources to business entertainment. Consequently, the interpretation provides for a partial exemption for those members with annual business entertainment expenses below $7,500. The provision provides that the $7,500 ceiling should be measured on a fiscal year basis. Each member that relies on the exemption must evidence that its business entertainment expenses were below the threshold.

Importantly, the exemption is not a total exemption from all aspects of the proposed interpretation. All members (except those members that do not engage in any business entertainment) are required to abide by the interpretation's general requirements as set forth in paragraph (a) and are required to have written policies and supervisory procedures that are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest or undermine the performance of a customer representative's duty to a customer or any person to whom the customer owes a fiduciary duty, and establish standards to ensure that persons designated to supervise and administer such policies and procedures are sufficiently qualified.

The effective date of the proposed rule change will be six months following Commission approval. NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change clarifies existing obligations of members with respect to the provision of business entertainment and will help prevent conduct by associated persons of a member that could undermine the performance of an employee's duty to the member's customer.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 06–06 (January 2006). NASD received 28 comments in response to the *Notice*.[22] A copy of the *Notice to Members* was attached to the original rule filing as Exhibit 2a. Copies of the comment letters received in response to the *Notice* were attached to the original rule filing as Exhibit 2b. Of the 28 comment letters received, 12 were generally in favor of the proposed rule change, 13 were opposed, and three took no clear position.

A number of commenters raised concerns with NASD's general, principles-based approach to the proposed rule change[23] and questioned the overall need for the IM.[24] As indicated above, the proposed rule change was undertaken in response to requests by NASD members for clarity concerning appropriate business entertainment. Both NASD and the NYSE undertook to provide members with additional guidance following these requests. To the extent some commenters questioned whether NASD should seek to ''regulate'' the employees of their members' customers, these commenters fail to recognize that NASD staff guidance in the 1999 Letter already prohibits business entertainment for employees of customers that is so frequent or excessive as to raise questions of propriety. Moreover, as discussed above, NASD is not seeking to regulate the behavior of the representatives of a member's customers;[25] rather, NASD is requiring each member to develop and enforce some appropriate degree of limitation on the business entertainment that persons associated with the member provide to its customers' representatives. In achieving this end, both NASD and the NYSE believe that a general, principles-based approach is more appropriate than a restrictive, one-size-fits-all regulatory scheme. Given the significant variation in broker-dealer business models and size, and regional differences in what may be considered appropriate business entertainment, NASD concluded that a fixed-dollar standard or similar specific mandate would prove unworkable.

One commenter suggested that NASD exempt certain small broker-dealers, at

[21] 15 U.S.C. 78o–3(b)(6).

[22] Letter from Pinnacle Taxx Advisors, Inc. (''Pinnacle''), dated Jan. 26, 2006; Letter from Keefe, Bruyette & Woods (''KBW''), dated Jan. 26, 2006; Letter from J.P. Morgan, dated Jan. 30, 2006; Letter from Evolve Securities, Inc. (''Evolve''), dated Jan. 31, 2006; Letter from Seasongood & Mayer, LLC (''Seasongood''), dated Feb. 2, 2006; Letter from Plexus Consulting (''Plexus'') o/b/o International Association of Small Broker Dealers and Advisers, dated Feb. 6, 2006; Letter from Dominion Investor Services, Inc. (''Dominion''), dated Feb. 13, 2006; Letter from National Regulatory Services (''NRS''), dated Feb. 6, 2006; Letter from T. Rowe Price Investment Services, Inc. (''T. Rowe Price''), dated Feb. 17, 2006. Letter from Maplewood Investment Advisors, Inc. (''Maplewood''), dated Feb. 22, 2006; Letter from Financial Services Institute, Inc. (''FSI''), dated Feb. 23, 2006; Letter from Transamerica Financial Advisors, Inc. (''Transamerica''), dated Feb. 23, 2006; Letter from H.D. Vest Financial Services (''H.D. Vest''), dated Feb. 23, 2006; Letter from ING U.S. Financial Services (''ING''), dated Feb. 23, 2006; Letter from The Investment Company Institute (''ICI''), dated Feb. 23, 2006; Letter from Hines Real Estate Securities, Inc. (''Hines''), dated Feb. 21, 2006; Letter from The National Society of Compliance Professionals (''NSCP''), dated Feb. 23, 2006; Letter from Financial Network, dated Feb. 23, 2006; Letter from Coker Palmer, dated Feb. 23, 2006; Letter from Griffin, Kubik, Stephens & Thompson, Inc. (''Griffin''), dated Mar. 2, 2006; Letter from Debevoise & Plimpton LLP (''Debevoise'') o/b/o The Midtown Regulatory Group, dated Mar. 3, 2006; Letter from Transamerica Capital, Inc. (''Transamerica Capital''), dated Mar. 3, 2006; Letter from The Bond Market Association (''BMA''), dated Mar. 3, 2006; Letter from Goodwin Browning & Luna Securities, Inc. (''GB&L''), dated Mar. 3, 2006; Letter from The ABA Securities Association (''ABASA''), dated Mar. 3, 2006; Letter from Wachovia Capital Markets, LLC (''Wachovia''), dated Mar. 3, 2006; Letter from Neal E. Nakagiri (''Nakagiri''), dated Mar. 3, 2006; and Letter from The Self-Regulation and Supervisory Practices Committee of the Securities Industry Association (''SIA''), dated Mar. 7, 2006.

[23] *See, e.g.*, Letters from Dominion, Financial Network, H.D. Vest, Hines, Plexus, and NRS.

[24] *See, e.g.*, Letters from Evolve, Financial Network, FSI, GB&L, H.D. Vest, ING, Maplewood, Nakagiri, and Transamerica Capital. Several commenters indicated that the proposed rule change should be made through notice and comment rulemaking with the Commission. As the *Notice to Members* stated, Section 19 of the Securities Exchange Act of 1934 requires that proposed rule changes such as IM–3060 be approved by the Commission following publication for public comment in the **Federal Register**. *See Notice to Members* 06–06, at 2 & n.2.

[25] NASD recognizes that customers whose representatives receive business entertainment have the responsibility to ensure that their representatives do not engage in improper conduct. However, NASD believes that the person providing business entertainment cannot disclaim any responsibility for improper conduct that flows directly from business entertainment its employee provided when the employee either intended for the business entertainment to have that effect or could reasonably have judged that the business entertainment would be likely to have that effect.

least in part because they lack the resources to affect decision-making in the manner the IM seeks to prohibit and that such extravagant and extensive business entertainment is localized among larger firms and does not occur in rural or small-market areas.[26] In response to this comment, NASD has included a limited exemption for members whose total business entertainment expenses in the course of their fiscal year are below $7,500. The exemption provides relief from the recordkeeping requirements of the rule, as well as many of the specific requirements regarding written policies and supervisory procedures. NASD believes, however, that the general requirements of the proposed rule change should apply to all members that engage in business entertainment. In addition, members that engage in business entertainment should have written policies and supervisory procedures that are designed to detect and prevent improper conduct. As noted above, the proposed rule change does not apply to any member firm that does not engage in any form of business entertainment.

Several commenters suggested that NASD identify in the IM the specific factors to be considered by firms in developing their written policies and procedures, such as those identified by the NYSE in its rule filing. NASD staff does not believe it is necessary to identify specific factors in the IM and that doing so may undermine the flexibility the proposed rule change is designed to achieve.[27] NASD staff will consider whether additional guidance concerning the IM is necessary when announcing the proposed rule change in a *Notice to Members.*

Several commenters expressed concern that the proposed rule change, including some of the defined terms, was too vague and may, in application, prove overly broad. Among other things, these commenters suggested that the proposed rule change could disadvantage firms with more conservative policies and procedures,[28] effectively require pre-approval of all business entertainment,[29] and introduce disadvantages among different types of firms and other industry participants.[30] Other commenters believed that the principles-based approach proposed by NASD is the appropriate manner to address the needed clarification of business entertainment.[31]

While NASD recognizes that there will be distinctions among each member's written policies and procedures, NASD concluded that member firms were in the best position to determine appropriate limitations and restrictions on the business entertainment provided by persons associated with a member. After considering the various comments concerning the definitions of ''customer'' and ''business entertainment'' in the proposed rule change,[32] NASD has determined not to amend the definitions substantively.[33] While several commenters recommended that the definition of customer track the definition of ''accredited investor'' as defined in SEC Rule 501 under the Securities Act of 1933, NASD staff does not believe that the application of the IM should be dependent on any particular level of assets. While member firms may choose to treat certain types of customers or certain types of business entertainment differently for purposes of their written policies and procedures, NASD believes that, for purposes of the proposed rule change, a broad definition of each is appropriate.

With respect to one comment, NASD believes that it would be appropriate for a member's written policies and procedures to allow case-by-case review and approval for types of entertainment not specifically set forth in the member's policies and procedures.[34] One commenter was concerned that a registered representative may not be aware whether a recipient of business entertainment is a representative of a customer of the firm.[35] If a person is entertained in his personal capacity as a natural person client, and the firm has information barriers that would prevent the person providing the business entertainment from knowing that the person represents another customer as a representative, and the person providing business entertainment has no knowledge that such person is a representative of a customer at the time of the business entertainment, then such entertainment would fall outside the scope of the IM.

Several commenters raised suggestions concerning Rule 3060's limitation on gifts and gratuities, ranging from comments focused on increasing the $100 limitation, moving from a hard figure standard to a principles-based approach, and providing guidance on the types of gifts and incidental expenses that should be included or excluded from any limitation.[36] The proposed rule change is focused on business entertainment, which is excepted from the limitation on ''gifts,'' and NASD is not currently considering amending the rule regarding gifts and gratuities.[37] NASD has long recognized that gifts—in contrast to business entertainment—are not incidental to the transaction of business. NASD requires that any gifts be *de minimis* and sees no reason to depart from this long-held view. NASD does not believe that the proposed rule change is the appropriate forum for providing interpretive advice on other aspects of Rule 3060; however, NASD staff recently published additional guidance on Rule 3060 regarding gifts and gratuities. *See Notice to Members* 06–69 (December 2006).

Two commenters expressed concern that the IM shifts the burden of proof required under NASD Rules and suggested that any change to Rule 3060 be done through a separate rule proposal rather than through an IM.[38] As discussed in footnote 2 and the accompanying text of *Notice to Members* 06–06, the IM, which is the equivalent of a rule provision, is being proposed in accordance with the procedures for a proposed rule change under Section 19 of the Act.[39] Rule 3060 and IM–3060 are two separate provisions, and the burden of proof under Rule 3060 is not affected by the proposed IM.

Several commenters appeared concerned that the discussion in footnote 5 of *Notice to Members* 06–06 would prohibit entertaining friends and relatives. This misconstrues the meaning of footnote 5, which says: ''Members cannot circumvent this proposed interpretive material by providing business entertainment to a natural person customer who also is an employee, agent or representative of a customer by claiming that such business

[26] Letter from Evolve.

[27] *See* Letter from BMA.

[28] *See, e.g.*, Letters from Hines and ING.

[29] *See* Letter from Transamerica Capital.

[30] *See, e.g.*, Letters from Dominion and Seasongood.

[31] *See* Letters from BMA, Griffin, NSCP, and Wachovia.

[32] *See, e.g.*, Letters from BMA, Financial Network, FSI, ING, and Transamerica Capital.

[33] As noted in footnote 2 above, although the language in the definitions has been modified, the substance and breadth has been retained.

[34] *See* Letter from Debevoise.

[35] *See* Letter from FSI.

[36] *See, e.g.*, Letters from ABASA, BMA, Debevoise, Evolve, Financial Network, and Wachovia.

[37] The one exception is the one noted above with respect to exigent circumstances. Numerous commenters requested that NASD adopt the exigent circumstances exception from the gift rule similar to the exception that the NYSE has proposed. *See, e.g.*, Letters from ABASA, BMA, and Wachovia. As discussed above, NASD has determined that it is appropriate to provide for such an exception.

[38] *See* Letters from Financial Network and ING.

[39] 15 U.S.C. 78s.

entertainment applies only to the 'natural person' relationship.'' What is required by footnote 5 is that an associated person of a member not avoid the application of the firm's business entertainment policies by claiming such entertainment is ''personal'' rather than business. Firms are, however, likely to include policies in their business entertainment procedures to address personal entertainment of a customer representative where there is a family or some other personal relationship, much the way firms do today for gifts and gratuities under Rule 3060 that are not in relation to the business of the employer of the recipient.

Many commenters requested clarification on whether an ''independent'' review could be conducted by an independent department within, or affiliated with, the member.[40] NASD has removed the specific review sections of the proposed rule change because it was redundant of existing obligations. A member firm's responsibility to supervise business entertainment exists under Rule 3010(a), and a member firm's responsibility to test and verify that its supervisory policies and procedures are achieving their intended purpose and complying with the federal securities laws and regulations and NASD rules exists under Rule 3012(a)(1).

Many commenters expressed concern with the breadth of the recordkeeping requirement and requested a lengthy implementation time for the recordkeeping requirements.[41] In response to these comments, NASD provided an exception from the recordkeeping obligations for expenses under $50. However, as discussed above, NASD believes that a member's policies and procedures should prevent persons associated with the member from intentionally avoiding the $50 requirement by breaking up what are otherwise connected costs or by engaging in frequent, repeated business entertainment at amounts below the $50 threshold. For example, a firm's policies and procedures may require associated persons of the member to submit all business entertainment expenses for review; however, the firm may decide to record and track only amounts over $50. NASD also is providing for an effective date of six months following the Commission's approval of the proposed rule change. Members should provide the Commission with specific comments as to whether this is sufficient time to implement recordkeeping systems to comply with the proposed rule change and, if it is not sufficient, offer reasons why and suggest an appropriate implementation period.

One commenter suggested that NASD permit a member's procedures to include prompt review of business entertainment after the event.[42] The commenter offered an example of a dinner that unexpectedly exceeds the firm's threshold. NASD does not believe that a member's policies and procedures should allow for post-event approval because there does not appear to be an effective means of rescinding business entertainment that has already been provided. Rather, persons associated with a member who are concerned that the cost of an event may exceed the threshold should request approval in advance to go over the firm's limit. In such a situation, the member should impose another dollar limit rather than simply waive the requirement.

Finally, several commenters requested that NASD and the NYSE harmonize their proposed rule changes or, in the alternative, include a provision that a dual member that complies with one of the SRO's rule will be deemed to be in compliance with the other SRO's rule.[43] In filing this Amendment No. 1, NASD has sought to address substantive disparities between its rule and that of the NYSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

The Commission notes that the NYSE's proposed Rule 350A(e) provides that a NYSE member organization must have a system in place to give notice (*e.g.*, via the member organization's Web site, a disclosure document, or other appropriate means) to customers that use customer representatives that upon a customer's written request, the NYSE member organization will provide detailed information regarding the manner and expense of any business entertainment provided by the NYSE member organization to the customer representative,[44] while the NASD's proposal does not contain a similar notice provision.[45] The Commission is soliciting comment on this difference between the NYSE and NASD proposed rules and specifically whether NASD should have a similar notification provision for customers utilizing customer representatives.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–044 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–NASD–2006–044. 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

[40] *See, e.g.*, Letters from Debevoise, Evolve, ICI, KBW, NRS, Transamerica Capital, and Wachovia.

[41] *See, e.g.*, Letters from Evolve, Financial Network, FSI, H.D. Vest, ICI, ING, Maplewood, and Transamerica Capital.

[42] *See* Letter from T. Rowe Price.

[43] *See, e.g.*, Letters from BMA and SIA.

[44] NYSE believes that the notice provision would encourage the expansion of monitoring and controls on business entertainment beyond broker-dealers to the employers of business entertainment recipients. *See supra* note 5.

[45] *See supra* note 5.

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–NASD–2006–044 and should be submitted on or before June 12, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9742 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55770; File No. SR–NSCC–2007–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Ability To Receive Transaction Data From Trade Reporting Facilities That Are Facilities of a Self-Regulatory Organization

May 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 26, 2007, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify NSCC's Rule 7, ''Comparison and Trade Recording Operation,'' in order to make clear that NSCC may accept transaction data on behalf of NSCC members from trade reporting facilities that are affiliated with and operated as a facility of a self-regulatory organization (''Trade Reporting Facilities'' or ''TRFs'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to clarify NSCC's Rule 7, ''Comparison and Trade Recording Operation,'' in order to make clear that NSCC may accept transaction data on behalf of NSCC Members from Trade Reporting Facilities.

Background

NSCC's Rule 7 permits NSCC in its discretion to accept transaction data from self-regulatory organizations (''SROs''), as defined in the Securities Exchange Act of 1934 (and, similarly, from derivatives clearing organizations registered or deemed registered with the Commodities Futures Trading Commission). Such data may be provided directly by an SRO or through subsidiary or affiliated organizations.

In conjunction with the recent separation of the National Association of Securities Dealers, Inc. (''NASD'') and The Nasdaq Stock Market, Inc. (''Nasdaq''), the Commission approved the establishment by NASD and Nasdaq of the NASD/Nasdaq Trade Reporting Facility, which provides NASD members with an alternative means for reporting transactions in exchange-listed securities effected otherwise than on an exchange. Since then, NASD has established several additional new TRFs in conjunction with other registered securities exchanges, each of which provides NASD members with alternate means for reporting transactions in exchange-listed securities effected otherwise than on an exchange. All of these TRFs will operate as joint ventures with the relevant exchanges, but NASD, the ''SRO Member'' of each such venture, will have sole regulatory responsibility for each TRF. As such, the TRFs are facilities ''of NASD and subject to NASD's registration as a national securities association.''[5]

At the current time, NASD filed proposed rule changes with the Commission relating to the establishment of the following TRFs: The NASD/Nasdaq TRF; the NASD/National Securities Exchange (NSX) TRF; the NASD/Boston Stock Exchange (BSE) TRF; and the NASD/New York Stock Exchange (NYSE) TRF. Currently, all the TRFs are operational. The rules governing the operations of these facilities are contained in NASD Rule 4000 and 6100 Series for the NASD/Nasdaq TRF, NASD Rule 4000C and 6000C Series for the NASD/NSX TRF, NASD Rule 4000D and 6000D Series for the NASD/BSE TRF, and NASD Rule 4000E and 6000E Series for the NASD/NYSE TRF. With the exception of the NASD/NYSE TRF, the applicable rules permit the TRFs, at the option of their NASD member participant, to submit the data relating to reported trades to NSCC for clearance and settlement.

In order to accommodate the NASD and to promote the efficient processing of securities transactions, NSCC proposes to clarify its Rule 7, Section 5[6] to make clear that it may accept transaction data from such TRFs as facilities of the NASD, the applicable SRO. For this purpose, the proposed clarification provides that the TRF be affiliated with and operated as a facility of the SRO and that the rules and operation of the TRF be the subject of a rule change of the SRO that has been duly filed with the Commission and is effective.[7] By allowing NSCC to receive transaction data for clearing purposes from these facilities with respect to NSCC's members, broker-dealers will be able to report transactions for both reporting/regulatory and clearing purposes in a single report to the TRFs.

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[46] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] *See e.g.*, Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) [SR–NASD–2005–087] (establishment of the NASD/Nasdaq TRF); 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) [SR–NASD–2006–108] (establishment of the NASD/NSX TRF); and 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) [SR–NASD–2006–115] (establishment of the NASD/BSE TRF).

[6] Rule 7, Section 5 is proposed to be renumbered as part of other changes pending pursuant to File No. SR–NSCC–2006–04.

[7] NASD filed a proposed rule change relating to the establishment of the NASD/NYSE TRF for immediate effectiveness, asserting that such proposed rule change was ''non-controversial'' because it was substantially similar to the rules relating to the other TRFs, which were subject to notice and comment and approved by the Commission. Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) [SR–NASD–2007–011].

The proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to NSCC because the proposed change is a clarification that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not adversely affect the respective rights or obligations of the clearing agency or its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or 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 relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1)[10] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NSCC. 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–NSCC–2007–05 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–NSCC–2007–05. 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. The text of the proposed rule change is available at NSCC, the Commission's Public Reference Room, and *http://www.nscc.com/legal/2007/2007-05.pdf*. 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–NSCC–2007–05 and should be submitted on or before June 11, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E7–9762 Filed 5–21–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5802]

Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On May 1, 2007, the Department of State certified, pursuant to Section 609 of Public Law 101–162 (''Section 609''), that 16 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2007 pursuant to Section 609.

DATES: *Effective Date:* May 22, 2007.

FOR FURTHER INFORMATION CONTACT: Clayton Stanger, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On May 1, 2007, the Department certified 16 nations on the basis that their sea turtle protection programs are comparable to that of the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Madagascar, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Suriname, and Venezuela.

The Department also certified 24 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy only harvest shrimp using small boats with crews of less than five

that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The eight nations and one economy are: The Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.

The Department of State has communicated the certifications under Section 609 to the Office of Field Operations of U.S. Customs and Border Protection.

In addition, this Federal Register Notice confirms that the requirement for all DS–2031 forms from uncertified nations must be originals and signed by the competent domestic fisheries authority. This policy change was first announced in a Department of State media note released on December 21, 2004.

Dated: May 9, 2007.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. E7–9884 Filed 5–21–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 11, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended(49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28173.

Date Filed: May 8, 2007.

Parties: Members of the International Air Transport Association.

Subject: CAC/35/Meet/007/07 dated, Expedited Resolutions 801r, 809, 809e, 819, 851 & 853(Minutes relevant to the Resolutions are included in CAC/35/Meet/006/07 dated 1 May 2007).

Intended effective date: 1 July 2007.

Renee V. Wright,

Program Manager, Docket Operations,Federal Register Liaison.

[FR Doc. E7–9827 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q)During the Week Ending May 11, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air CarrierPermits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).The due date for Answers, Conforming Applications, or Motions to ModifyScope are set forth below for each application. Following the Answer periodDOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–28180.

Date Filed: May 8, 2007.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*May 29, 2007.

Description: Joint Application of ATA Airlines, Inc. (''ATA''), North American Airlines, Inc.(''North American'') and World Airways, Inc. (''World'') requesting approval of the de facto transfer of certain international certificate and exemption authority currently held by North American and World to ATA.

Renee V. Wright,

Program Manager, Docket Operations,Federal Register Liaison.

[FR Doc. E7–9814 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Rickenbacker International Airport Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 188.653 acres of vacant airport property previously used for agricultural purposes for the proposed development of bulk warehouse/distribution facilities as a component of the Rickenbacker Global Logistics Park. The land was acquired by the Rickenbacker Port Authority through three Quitclaim Deeds from the United States of American dated March 30, 1984, September 22, 2004 (amended and restated August 26, 2005) and May 16, 2005. There are no impacts to the airport by allowing the airport to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The CRAA will receive $4,245,000 for the parcel.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before June 21, 2007.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Mary W. Jagiello, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

FOR FURTHER INFORMATION CONTACT: Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2956)/Fax Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at Rickenbacker International Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property situated in the State of Ohio, County of Franklin, Township of Hamilton, Ohio, being more particularly described as follows:

Beginning at the northwesterly corner of dedicated right-or-way of Port Road (formerly known as Curtis LeMay Avenue) as shown and delineated on the plat of ''Dedication of Curtis LeMay Avenue and Alum Creek Drive'' of record in Plat Book 76, page 46, being the northeasterly corner of said 0.371 ace tract;

Thence the following fourteen (14) courses and distances on, over and across the said 241.695 acre tract:

1. Along a curve to the left having a central angle of 22°14′57″, a radius of 1979.86 feet, an arc length of 768.82

feet, with a chord bearing of South 82°42′47″ West, and a chord length of 764.00 feet, to a point;

2. North 03°45′18″ East, a distance of 31.60 feet, to a point;

3. North 86°06′35″ West, a distance of 435.21 feet, to a point;

4. South 03°53′24″ West, a distance of 18.20 feet, to a point at the northwesterly corner of a 1.433 acre tract conveyed to South Central Power Company by deed of record in Official Record 34399 E11;

5. South 04°16′55″ West, a distance of 261.65 feet, to a point in a curve;

6. Along a curve to the left having a central angel of 11°24′43″, a radius of 1979.86 feet, with an arc length of 394.34 feet, with a chord bearing of South 51°17′48″ West, a chord length of 393.69 feet, to a point of tangency;

7. South 45°35′27″ West, a distance of 2212.72 feet, to a point of curvature;

8. Along a curve to the left having a central angle of 76°06′34″, a radius of 786.20 feet, with an arc length of 1044.36 feet, with a chord bearing of South 07°32′10″ West, and a chord a length of 969.25 feet, to a point of tangency;

9. South 30°31′07″ East, a distance of 864.22 feet, to a point of curvature;10. Along a curve to the right having a central angle of 74°04′38″, a radius of 789.44 feet, an arc length of 1020.66 feet, with a chord bearing of South 96°31′12″ West, and a chord length of 951.04 feet, to a point of tangency;

11. South 43°33′31″ West, a distance of 1394.98 feet, to a point in the line of said 241.695 acre (Tract 2);

12. North 44°24′19″ West, a distance of 737.07 feet, along the said 241.695 acre (Tract 2) to a point;

13. North 45°35′41″ East, a distance of 1558.56 feet, continuing along said 241.695 acre (Tract 2), to a point;

14. North 86°58′21″ West, a distance of 1030.00 feet, on, over and across said 241.695 acre tract (Tract 2), to a point in the line between Section 11 and Section 12;

Thence North 03°36′41″ East, a distance of 1566.99 feet, along the line between Section 11 and Section 12 then a westerly line of said 241.695 acre tract (Tract 2) to a point at the common corners to Sections 11, 12, 1 and 2; Thence North 04°02′49″ East, a distance of 2714.89 feet, along line between Section 1 and Section 2 and continuing along a westerly line of said 241.695 acre tract (Tract 2) to a point at an angle point in the 225.289 acre tract (Tract 11);

Thence the following seven (7) courses and distances along a northerly line of said 225.289 (Tract 11);

1. South 86°46′46″ East, a distance of 2648.79 feet, to a point;

2. North 34°49′42″ East, a distance of 25.00 feet, to a point;

3. South 86°13′24″ East, a distance of 428.28 feet, to a point;

4. North 03°46′36″ East, a distance of 87.40 feet, to a point;

5. South 87°08′04″ East, a distance of 40.00 feet, to a point;

6. South 03°46′36″ West, a distance of 88.04 feet, to a point;

7. South 86°13′24″ East, a distance of 286.49 feet, to a point;

Thence North 03°48′27″ East, a distance of 39.68 feet, along the said 225.289 acre tract (Tract 11) then westerly line of said 0.371 acre tract (Tract 10) to a point;

Thence South 86°09′46″ East, a distance of 595.96 feet, along the northerly line of said 0.371 acre tract (Tract 10) to the Point of Beginning, containing 188.653 acres, more or less.

The bearings shown herein are based on the bearing of South 86°09′45″ East, for the northerly line of 0.371 acre (Tract 10) of record in Instrument Number 200301020000768, records of the Recorder's Office, Franklin County, Ohio.

Dated: Issued in Romulus, Michigan, on April 30, 2007.

Irene Porter,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 07–2510 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held June 13, 2007, from 1 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. Note: Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure. Agenda items will be posted on *www.rtca.org.* Web-site.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 11, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–2515 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; Renewal of American Pyrotechnics Association (APA) Exemption From the 14-Hour Rule during Independence Day Celebrations

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the American Pyrotechnics Association (APA) exemption from FMCSA's regulation that drivers of commercial motor vehicles (CMVs) may not drive after the 14th hour of coming on duty. The exemption for 70 motor carriers and approximately 3,000 drivers is applicable for a period beginning 7 days prior to and 2 days immediately following Independence Day in 2007 and 2008. Drivers who operate CMVs in conjunction with staging fireworks shows celebrating Independence Day will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will not be allowed to drive after

accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and will continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The terms and conditions of the current exemption will remain in place for a second two-year period. FMCSA believes that with the terms and conditions in place, APA will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

DATES: This renewed exemption is effective from June 28 through July 6, 2007, and from June 28 through July 6, 2008. The exemption expires on July 7, 2008. Comments must be received on or before June 21, 2007.

ADDRESSES: You may submit comments to the DOT Docket Management System (DMS), referencing Docket Number FMCSA–2007–XXXXX, using any of the following methods:

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading **FOR FURTHER INFORMATION CONTACT**.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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 DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the hours of service (HOS) requirements in 49 CFR 395.3(a)(2) for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381. FMCSA has evaluated the American Pyrotechnics Association (APA) application for a renewal on its merits and decided to renew the exemption for the 70 companies requested for a two-year period. The list of APA member companies covered by the exemption from 49 CFR 395.3(a)(2) is included as an Appendix to this Notice.

APA Application for an Exemption Renewal

APA applied for the renewal of an exemption from the HOS rules, specifically 49 CFR 395.3(a)(2), which prohibits drivers from operating property-carrying CMVs after the 14th hour of coming on duty. APA requested that drivers covered by the exemption be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour rule. Drivers would not be allowed to drive after the accumulation of 14 hours of on-duty time following 10 consecutive hours off duty. The exemption would be applicable to 70 motor carriers and approximately 3,000 drivers responsible for operating about 3,000 CMVs. APA is seeking a renewal of this exemption because full compliance with the 14-hour rule imposes a substantial economic hardship on their member companies. A copy of the request for a renewal is included in the docket referenced at the beginning of this notice.

APA, a trade association representing the domestic fireworks industry, asserts that full compliance with the current HOS regulations during the brief period surrounding Independence Day imposes a substantial economic hardship on its members that operate fireworks for the public. According to their original exemption request submitted in December 2004, APA member-company drivers are trained pyrotechnicians, each holding a commercial driver's license (CDL) with a hazardous materials (HM) endorsement. These drivers transport fireworks and equipment to remote locations under demanding schedules. During the week before Independence Day, APA members are engaged to stage multiple shows in a very compressed period of time. To meet the surge of business in this 1-week period under the current HOS rules, companies would be required to hire a second driver for most trips. This would result in a substantial increase in the cost of these shows, and as a result, many shows would be cancelled. Alternatively, APA members would be forced to significantly decrease their engagements. In either case, APA members would have to decrease the number of shows they provide, thereby denying many Americans a primary component of their Independence Day celebration.

Method To Ensure an Equivalent or Greater Level of Safety

APA believes that the renewal of the exemption will not adversely affect the safety of the motor carrier transportation provided by their member companies. These companies operated under the existing exemption for two years with no reports of incidents of any kind. Moreover, according to the APA, the exemption will enhance safety by decreasing the number of CMVs stationed with HM 1.3 and 1.4 products aboard at locations throughout the country. Under the exemption, CMVs will be able to return to their home base, which is a secured area for these types of products.

In their original exemption request, APA stated they believe that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, drivers spend their driving time transporting fireworks relatively short distances from the nearest distribution point to the site

of the fireworks display. Most of their on-duty time, however, is devoted to installing, wiring, and double-checking fireworks displays. Pyrotechnicians drive to the site of the fireworks display in the early morning and return late in the evening, thus avoiding much of the heavy traffic typical of the holiday. After setting the fireworks display in daylight in order to reduce the possibility of mistakes, the pyrotechnicians/drivers typically have several hours off duty in the late afternoon and early evening, just before the shoot. This enables them to rest or nap, reducing or eliminating the fatigue caused by the day's activities, and making their return trip later that evening safer.

In addition to driving at off-peak hours and having an opportunity for substantial rest periods during their tour of duty, pyrotechnicians who drive back to a hotel or motel in the 15th or 16th hours after coming on duty will be required to take 10 consecutive hours off-duty, like other drivers. Although FMCSA believes the 14-hour limit is generally conducive to safety, the current HOS regulations allow certain short-haul drivers a 16-hour driving ''window'' once a week, providing specified conditions are met. Because pyrotechnician-drivers operate like short-haul drivers (relatively little driving, a variety of work), FMCSA has concluded that the 9-day yearly exemption requested by APA is not likely to adversely affect motor carrier safety.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on APA's request for a renewal of its exemption from the requirements of 49 CFR 395.3(a)(2). FMCSA will review all comments received and determine whether the renewal of the exemption is consistent with the requirements of 49 U.S.C. 31315 and 31136(e). Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

FMCSA believes the requirements for a renewal of an exemption under 49 U.S.C. 31315 and 31136(e) can be satisfied by initially granting the renewal and then requesting and subsequently evaluating comments submitted by interested parties. As indicated earlier, the Agency previously published a notice announcing its decision to exempt these APA member companies (and drivers) from the HOS rules in 49 CFR 395.3(a)(2). The decision to renew the exemption for these companies and drivers was based on the merits of the APA application, and only after careful consideration of the comments submitted in response to the May 6, 2005 notice (70 FR 24160).

Interested parties or organizations possessing information that would otherwise show that any or all of these APA member companies are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of the exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company or companies and driver(s) in question.

Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) (the 14-hour rule) is effective June 28, 2007, and is applicable from June 28 through July 6, 2007, and from June 28 through July 6, 2008. The exemption expires on July 7, 2008.

Extent of the Exemption

This exemption is restricted to drivers employed by the companies, firms and entities listed in the appendix to this notice. The drivers are entitled to a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation, 49 CFR 395.3(a)(2), currently prohibits a driver from driving after the 14th hour of coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper berth time of any length from the calculation of the 14-hour limit. This exemption is contingent on each driver driving no more than 11 hours in a 14-hour period. The exemption is further contingent on each driver having a full 10 hours off duty following 14 hours on duty prior to beginning a new driving period. The drivers must comply with all other requirements of 49 CFR part 395.

Preemption

During the period the exemption is in effect, no state shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

Notification to FMCSA

Each company, firm and entity listed in the appendix to this notice must notify FMCSA within 5 business days of any of the following:

1. An accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs, operating under the terms of this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or closest to the accident scene,

c. Driver's name and license number,

d. Vehicle number and State license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident, and

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations.

2. The total driving time and the total on-duty time period prior to the accident.

Termination

FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Each motor carrier and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on: April 20, 2007

Rose A. McMurray,

Chief Safety Officer, Assistant Administrator.

Appendix to Notice of Renewal of American Pyrotechnics Association (APA) Exemption from the 14-Hour Rule during Independence Day Celebrations

LIST OF APA MEMBERS COVERED BY EXEMPTION FROM 14 HOUR RULE IN HOURS OF SERVICE FOR DRIVERS REGULATION

Company name	Address	Address 2	DOT #
Add Fire, Inc	11370 NE 8 Ave	Miami, FL 33161	481513
Alonzo Fireworks Display, Inc	12 County Rd 75	Mechanicsville, NY 12118	420639
American Promotional Events, Inc—West/TNT Fireworks	555 North Gilbert Street	Fullerton, CA 92833	564520
American Promotional Events of Texas, LP/TNT Fireworks.	1101 114th Street	Lubbock, TX 79423	1144209
American Promotional Events, Inc—East Coast/TNT Fireworks.	4511 Helton Drive	Florence, AL 35630	0121384
American Promotional Events—Northwest/TNT Fireworks.	2120 Milwaukee Way	Tacoma, WA 98421	013086
Arrowhead Fireworks Co., Inc	3625 Normanna Rd	Duluth, MN 55803	125673
Atlas Enterprises Inc	6601 Nine Mile Azle Rd	Fort Worth, TX 76135	0116910
Atomic Fireworks	3660 W. Sunshine	Springfield, MO	130200
Atomic Fireworks	999 Sumter Highway	Bishopville, SC	446835
Atomic Fireworks	P.O. Box 190	South Pittsburg, TN	095166
B.J. Alan Company	555 Martin Luther King, Jr Blvd	Youngstown, OH 44502–1102	262140
Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
Ches-Lee Enterprises, Inc	P.O. Box 64	Bastrop, TX 78602	533725
Colonial Fireworks Company	5225 Telegraph Road	Toledo, OH 43612	177274
Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
Fireworks & Stage FX America	P.O. Box 488	Lakeside, CA 92040	908304
Fireworks by Grucci, Inc	1 Grucci Lane	Brookhaven, NY 11719	324490
Fireworks of Alabama	3325 Poplar Lane	Adamsville, AL 35005	579933
Fireworks Productions, Inc	P.O. Box 294	Maryland Line, MD	464796
Garden State Fireworks, Inc	383 Carlton Road	Newington, NJ 07946	435878
Galaxy Fireworks, Inc	204 E MLK Jr Blvd	Tampa, FL 33603	809731
Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
Global Pyrotechnics Solutions, Inc	10476 Sunset Drive	Dittmer, MO 63023	1183902
Hamburg Fireworks Display Inc	4300 Logan Lancaster Rd	Lancaster, OH	395079
Ingram Enterprises dba Fireworks over America	6597 W Independence Drive	Springfield, MO 65802	0268419
International Fireworks Mfg. Co.	242 Sycamore Road	Douglasville, PA 19518	385065
Island Fireworks Company	N735 825th St	Hager City, WI 54014	414583
J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
Jake's Fireworks, Inc	2311 A West 4th St	Pittsburg, KS 66762	449599
July 4 Ever	382 Rock Cut Rd	Walden, NY 12586	803422
Kellner's Fireworks Inc	478 Old Rte 8	Harrisville, PA	481553
Kuhn Fireworks Display Co.	2240 Homebrook Trail SW	Pequot Lakes, MN 56472	1057310
Lantis Fireworks and Lasers	P.O. Box 491	Draper, UT 84202	195428
Lantis Fireworks, Inc	130 Sodrac Dr	N Sioux City, DK 57049	534052
Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
Lew's Fireworks, Inc	45788 U.S. Hwy 212	Watertown, SD 57201	333792
Mad Bomber/Planet Productions	P.O. Box 418	Kingsbury, IN 46345	777176
Melrose Display Company	7620 Little Mount Rd	Taylorsville, KY 40071	434586
Melrose North Pyrotechnics	9405 River Rd SE	Clear Lake, MN 55319	434586
Melrose Pyrotechnics, Inc	P.O. Box 302	Kingsbury, IN 46345	434586
Melrose South Pyrotechnics	4652 Catawga River Rd	Catawga, SC 29704	545033
Montana Display Inc	9480 Inspiration Drive	Missoula, MT 59808	1030231
Precocious Pyrotechnics, Inc	4420–278th Ave NW	Belgrade, MN 56312	435931
Premier Pyrotechnics Inc	25255 Hwy K	Richland, MO 65556	0853895
Pyro Engineering Inc, dba/Bay Fireworks	110 Route 110, Suite 102	Huntington Station, NY 11746	530262
Pyro Shows Inc	701 W. Central Ave	LaFollette, TN 37766	456818
Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
Pyro Services, Inc dba, Pyrotechnics by Lamb & Choice Express.	P.O. Box 1931	Kilgore, TX 75663	1264631
Pyrotechnics by Presutti, Inc	P.O. Box 42	St Clairsville, OH 43950	51974
Pyrotecnico	302 Wilson Rd	New Castle, PA 16105	526749
Pyrotecnico of Louisiana, LLC	60 West Ct	Mandeville, LA 70471	548303
Red Rocket Fireworks Co. Inc	311 Evergreen	Strafford, MO 65757	239756
RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
Rich Brothers Company	700 S Marion Rd	Sioux Falls, SD 57106	001356
Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd	Loveland, OH 45140	0483686
Salish Fireworks	10041 S March Pt Rd	Anacortes, WA 98221	678702
Skypainter Fireworks Intl. Inc	1714 Prince Philip Street	Clearwater, FL 33755	1079555
Spielbauer Fireworks Co, Inc	220 Roselawn Blvd	Green Bay, WI 54301	046479
Stonebraker-Rocky Mountain Fireworks Co.	5650 Lowell Blvd, Unit E	Denver, CO 80221	0029845
Thunder Fireworks	5207–187th St E	Tacoma, WA 98446	463284
Vermont Fireworks Co., Inc/Northstar Fireworks Co., Inc	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
Wald & Co., Inc	P.O. Box 319	Greenwood, MO 64034–0319	087079
Walt Disney Entertainment	5700 Maple Road	Lake Buena Vista, FL 32830	148477
Western Enterprises, Inc	P.O. Box 160	Carrier, OK 73727	203517
Western Fireworks, Inc	14592 Ottaway Rd. NE	Aurora, OR 97002	838585
Winco Fireworks Int. LLC	1992 NW Hwy 50	Lone Jack, MO	259688

LIST OF APA MEMBERS COVERED BY EXEMPTION FROM 14 HOUR RULE IN HOURS OF SERVICE FOR DRIVERS REGULATION—Continued

Company name	Address	Address 2	DOT #
Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
Young Explosives Corp	P.O. Box 18653	Rochester, NY	450304
Zambelli Fireworks MFG, Co., Inc	P.O. Box 1463	New Castle, PA 16103	033167

[FR Doc. E7–9841 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26424; Notice 2]

Maxon Industry, Inc. DBA Maxonlift Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance

Maxon Industry Inc. DBA Maxonlift Corp. (Maxonlift) has determined that certain wheelchair lifts that it produced in 2005 and 2006 do not comply with paragraph S6.4.7.3 of 49 CFR 571.403, Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles*. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Maxonlift has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Responsibility and Reports.'' Notice of receipt of the petition was published, with a 30 day public comment period, on December 13, 2006 in the **Federal Register** (71 FR 74996). The National Highway Traffic Safety Administration (NHTSA) received no comments. To view the petition and all supporting documents, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter Docket No. NHTSA–2006–26424.

Affected are a total of approximately 197 Model WL–7 and WL–7A wheelchair lifts produced by Maxon between April 1, 2005 and May 30, 2006. Specifically, paragraph S6.4.7.3 of FMVSS No. 403 requires:

> The deployed wheelchair retention device(s) must be capable of sustaining 7,117 N (1,600 lb force) when tested in accordance with S7.13. No separation, fracture, or breakage of the wheelchair retention device may occur as a result of conducting the test in S7.13.

On the subject wheelchair lifts, the outer barrier wheelchair retention device does not comply. In NHTSA's compliance test on the Maxon lift, the outer barrier sustained 5,502 N (1,237 lb. force). Bending occurs on the locking bracket attachments and in the ramp extrusion, and potentially the outer barrier can unfold or break. Maxonlift has corrected the problem that caused these errors so that they will not be repeated in future production.

Maxonlift believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Maxonlift states:

> For the units built with seat belts [all except for 63] we have an electronic feature that does not allow the unit to travel up and down without the seat belts fastened. The seat belt is an added restraint that takes force off of the outboard roll stop. If an electric wheelchair is accidentally moved forward it will hit the seat belt first keeping the person in place. We have had zero failure reports or warranty claims relating to an outboard roll stop failure.

With respect to the lifts that were provided with seat belts and an associated electronic feature that prevents lift platform up and down travel unless the seat belt is fastened, NHTSA agrees with Maxonlift that the noncompliance of the outer barrier is inconsequential to motor vehicle safety. NHTSA does not agree with Maxonlift with regard to the remainder of the lifts that do not have seat belts (secondary wheelchair retention devices). Lifts without seatbelts would rely solely on the inadequate noncompliant outer barrier to prevent a wheelchair from rolling off the lift platform. A failure of the outer barrier would therefore present a potential for severe injury to both the wheelchair occupant and attendants.

On the basis of the foregoing, NHTSA has determined that Maxonlift has adequately demonstrated that, under the specific facts and circumstances presented here, the noncompliance with FMVSS No. 403 in the lifts *with seat belts* is inconsequential to motor vehicle safety and no further action is warranted. Conversely, the noncompliance in the lifts *without seat belts* is not inconsequential.

Accordingly, Maxonlift's petition for an exemption from the duty to recall these noncompliant lifts equipped with seat belts is granted in part. However, the case of the noncompliant lifts without seat belts, the petition is denied and Maxonlift must notify according to 49 U.S.C. 30118 and remedy according to 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 16, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–9858 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26109]

Panoz Auto-Development Company; Grant of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of application for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection.

SUMMARY: This document grants the application of Panoz Auto-Development Company for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The exemption applies to the Panoz Esperante. The basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible effect on motor vehicle safety.

The notice of receipt of an application for temporary exemption from Panoz was published in the **Federal Register** on October 20, 2006. We received no comments in response to the publication.

DATES: The exemption for the Panoz Esperante from the specified provisions of FMVSS No. 208 is effective immediately and remains in effect through August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Nakama, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [1] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a low volume, exotic sports car.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Panoz Auto-Development Company (Panoz) has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208 *Occupant Crash Protection* for the Panoz Esperante only. The basis for the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

III. Statutory Background for Economic Hardship Exemptions

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,'' [2] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

IV. Petition of Panoz Auto-Development Company

Panoz stated that it seeks a temporary exemption from the advanced air bag requirements of FMVSS No. 208 only for the Panoz Esperante, a two-seat convertible sports car. Panoz stated that ''[t]he Esperante is the only passenger car currently being produced by Panoz, a small volume manufacturer.'' Panoz stated that it is an independent company with no affiliation with other automobile manufacturers.

Panoz began to sell the Esperante in 2001. The Esperante is equipped with a driver and passenger side air bag. The driver side air bag is supplied by Breed and the passenger side air bag is supplied by Ford. Panoz stated that it spent a ''significant'' amount of money in order to comply with the ''inflatable restraint requirements'' of FMVSS No. 208. Panoz was able to achieve compliance with ''extensive technical support'' from Visteon, which performed all the calibration work on the air bag restraint module necessary for compliance.

Panoz stated that as a small volume manufacturer with limited financial and technical resources, Panoz must use components produced by large volume manufacturers in order to meet safety and emissions requirements. Panoz stated that it uses components developed by Ford for the Ford Mustang ''in order to meet the stringent regulations.'' Panoz's center tub and chassis design is based on the previous generation Ford Mustang which Panoz referred to as the ''SN95 platform.'' The front chassis structure is engineered to closely simulate the Ford Mustang crash pulse, so that the same air bag restraint module could be used in the Esperante, with some calibration changes, as was used in the Mustang. The interior space in the Esperante was designed to be similar to the Mustang so that the Mustang's relationship of the air bags to the occupants was simulated in the Esperante.

[1] *See* 65 FR 30680 (May 12, 2000).

[2] 49 U.S.C. 30113(b)(1).

Panoz cited the following issues as contributing to its inability to meet the advanced air bag requirements of FMVSS No. 208 by September 1, 2006:

1. Actual sales of the Esperante have been below projected sales;
2. In Model Year 2005, a complete change was made to the Mustang platform, resulting in a new Ford S197 Mustang platform;
3. A delay in Panoz's receiving the necessary information from Ford regarding the new chassis delayed Panoz's design and development of an Esperante that can meet the advanced air bag requirements;
4. Visteon declared bankruptcy and eliminated their air bag system division; and
5. Advanced air bag systems components and technology are not readily available to small volume manufacturers. Most vendors continue to concentrate on large volume manufacturers.

How these issues have affected Panoz's inability to manufacture the Esperante to meet the advanced air bag requirements are discussed in the following sections on Panoz's statements of economic hardship and good faith efforts to comply.

Panoz stated that while its petition is under consideration, it will continue the design and development of the advanced air bag system. Panoz has assigned engineering personnel and test vehicles to this project and Panoz will continue to pursue full compliance with the requirements of FMVSS No. 208.

Panoz estimated that full compliance with FMVSS No. 208 requirements will be achieved before July 2009.

V. Panoz's Statement of Economic Hardship

Panoz has estimated that the addition of an advanced air bag system adds approximately $6,129 to the cost of each vehicle. The impact of the cost increase could reduce vehicle sales by approximately 8 percent. Panoz stated that as a result of development efforts necessary to comply with the ''airbag mandate'' [3] and with Environmental Protection Agency and California Air Resources Board requirements, the manufacturers' suggested retail price (MSRP) of the Esperante was increased to $121,326. As a result of the price increase and ''prevailing market conditions,'' Panoz stated that:

> Actual sales were 35 units below projections in 2001, 30 units below projections in 2002, 72 units below projections in 2003, 77 units below projections in 2004, 73 units below projections in 2005, and 43 units below projections in 2006.[4]

Panoz also stated: ''The total production of Panoz Esperante vehicles during the past 12 months was 12 units. The 2006 calendar-year production to date is 10 vehicles.''

Panoz stated that the reduced sales revenue forced it to slow the advanced air bag system and other programs and decrease staff by approximately 30 percent.

Panoz cited the following development work and modifications related to the installation of an advanced air bag system in the Esperante. Panoz estimated the total cost to adapt an advanced driver and passenger-side air bag system within one or two years to be $1,928,000:

1. Develop a new chassis that would generate the same crash pulse as the S197 Mustang ($380,000);
2. Chassis tooling ($300,000);
3. Design a new firewall and surrounding structure in order to install the passenger side air bag from the Mustang ($187,000);
4. Interior tooling ($150,000);
5. Installation of the Mustang steering column and driver side air bag ($85,000);
6. Installation of a new passenger side seat with built-in sensors ($49,000);
7. Modifications to the vehicle wiring harness ($65,000);
8. Low (8 mph), medium (14 mph) and high (30 and 35 mph) speed barrier crash testing, including the cost of test vehicles and engineering support (estimated at $235,000);
9. Undercarriage snag, pole snag, rough-road testing, and engineering support, including the cost of test vehicles (estimated at $98,000);
10. Barrier crash tests with 3 and 6 year old dummies, including the cost of test vehicles ($228,000);
11. Testing for out-of-position occupant sensing ($46,000);
12. ''Compliance-level'' frontal barrier crash tests at 30 mph, including the cost of vehicles (estimated at $68,000); and
12. Continued evaluation of production vehicles under varying ambient and road conditions (estimated at $37,000).

Panoz stated that this $1,928,000 expenditure represents a ''significant sum.'' Panoz stated it must continue the sale of the existing Esperante in order to generate the revenue necessary to fund this project. The three year extension will provide Panoz the time necessary to properly develop the advanced air bag system.

If the exemption is not granted by NHTSA, Panoz stated that it will lose:

> Approximately $4,226,120.00 in sales revenues in 2006 based on the projected annual sales of 53 units, $6,339,180.00 in 2007 based on the projected sales of 60 units, $10,565,300.00 in 2008 based on the projected sale of 100 units, and $15,847,950.00 in 2009 based on the projected sale of 150 units.

Panoz further stated that denial of the petition would cause substantial economic hardship and would keep it from meeting the advanced air bag requirements of FMVSS No. 208, removing the Esperante from the U.S. market and jeopardizing the existence of the company. Panoz stated that a three-year exemption would spread the necessary expenditures to approximately $1,928,000 divided by thirty-six months or $53,556 per month, which would be sustained through the sales of Esperante vehicles.

VI. Panoz's Statement of Good Faith Efforts to Comply

Panoz states that the delay in the implementation of the advanced air bag system has mostly been due to ''circumstances beyond the control of Panoz.'' Panoz states its intent is to ''provide the safest vehicles possible to the public.'' The three year exemption from the advanced air bag requirements is necessary to develop and test the ''most up-to-date airbag technology available.'' Panoz states that the Esperante will ''remain fully compliant with all FMVSS standards during the extended exemption periods with the sole exception of the advanced air bag requirements of standard 208.'' Panoz cited the following changes that must be made to the Esperante in order to meet the advanced air bag requirements:

1. Modify the chassis in order to simulate the S197 Mustang crash pulse;
2. Modify the interior in order to simulate the interior space of the S197 Mustang and the relationship between the occupants and air bag system;
3. ''Package'' [5] the new Mustang seats which are equipped with sensors;
4. ''Package'' the air bag system sensors, restraint control module and wiring harness;
5. Modify the dashboard and support structure to install the new passenger side air bag;
6. Install new driver side air bag;
7. Perform crash tests to determine compliance with the Federal motor vehicle safety standards; and

[3] Panoz did not specify whether it meant the advanced air bag or requirements or other FMVSS No. 208 air bag requirements.

[4] Panoz did not provide actual sales figures orproduction figures for the Esperante for any of these years.

[5] Panoz did not explain what it means by the term ''package.''

8. Validate the advanced air bag system.

Panoz cited the following as a factor in ''significantly'' delaying its ability to develop an Esperante model that meets the advanced air bag requirements. Ford introduced the new Mustang in Model Year 2005. Panoz was scheduled to receive a preproduction Mustang for development purposes in 2004. However, Panoz did not receive an S197 Mustang until March 2005, a delay of approximately a year.

Panoz stated that between October 2003 and July 2006, it spent 6,292 man-hours and $630,000 to develop an advanced air bag system for the Esperante. A large portion of these resources went into designing a new ''compliant'' chassis, with assistance from Multimatic Corporation. The new chassis project began before Panoz received a new Mustang from Ford. Development of this chassis is ongoing.

Panoz stated that in addition to expenditures relating to the installation of an advanced air bag system, ''during this period'' Panoz spent approximately $1,910,000 towards compliance with other Federal motor vehicle safety standards and with Environmental Protection Agency and California Air Resources Board emissions standards.

Panoz noted that Visteon developed and calibrated the restraint control module installed in the Esperante. Panoz intended to enter into a contract with Visteon to develop the advanced air bag system and recalibrate the air bag restraint module for use with the advanced air bag system. Panoz was unable to use this option when Visteon eliminated its air bag development group.

Panoz stated that it began the process of complying with advanced air bag requirements in October 2003 by entering into a contract with Multimatic Corporation to develop a chassis that simulates the crash pulse and duplicates the interior packaging of the ''S197 Mustang.'' Panoz stated that a large portion of the work has been accomplished, but because of financial constraints and inability to obtain the necessary S197 crash pulse information, the work has not been completed. Panoz stated that the new chassis design dictates that it must develop a proprietary fuel tank that is able to work properly with the Ford On-Board-Diagnostic system, since the new Mustang fuel tank will not fit in the Esperante. The new chassis also required redesign of the suspension system.

VII. Panoz's Statement of Public Interest

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, Panoz stated that the Esperante is a ''unique'' car produced in the U.S. using ''100 percent U.S. components.'' The powertrain, climate control system, wiper/washer system, and other major components are purchased from Ford Motor Company. Other parts are purchased from approximately 469 different companies. Panoz currently provides direct employment to ''35 full time employees and one part time employee.'' The Panoz Esperante is currently being sold through 20 dealers in the U.S. Panoz stated that in addition to providing direct employment to 36 employees, ''at least 500 employees from over 469 different companies remain involved in the Panoz project.''

Panoz stated that the Esperante remains as the only vehicle developed and sold in the U.S. which uses extensive aluminum technology. Panoz stated that the Esperante is the only vehicle to currently use molded aluminum body panels for the entire car. Application of aluminum technology continues to gain strength in the U.S. automotive industry. Several new manufacturers have introduced new models equipped with a large number of aluminum components. Panoz asserted that ''[w]ith the probable mandate for greater fuel efficiency, the use of aluminum technology should continue to escalate.'' Panoz stated that the Esperante is a ''showcase'' for aluminum technology. Several companies have used some of the Esperante technology in their products. Panoz stated that it is an innovator in vehicle technology. Panoz further stated that it continues to provide the public with ''a classic alternative'' to current production vehicles.

VIII. Federal Register Notice of October 20, 2006

In the **Federal Register** of October 20, 2006 (71 FR 62038), we published a notice announcing receipt of an application from Panoz for a temporary exemption from the advanced air bag requirements of FMVSS No. 208 for the Esperante. We invited public comment on Panoz's application. We received no comments in response to this publication.

IX. Final Decision

The following discussion provides our decision regarding Panoz's temporary exemption request pertaining to the advanced air bag requirement of FMVSS No. 208.

We are granting Panoz's petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Panoz must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for that requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Panoz to undertake a major redesign of the Esperante, in order to overcome its engineering limitations. While the petitioner was aware of the new requirements for some time, its business plans to introduce a fully compliant vehicle did not materialize due to the fact that it has to rely on components produced by large volume manufacturers in order to meet safety and emissions standards. Consequently, Panoz had to accommodate the delivery schedule of these large manufacturers.

Panoz explained the main engineering challenges precluding incorporation of advanced air bag into the Esperante at this time, as follows. The company does not have access to necessary sensor technology to pursue the ''full suppression'' passenger air bag option. In addition, due to the redesign of the Mustang platform, resulting in a new S197 Ford platform, chassis modifications are anticipated. The petitioner stated that it would take approximately two years to resolve these technical issues surrounding advanced air bags, given adequate funding. Panoz estimated that the total cost to adapt an advanced driver and passenger-side air bag system within one or two years to be $1,928,000. Panoz has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Panoz made good faith efforts to bring the Esperante into compliance with the applicable requirements. The company had a difficult time in gaining access to advanced air bag technology (which

presumably reflects suppliers' initial focus on meeting the needs of large volume manufacturers), and this further reduced the lead time available for development. Furthermore, because Panoz is a fully independent company, there was no possibility of technology transfer from a larger parent company. Consequently, no viable alternatives remain. The petitioner was unable to redesign its vehicle by the time the new advanced air bag requirements went into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties. Panoz has estimated that adding the advanced air bag system adds approximately $6,129 to the cost of each vehicle, and could reduce vehicle sales by approximately 8 percent. Panoz stated that as a result of development costs necessary to meet the ''airbag mandate'' and to meet Federal and State emissions control requirements, the manufacturer's suggested retail price of the Esperante was increased to $121,326. If the exemption is not granted by NHTSA, Panoz stated that it will lose $6,339,180 in 2007 based on the projected sales of 60 units, $10,565,300 in 2008 based on the projected sale of 100 units, and $15,847,950 in 2009 based on the projected sale of 150 units. Panoz stated that the reduced sales revenue forced it to slow the advanced air bag system and other programs and decrease staff by approximately 30 percent.

According to Panoz, its problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Esperante over the next three years to finance development of a fully compliant vehicle for sale. Granting the exemption will allow Panoz to earn the resources necessary to bridge the gap in terms of development of a vehicle that meets all U.S. requirements.

The petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Panoz's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Itemized costs of each component that would have to be modified in order to achieve compliance.

3. Cost of tooling needed to make the vehicle meet advanced air bag requirements.

4. Costs of testing to ensure the redesigned vehicle meets the advanced air bag requirements.

5. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Panoz's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Panoz dealers and repair specialists, negatively impacting their ability to provide parts and services to current Panoz owners. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (approximately 300 for the duration of the exemption), and because Panoz vehicles are not typically used for daily transportation. Their annual usage is substantially lower compared to vehicles used for everyday transportation.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture ''except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

We note that the text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. Specifically in the case of FMVSS No. 208, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, ''except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *.'' We note that the phrase ''Advanced Air Bag Requirements'' is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

In sum, the agency concludes that Panoz has demonstrated good faith effort to bring the Esperante into compliance with the advanced air bag requirements of FMVSS No. 208 and has also demonstrated the requisite financial hardship. Further, we find this exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption from these provisions would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Panoz Esperante is granted NHTSA Temporary Exemption No. EX 07–01, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective immediately and continues in effect through August 31, 2009.

Issued on: May 15, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. E7–9850 Filed 5–21–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before June 6, 2007.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 15, 2007.

Delmer Billings,

Director, Special Permits & Approvals Programs, Office of Hazardous Materials, Special Permits & Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) Affected	Nature of special permit thereof
5022–M	.....	Alliant TechSystems Inc., Plymouth, MN.	49 CFR 174.101(L); 174.104(d); 174.112(a); 177.834(l)(l).	To modify the special permit to authorize the transportation in commerce of an additional Division 1.2 explosive.
10043–M	.....	Texas Instruments, Inc., Dallas, TX.	49 CFR 173.12	To modify the special permit to authorize residual amounts of various hazardous materials, Class 3 liquids, Class 8 materials, Division 6.1 materials, Division 5.1 materials, and ORM–A or ORM–B, in inside packaging having a maximum capacity of five gallons overpacked in outside non-DOT polyethylene bins of 30 cubic-foot capacity.
11579–M	.....	Austin Powder Company, Cleveland, OH.	49 CFR 177.848(e)(2); 177.848(g)(3); 177.835(c)(3).	To modify the special permit to authorize an increase in weight of bulk Division 1.5D and 5.1 hazardous materials allowed to be carried in combination with certain Division 6.1 and Class 8 hazardous materials.
11924–M	2744	Wrangler Corporation, Auburn, ME.	49 CFR 173.12(b)(2)(i)	To modify the special permit to authorize an additional design type for composite intermediate bulk containers (IBCs) and a change to the additional IBC drop test requirements.
13199–M	14558	Carrier Corporation, Houston, TX	49 CFR 173.302(c); 173.306(e)(l).	To modify the special permit to authorize a manufactured rigid internal structure in place of permanently affixing to a trailer.
13280–M	16152	Ovonic Hydrogen Systems, L.L.C., Rochester Hills, MI.	49 CFR 173.301(a)(l) (d) and (f).	To modify the special permit to authorize different pressure relief devices per CGA standards.
14313–M	23868	Airgas, Inc., Radnor, PA	49 CFR 173.302a(b) (2), (3), (4) and (5), 180.205, 180.209, 172, 203(a), 172.301(c).	To authorize the use of ultrasonic inspection as an alternative retest method for certain DOT specification cylinders and certain cylinders manufactured under a DOT special permit.
14478–M	.....	Pilkington North America, Inc., Northwood, OH.	49 CFR 178.603	To reissue the special permit originally issued on an emergency basis to authorize the alternative testing of custom manufactured containers that will be used to transport flammable solids, organic, n.o.s., (ferrocene).

[FR Doc. 07–2512 Filed 5–21–07; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 21, 2007.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing he special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 15, 2007.

Delmer Billings,

Director, Special Permits & Approvals Programs, Office of Hazardous Materials, Special Permits & Approvals.

NEW SPECIAL PERMITS

Applicant No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14502–N		Ropak Southeast, LaGrange, GA.	49 CFR 178.3(a)(1), 178.502(a)(1).	To authorize the transportation in commerce of approximately 3900 UN 1H1 drums that were incorrectly marked as jerricans (3H1). (Modes 1, 2, 3, 4, 5)
14503–N		Gay Lea Foods Co-operative Limited, Guelph, OH.	49 CFR 173.306(b)(1)	To authorize the transportation in commerce of an aerosol foodstuff in a nonrefillable metal container similar to a DOT Specification 2P. (Modes 1, 2, 3, 4, 5)
14505–N		Arkema, Inc., Philadelphia, PA	49 CFR 173.31(a) 179.13	To authorize the transportation in commerce of tank cars, containing certain refrigerant gases in Division 2.2, with a maximum gross weight on rails of 286,000 pounds. (Mode 2)
14506–N		Jacobs Engineering, Anchorage, AK.	49 CFR 173.4(a)(1)(i)	To authorize the transportation in commerce of Class 3 material in a non-DOT Specification packaging. (Modes 1, 2, 3, 4, 5, 6)
14507–N		Gulf Coast Hydrostatic Testers, LLC, Denham Springs, LA.	49 CFR 180.205(f), 180.209(a), 172.203(a), 172.301(c).	To authorize the retesting of DOT Specification 3A, 3AA, and 3AL cylinders by means other than the hydrostatic retest required in 49 CFR 180.209. (Modes 1, 3, 4)
14508–N		Gulf Coast Hydrostatic Testers, LLC, Denham Springs, LA.	49 CFR 180.205(f), (g); § 180.209(a), (b)(1)(iv); § 172.203(a); § 172.301(c); § 173.302a(b)(2),(4), (5).	To authorize the retesting of DOT Specifications 3A, 3AA, and 3AL cylinders by means other than the hydrostatic retest required in 49 CFR 180.209 and to allow filling pressure 10% greater than marked service pressure. (Modes 1, 3, 4)
14509–N		Pacific Consolidated Industries, LLC, Riverside CA.	49 CFR 173.302(a)(1), 173.304a (a)(1), 175.3.	To authorize the manufacturing, marking, sale and use of brass-lined filament wound cylinders for use in transporting certain Division 2.1 and 2.2 gases. (Modes 1, 2, 3, 5)
14510–N		Clean Earth Systems, Inc., Tampa, FL.	49 CFR 173.12(b), 173.12(b)(2)(i).	To authorize the transportation in commerce by motor vehicle of certain hazardous materials in UN4G fiberboard boxes lined with polyethylene. (Mode 1)
14512–N		Amfuel, Magnolia, AZ	49 CFR 173.241	To authorize the manufacture, marking sale and use of non-DOT specification bulk packagings for the transportation in commerce of certain Class 8 hazardous materials. (Mode 1)
14513–N		Hazmat Services, Inc., Anaheim, CA.	49 CFR 173.12(b)(2)(ii), 172.101(b)(1), 173.12(b)(1).	To authorize the transportation in commerce of chemically-compatible hazardous materials with different hazard classes in lab packs. (Mode 1)

NEW SPECIAL PERMITS—Continued

Applicant No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14515–N	.....	STAKO	49 CFR 173.302(a); 173.304(a); 175.3.	To authorize the manufacture, marking and sell of non-DOT specification fiber reinforced plastic cylinders built to DOT FRP–1 standard for use in transporting various flammable and non-flammable gases.(Modes 1, 2, 3, 4, 5)

[FR Doc. 07–2513 Filed 5–21–07; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Request for Public Comments, New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

SUMMARY: This document invites comments from the public on certain issues regarding how, for purposes of the New Markets Tax Credit (NMTC) Program, the Community Development Financial Institutions (CDFI) Fund should ensure that non-metropolitan counties receive a proportional allocation of Qualified Equity Investments (QEIs). All materials submitted will be available for public inspection and copying.

DATES: All comments and submissions must be received by July 6, 2007.

ADDRESSES: Comments should be sent by mail to: NMTC Program Manager, CDFI Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Information regarding the CDFI Fund and its programs may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION: Section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554), enacted on December 21, 2000, amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. Taxpayers that make QEIs in qualified Community Development Entities (CDEs) may claim the NMTC. Under section 45D(a)(2), the NMTC is equal to five percent of the QEI the first three years and six percent for the next four years for a total of 39 percent. The CDE must use substantially all of the cash from a QEI to make Qualified Low-Income Community Investments (QLICIs). IRC section 45D(d)(1) defines a QLICI as: (A) Any capital or equity investment in, or loan to, any Qualified Active Low-Income Community Business (QALICB); (B) the purchase from another CDE of any loan made by such entity which is a QLICI; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, a CDE.

Under IRC section 45D(c)(1), a CDE is any domestic corporation or partnership if: (A) The primary mission of the entity is to serve, or provide investment capital for, low-income communities or low-income persons; (B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified as a CDE by the Secretary.

The term low-income community, as defined under IRC section 45D(e)(1), means any population census tract in which: (A) The poverty rate is at least 20 percent; or (B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. In addition, pursuant to the American Jobs Creation Act of 2004 (Pub. L. 108–357), certain other census tracts and Targeted Populations may be treated as low-income communities.

Section 102(b)(6) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) (the 2006 Act) amended IRC section 45D(i)(6) to provide that the Secretary shall prescribe regulations to ensure that non-metropolitan counties receive a proportional allocation of QEIs.

For purposes of the NMTC Program, the CDFI Fund defines metropolitan area and non-metropolitan area in accordance with OMB Bulletin No. 04–03 (Update of Statistical Area Definitions and Additional Guidance on Their Uses) and based on 2000 Census data.

The CDFI Fund is seeking comments from the public regarding how it should ensure that non-metropolitan counties receive a proportional allocation of QEIs. Commentators are encouraged to consider, at a minimum, the following issues:

1. *Allocations of QEIs.* IRC section 45D(i)(6) requires that the Secretary ensure that non-metropolitan areas receive a proportional allocation of QEIs. However, the CDFI Fund does not allocate QEIs to geographic areas, per se. Rather, the CDFI Fund allocates NMTCs to CDEs, the vast majority of which have service areas encompassing statewide, multi-state or national markets, and which include both metropolitan and non-metropolitan counties. Further, the location of an allocatee CDE's headquarters is neither indicative of the geographic locations of its investors (the sources of its QEIs), nor of where it intends to make its QLICIs. An allocatee headquartered in a non-metropolitan area may make QLICIs in metropolitan areas, just as an allocatee headquartered in a metropolitan area may make QLICIs in non-metropolitan areas. Similarly, an allocatee's investors may be located in metropolitan or non-metropolitan counties. Consequently, commentators are asked to consider several possible alternatives for ensuring that non-metropolitan areas receive a proportional allocation of QEIs:

(a) Location of investors. Should the CDFI Fund endeavor to ensure that a desired proportion of investors (those persons or entities making QEIs in CDEs) reside or be headquartered in non-metropolitan counties?

(b) Location of allocatees. Should the CDFI Fund endeavor to ensure that either: (i) A desired proportion of NMTC allocatees (as a percentage of the total number of allocatees) in any given NMTC allocation round is headquartered in non-metropolitan counties; or (ii) a desired proportion of NMTC allocation authority (as a percentage of the total dollar amount of allocation authority) in any given NMTC allocation round is provided to CDEs

headquartered in non-metropolitan counties?

(c) Principal service area of allocatees. Should the CDFI Fund endeavor to ensure that either: (i) A desired proportion of NMTC allocatees (as a percentage of the total number of allocatees) in any given NMTC allocation round is ''principally serving'' (i.e., making QLICIs in) non-metropolitan counties; or (ii) a desired proportion of NMTC allocation authority (as a percentage of the total dollar amount of allocation authority) in any given NMTC allocation round is provided to CDEs principally serving non-metropolitan counties? If so, what is the appropriate meaning of ''principally serving'' (e.g., 85 percent of total QLICIs made by the CDE, 50 percent of total QLICIs made by the CDE, or another calculation)?

(d) Location of QLICIs. Should the CDFI Fund endeavor to ensure that a desired proportion of QLICIs is provided in non-metropolitan counties, without consideration of where the CDE is headquartered or which counties (metropolitan vs. non-metropolitan) that it is principally serving?

2. ''*Proportionality.*'' Commentators are asked to consider, in accordance with one or more of the alternatives presented under issue 1 above, the most appropriate definition of the term ''proportional.''

(a) With respect to alternatives (a) and (d) under issue 1, should the CDFI Fund define the term ''proportional'' to mean: (i) The proportion of the U.S. population that resides in non-metropolitan areas (approximately 17.4 percent); (ii) the proportion of low-income communities that are located in non-metropolitan areas (approximately 25 percent); or (iii) another calculation?

(b) With respect to alternatives (b) and (c) under issue 1, should the proportion be based upon: (i) the total applicant pool for a given NMTC allocation round (for example, if 25 percent of the applicant pool consists of CDEs that predominantly serve non-metropolitan areas, the CDFI Fund would ensure that 25 percent of the allocatees predominantly serve rural areas); or (ii) that portion of the applicant pool that, after the first phase of application review and scoring, met or exceeded the minimum scoring threshold to be eligible for NMTC allocations?

(c) With respect to alternatives (c) and (d) under issue 1, should the percentage of QLICIs made in low-income communities be based upon the total number of QLICIs made by a CDE, or the total dollar amount of those QLICIs?

3. *Review Process.* Commentators are asked to consider what changes the CDFI Fund should consider making to the allocation application review and decision-making process. What modifications could be made to the CDFI Fund's review process to ensure that there is a proportional allocation of QEIs in non-metropolitan areas? For example:

(a) Priority points. In prior allocation rounds, the CDFI Fund has provided up to five priority points to applicants that demonstrated a track record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, pursuant to IRC section 45D(f)(2). Should the CDFI Fund adopt priority points based on: (i) The CDE's track record of serving non-metropolitan areas (e.g., an applicant could get up to five priority points based on the percentage of its historic activities serving non-metropolitan areas); (ii) a forward-looking commitment to serving non-metropolitan areas (e.g., up to five points based on the percentage of activities that will be directed to non-metropolitan areas); or (iii) both the track record and the forward-looking commitments?

(b) Re-ranking of applicants. Should the CDFI Fund consider advancing lower scoring applicants that predominantly serve non-metropolitan areas over higher scoring applicants so that the desired proportionality is achieved?

4. *Compliance.* The CDFI Fund must have a mechanism to ensure that allocatees comply with any non-metropolitan area proportionality requirement. Commentators are asked to consider whether the CDFI Fund should require that applicants specify in their applications the percentage of their QEI proceeds that they will use to make investments in non-metropolitan areas and then be held to those percentages as a condition of their allocation agreements.

Authority: 26 U.S.C. 45D; Tax Relief and Health Care Act of 2006, Pub. L. 109–432; 26 CFR 1.45D–1.

Dated: May 16, 2007.

Kimberly A. Reed,

Director, Community Development Financial Institutions Fund.

[FR Doc. E7–9832 Filed 5–21–07; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on June 14–15, 2007, in Room 4442, Export Import Bank, 811 Vermont Avenue, NW., Washington, D.C. The June 14 session will be from 9 a.m. until 5 p.m., and the June 15 session will be from 8:30 a.m. until 12:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of its facilities.

On June 14, the Committee will review developments in the fields of fire safety issues and structural design as they relate to seismic and other natural hazards, impact on the safety of buildings. On June 15, the Committee will receive appropriate briefings and presentations on current seismic, natural hazards and fire safety issues that are particularly relevant to facilities owned and leased by the Department. The Committee will also discuss appropriate structural and fire safety recommendations for inclusion in VA's standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written statements. Statements should be sent to Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Construction & Facilities Management (00CFM1A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Those wishing to attend should contact Mr. Banga at (202) 565–9370.

Dated: May 15, 2007.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–2516 Filed 5–21–07; 8:45 am]

BILLING CODE 8320–07–M

DEPARTMENT OF VETERANS AFFAIRS

Annual Pay Ranges for Physicians and Dentists of the Veterans Health Administration (VHA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: In a notice document that published in the **Federal Register** on May 16, 2007 (72 FR 27637), the Department of Veterans Affairs gave notice of annual pay ranges for Veterans Health Administration (VHA) physicians and dentists as prescribed by the Secretary for Department-wide applicability. In that published notice, we inadvertently inserted an incorrect effective date. Accordingly, this document corrects that error. The ''Dates Section'' is corrected to read as follows:

Effective Dates: Annual pay ranges are effective on July 22, 2007.

FOR FURTHER INFORMATION CONTACT: Donna R. Schroeder, Director, Compensation and Classification Service (055), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9803.

Dated: May 16, 2007.

William F. Russo,

Director of Regulations Management, Office of Regulation Policy and Management, U.S. Department of Veterans Affairs.

[FR Doc. E7–9763 Filed 5–21–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
May 22, 2007

Part II

Department of Veterans Affairs

38 CFR Part 5

General Evidence Requirements, Effective Dates, Revision of Decisions, and Protection of Existing Ratings; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AM01

General Evidence Requirements, Effective Dates, Revision of Decisions, and Protection of Existing Ratings

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language general provisions applicable to its compensation and pension regulations, including general evidence requirements, general effective dates for new awards, revision of decisions, and protection of existing ratings. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants and VA personnel in locating and understanding these general provisions.

DATES: Comments must be received by VA on or before July 23, 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. Comments should indicate that they are submitted in response to ''RIN 2900–AM01—General Evidence Requirements, Effective Dates, Revision of Decisions, and Protection of Existing Ratings.'' 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). Please call (202) 273–9515 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515. (This is not a toll-free number.)

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

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding general evidence requirements, general effective dates for awards, revision of decisions, and protection of VA ratings. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

Overview of New Part 5 Organization
Overview of This Notice of Proposed Rulemaking
Table Comparing Current Part 3 Rules with Proposed Part 5 Rules
Content of Proposed Regulations
General Evidence Requirements
5.130 Submission of statements, evidence, or information affecting entitlement to benefits.
5.13 Applications, claims, and exchange of evidence with Social Security Administration (SSA)—death benefits.
5.132 Claims, statements, evidence, or information filed abroad; authentication of documents from foreign countries.
5.133 Information VA may request from financial institutions.
5.134 Will VA accept a signature by mark or thumbprint?
5.135 Statements certified or under oath or affirmation.
Evidence Requirements for Former Prisoners of War (POWs)
5.140 Determining former prisoner of war status.
5.141 Medical evidence for former prisoners' of war compensation claims.
General Effective Dates for Awards
5.150 General effective dates for awards or increased benefits.
5.151 Date of receipt.
5.152 Effective dates based on change of law or VA issue.
5.153 Effective date of awards based on receipt of evidence prior to end of appeal period.
General Rules on Revision of Decisions
5.160 Binding effect of VA decisions.
5.161 Review of benefit claims decisions.
5.162 Revision of decisions based on clear and unmistakable error (CUE).
5.163 Revision of decisions based on difference of opinion.
5.164 Effective dates for revision of decisions based on difference of opinion.
5.165 Effective dates for reduction or discontinuance of awards based on error.
5.166 New and material evidence based on service department records.
General Rules on Protection or Reduction of Existing Ratings
5.170 Calculation of 5-year, 10-year, and 20-year protection periods.
5.171 Protection of 5-year stabilized ratings.
5.172 Protection of continuous 20-year ratings.
5.173 Protection against reduction of disability ratings when revisions are made to the Schedule for Rating Disabilities.
5.174 Protection of entitlement to benefits established before 1959.
5.175 Protection or severance of service connection.
5.176 Due process procedures for severing service connection or reducing or discontinuing compensation benefits.
5.177 Effective dates for severing service connection or discontinuing or reducing benefit payments.
Endnote Regarding Amendatory Language
Paperwork Reduction Act
Regulatory Flexibility Act
Executive Order 12866
Unfunded Mandates
Catalog of Federal Domestic Assistance Numbers and Titles
List of Subjects in 38 CFR Part 5

Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that most of the provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will enable claimants, beneficiaries, and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of

war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

''Subpart C—Adjudicative Process, General'' would inform readers about types of claims and filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680. The portion of this subpart covering general evidence requirements, effective dates for awards, revision of decisions, and protection of VA ratings is the subject of this document.

''Subpart D—Dependents and Survivors'' would inform readers how VA determines whether an individual is a dependent or a survivor of a veteran. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected compensation, including direct and secondary service connection. This subpart would inform readers how VA determines entitlement to service connection. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614.

''Subpart F—Nonservice-Connected Disability Pensions and Death Pensions'' would include information regarding the three types of nonservice-connected pension: Improved pension, Old-Law pension, and Section 306 pension. This subpart would also include those provisions that state how to establish entitlement to Improved pension, and the effective dates governing each pension. This subpart would be published in two separate NPRMs due to its size. The portion concerning Old-Law pension, Section 306 pension, and elections of Improved pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary,'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart was published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

''Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors'' would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart was published as proposed on March 9, 2007. *See* 72 FR 10860.

''Subpart I—Benefits for Certain Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

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

''Subpart K—Matters Affecting the Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

''Subpart L—Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, subpart L will be published in two separate NPRMs.

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

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

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of This Notice of Proposed Rulemaking

This NPRM pertains to those regulations governing the following for purposes of compensation and pension benefits: (1) General evidence requirements; (2) general effective dates for awards; (3) revision of decisions; and (4) protection of existing ratings. These regulations would be contained in proposed Subpart C of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, along with some rules that do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

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

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.130(a)	3.217(a) and Note to 3.217(a).
5.130(b)	3.217(b).
5.130(c)(1)(i)	3.217(b)(1)(i).
5.130(c)(1)(ii)	3.217(b)(1)(ii).
5.130(c)(1)(iii)	3.217(b)(1)(iii).
5.130(c)(2)	3.217(b)(2).
5.130(d)	New.
5.131(a)	3.153.
5.131(b)	3.201(a).
5.131(c)	3.201(b).
5.132(a)	3.108.
5.132(b)	3.202(a).
5.132(c)(1)	3.202(b)(1).
5.132(c)(2)	3.202(b)(2).
5.132(c)(3)	3.202(b)(3).
5.132(c)(4)	3.202(b)(6).
5.132(c)(5)	3.202(b)(4).
5.132(d)(1)	3.202(a) [first sentence] and 3.202(a)(2).
5.132(d)(2)	3.202(a)(1).
5.132(e)	3.202(c).
5.133(a)	3.115(a).
5.133(b)	New.
5.133(b)(1)	New.
5.133(b)(2)	New.
5.133(c)(1)	3.115(b).
5.133(c)(2)	3.115(b).
5.134	3.2130.
5.135	3.200.
5.140(a)	3.1(y)(1), (y)(3).
5.140(b)	3.1(y)(2)(i).
5.140(c)	3.1(y)(2)(ii).
5.140(d)	3.1(y)(4).
5.141(a)	3.304(c).
5.141(b)	New.
5.141(c)	3.304(e).
5.141(d)	3.304(e) [first sentence].
5.141(e)	3.304(e) [last two sentences].
5.141(f)	3.326(b).
5.150(a)	3.400 [intro] and (a), 3.400(h)(1), and 3.400(q)(1)(ii).
5.150(b)	New.
5.151	3.1(r).
5.152	3.114.
5.153	3.156(b) and 3.400(q)(1)(i).
5.160(a)	3.104(a).
5.160(b)	3.104(b).
5.161	3.2600.
5.162(a)	3.105(a) first two sentences].
5.162(b)	3.105 [intro—first sentence] and 3.105(a) [third and fourth sentences].
5.163	3.105(b).
5.164	3.400(h)(1).
5.165(a)	3.500(b).
5.165(b)	3.500(b)(1).
5.165(c)	3.500(b)(2).
5.166	3.156(c).
5.170(a)	3.344, 3.951, and 3.957.
5.170(b)	3.951(b) and 3.957.
5.170(c)	New.
5.170(d)	New.
5.170(e)	New.
5.171(a)	3.344(a).
5.171(b)	3.344(c).
5.171(c)(1)	3.344(c).
5.171(c)(2)	3.344(a).
5.171(d)	3.344(a).
5.171(e)	3.344(b).
5.172(a)	3.951(b) [first sentence].
5.172(b)	3.951(b) [second sentence].
5.172(c)	New
5.173(a)	3.951(a) and 3.952.
5.173(b)(1)	3.952.
5.173(b)(2)	3.952.
5.173(b)(3)	3.952.
5.174(a)	3.953(a).
5.174(b)	3.953(c).
5.175(a)(1)	3.957 [first sentence].
5.175(a)(2)	3.957 [last sentence].
5.175(b)(1)	3.105(d) [first two sentences].
5.175(b)(2)	3.105(d) [third and fourth sentences].
5.176(a) and (b)	3.105(d) [fifth and sixth sentences] and 3.105(e) [first two sentences].
5.176(c)	3.105(d) [last two sentences] and 3.105(e) [last two sentences].
5.177(a)	3.105 [intro—last sentence].
5.177(b)	3.105 [intro—second sentence].
5.177(c)	3.105 [intro—first sentence] and 3.500(b).
5.177(d)	3.105(d).
5.177(e)	3.105(c).
5.177(f)	3.105(e).
5.177(g)	3.105(f).
5.177(h)	3.105(g).
5.177(i)	3.105(h).

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are contained in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be carried forward to part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

General Evidence Requirements

Section 5.130 Submission of Statements, Evidence, or Information Affecting Entitlement to Benefits

Proposed § 5.130 is derived from current § 3.217, VA's regulation governing the submission of statements or information affecting entitlement to benefits. We propose explicitly to make this regulation applicable to ''evidence'' as well as statements and information. The current regulation does not explicitly apply to the submission of written evidence; however, in practice the principles therein do apply to the submission of written evidence, and there is no reason not to make the part 5 regulation explicit in this regard.

Proposed paragraph (a) addresses the methods by which beneficiaries may submit statements, evidence, or information affecting their entitlement to benefits. Acknowledging that certain VA regulations require that particular types of evidence or information be submitted in writing—e.g., Marriage (§ 5.192), Divorce (§ 5.194), and Birth (§ 5.229)—we propose to state that it is VA's policy to accept electronic submissions unless another regulation, form, or directive expressly requires a different method of submission. Proposed paragraph (a) would state that this policy does not apply to the filing of a claim, Notice of Disagreement, Substantive Appeal, or any other submissions or filing requirements covered in parts 19 and 20 of this title.

We propose not to include the introductory phrase, ''For purposes of this part, unless specifically provided otherwise,'' which is used in paragraph (b) of current § 3.217. Because proposed § 5.0 specifically states that ''[e]xcept as otherwise provided, this part applies only to benefits governed by this part,'' it is no longer necessary to state that any rule in part 5 applies only for purposes of this part. 71 FR 16464, 16473. Therefore, in paragraph (b) of § 5.130, we propose to state, ''Except as otherwise provided.'' By so doing, we achieve our goal of greater readability without loss of clarity or substance.

In § 5.130(c)(1), we propose to include a reference to the beneficiary's authorized representative that is not

contained in current § 3.217(b)(1). Including the representative merely clarifies the established legal principle that the actions of an authorized representative are considered to be actions by the client beneficiary.

Current § 3.217(b)(1)(iii) states that, when a beneficiary or fiduciary orally provides information or a statement that VA may use to adjust benefits, VA must inform him or her that ''the information or statement will be used for the purpose of calculating benefit amounts.'' In proposed § 5.130(c)(1)(iii), we use the word ''may'' instead of ''will.'' This wording is more accurate because VA may determine that the information or statement needs to be verified through other means. It also makes this paragraph consistent with the first sentence in proposed paragraph (b), which states that, ''VA may take action* * *'' Similarly, we also propose to use the phrase ''may be used'' in § 5.130(c)(2)(v) instead of ''would be used'' as stated in current § 3.217(b)(2).

Finally, in proposed paragraph (d) we articulate the exceptions to the rule that VA cannot act on an oral statement unless VA has complied with paragraphs (c)(1) and (2). These exceptions, which apply to statements made at a hearing or to a physician, reflect current practice. Persons who appear at a hearing or who provide information to a physician, especially in connection with a VA medical examination, should expect that such information will be considered as part of their claim. Neither current § 3.217 nor the proposed part 5 version of that rule preclude VA from relying on medical statements or statements made at a hearing. Moreover, there is no doubt as to the identity of the person making the statement in these two discrete situations. Finally, §§ 5.81, 5.82, and 20.700 adequately regulate statements made at a hearing. 70 FR 24680, 24686–87.

Section 5.131 Applications, Claims, and Exchange of Evidence With Social Security Administration (SSA)—Death Benefits

Proposed § 5.131(a) is derived from the first sentence of current § 3.153, which states that an application for death benefits filed with SSA on or after January 1, 1957, on a form jointly prescribed by VA and SSA, will be considered a claim for VA death benefits, and will be considered as received by VA as of the date SSA received it.

Note that although current § 3.1(p) uses the terms ''claim'' and ''application'' interchangeably, we propose to only use the term ''claim'' in part 5, for the sake of consistency, when referring to a formal or informal communication in writing requesting a determination of entitlement or evidencing a believe in entitlement to a benefit, as the term ''claim'' is defined in part 3. (A future NPRM will fully address the definition of ''claim'' for the purposes of part 5.) Thus, the term ''claim'' would have the same meaning in Part 5 as it currently does in Part 3; no substantive change is intended. We propose to use the term ''application'' when referring to a certain form that a claimant must file to apply for benefits. This definition will be contained in § 5.1 General Definitions.

Current § 3.153 implements the statutory provision 38 U.S.C. 5105 that governs joint applications for SSA and dependency and indemnity compensation (DIC). The statute is applicable only to claims for chapter 13 benefits, which means that it applies to claims for DIC. Current § 3.153 states that a claim on a joint form is to be treated as a claim for ''death benefits.'' However, under 38 U.S.C. 5101(b)(1), a claim for DIC must also be considered a claim for death pension and accrued benefits. Consequently, proposed § 5.131(a) would parenthetically describe ''VA death benefits'' as ''[DIC], death pension and accrued benefits.'' We also propose to update the statutory authority citation by including a reference to 38 U.S.C. 5101(b)(1), as the authority for considering a joint application to be a claim for ''death benefits'' is not derived from 38 U.S.C. 5105 alone. For the reasons set forth above, the inclusion of death pension and accrued benefits in the proposed regulation would not create a new basis of entitlement or result in a substantive right that does not exist within the current framework of the pertinent law or regulations.

The second sentence of current § 3.153 states that VA is not precluded by reason of having received a joint application from requesting necessary evidence. This language is unnecessary because nothing in any statute or regulation, including proposed § 5.131, precludes VA from requesting necessary evidence after we have received a claim for benefits. In addition, the sentence merely reiterates the last sentence of 38 U.S.C. 5105(b), and there is no need to maintain a regulatory provision that merely recites a statutory provision.

Proposed § 5.131(b) is derived in part from the second sentence of current § 3.201(a), which pertains to the exchange of evidence between VA and SSA. The cited authority for this regulation includes 38 U.S.C. 5105, discussed above. Proposed § 5.131(b) does not incorporate the first sentence of current § 3.201(a), as it is unnecessary and redundant of proposed § 5.81, which explicitly states that ''VA will include in the record of proceedings any information, evidence (whether documentary, testimonial, or in other form), and any argument that a claimant offers in support of a claim.'' 70 FR 24680, 24686. In addition, VA's ''duty to assist'' regulation, 38 CFR 3.159(c)(2), requires VA to obtain relevant records from a federal department or agency, including records in custody of SSA. Moreover, SSA is required, pursuant to 38 U.S.C. 5105(b), to forward to VA all information and supporting documents that it receives in conjunction with a joint application for DIC/SSA benefits. In light of the foregoing, it is not necessary to specify in § 5.131(b) that a claimant may submit evidence submitted to SSA, or to permit the claimant to request VA to obtain such evidence. We have also clarified that the rule, embodied in proposed § 5.131(b) and current § 3.201(a), regarding the deemed date of receipt for evidence filed at SSA applies only when the evidence was filed in conjunction with a claim for both SSA death benefits and VA death benefits. The clarification is to avoid a situation in which a final VA decision is subject to collateral attack based upon evidence filed with SSA in support of a claim for only SSA death benefits that predates a subsequent separate claim for VA death benefits.

Proposed § 5.131(c) is derived from current § 3.201(b), which provides that when SSA requests evidence from VA that was submitted in support of a DIC application, VA will furnish it. However, current § 3.201(b) does not acknowledge the existence of laws, including the Health Insurance Portability and Accountability Act (HIPAA), that protect the confidentiality of various kinds of information or evidence that claimants or beneficiaries file with VA. For example, 38 U.S.C. 7332 protects the confidentiality of all records containing the identity, diagnosis, prognosis, or treatment of any patient or subject maintained in connection with any program or activity carried out by or for VA and connected with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. VA can only release such records when certain prerequisites are satisfied, and we do not interpret section 7332 as providing for an exemption for mandatory disclosures to SSA under this regulation or under its authorizing statute, 38 U.S.C. 5105(b). Also, 5 U.S.C. 552a contains general

procedures that all agencies must follow when determining whether to release records that they maintain on individuals. Therefore, we propose to add a sentence in proposed § 5.131(c) to clarify that any disclosure of evidence to the SSA under this paragraph must comply with all requirements of any applicable privacy or confidentiality laws, which would include HIPAA.

Section 5.132 Claims, Statements, Evidence, or Information Filed Abroad; Authentication of Documents From Foreign Countries

Proposed § 5.132 is derived from current § 3.202, VA's regulation pertaining to the criteria for the acceptance of foreign evidence, and § 3.108, which relates to occasions when the State Department functions as an agent of VA. We believe it is logical to consolidate into a single regulation the rule pertaining to filing claims or evidence in foreign countries with the rule pertaining to filing evidence from foreign sources.

In paragraph (a) of § 5.132, we propose to include the provisions of current § 3.108, which recognize U.S. diplomatic and consular officers abroad as agents for the acceptance of VA applications or claims, or evidence in support of a claim pending with VA. We clarify that the rule applies to submissions of claims or of statements, evidence, or information in support of a claim.

Current § 3.108 provides that diplomatic and consular officers may act as agents of VA, ''and, therefore, a formal or informal claim or evidence submitted in support of a claim filed in a foreign country will be considered as filed in [VA] as of the date of receipt by the State Department representative.'' We intend no substantive changes to this regulation by eliminating the term ''informal claim.'' The term ''claim'' necessarily embraces all of the types of claims listed in the regulations, including informal and formal claims.

Current § 3.108 uses the terms ''diplomatic and consular officers of the Department of State'' and ''the State Department representative,'' to describe the officials who are authorized to receive claims and evidence. For purposes of § 5.132, we propose to simplify the description by substituting the inclusive term ''Department of State representative.''

Paragraph (b) of proposed § 5.132 explains that the term ''authentication'' means that ''an official listed in paragraph (d) of this section verifies that the foreign document, including each signature, stamp, and seal appearing on it, is genuine and has not been altered.''

Paragraph (b) of proposed § 5.132 explains that for the purposes of § 5.132(b) the term ''foreign documents'' means documents that are signed under oath or affirmation in the presence of an official in a foreign country. This definition is derived from current § 3.202(a). Examples of foreign documents are described in the proposed regulation in order to aid the reader.

Paragraph (b) also directs the reader to a list (in paragraph (c)) of foreign documents that do not require authentication.

Paragraph (c) of proposed § 5.132 restates current § 3.202(b). In addition, proposed § 5.132(c)(3) contains a direct reference to § 2.3, which pertains to delegation of authority to employees to take affidavits, to administer oaths, etc. This reference is appropriate, as it bears directly on the subject matter contained in proposed § 5.132. Current § 3.202(b)(4) states that authentication will not be required, ''[w]hen a copy of a public or church record from any foreign country purports to establish birth, adoption, marriage, annulment, divorce, or death, provided it bears the signature and seal of the custodian of such record and there is no conflicting evidence in the file which would serve to create doubt as to the correctness of the record.'' Paragraph (b)(5) states that authentication will not be required, ''[w]hen a copy of the public or church record from one of the countries comprising the United Kingdom, namely: England, Scotland, Wales, or Northern Ireland, purports to establish birth, marriage, or death, provided it bears the signature or seal or stamp of the custodian of such record and there is no evidence which would serve to create doubt as to the correctness of the records.'' VA believes that maintaining a different rule for the United Kingdom is unnecessary because records maintenance in the United Kingdom is not necessarily superior to that of all other countries. Moreover, we believe that a single rule will be easier for VA personnel to correctly apply and for the public to understand. We therefore propose not to include an equivalent to § 3.202(b)(5) in § 5.132.

Paragraph (d) of proposed § 5.132 is derived from current § 3.202(a). Current § 3.202(a) uses, among others, the terms ''United States Consular Officer,'' ''the State Department,'' and ''the nearest American consul,'' to describe the various Department of State officials who may authenticate the signatures of officials of foreign countries in cases where affidavits or other documents are required to be executed under oath before foreign officials. For purposes of § 5.132, we propose to simplify the description by substituting the inclusive term ''officer of the Department of State authorized to authenticate documents.'' We note that the Department of State has promulgated 22 CFR 131.1, which authorizes specially designated ''authentication officers'' to issue certificates of authentication under the seal of the Department of State on behalf of the Secretary of State. That regulation also prescribes the proper form of authentication. A certificate of authentication therefore constitutes the State Department's official acknowledgment that a document of foreign origin is genuine.

Section 5.133 Information VA May Request From Financial Institutions

Proposed § 5.133, derived from current § 3.115, will provide readers with clarification of the different types of information VA may request from a financial institution, the conditions under which a request may be made, the steps for making a request, and VA's responsibilities with regard to the handling of this information once it is obtained.

The first sentence of current § 3.115(a) reads: ''The Secretary of Veterans Affairs may request from a financial institution the names and addresses of its customers.'' As in several other proposed part 5 rules, this rule will refer to ''VA'' rather than ''[t]he Secretary of Veterans Affairs'' to shorten the reference without changing its meaning.

Some readers may not have a clear understanding of what constitutes a ''financial institution,'' a term that is used in the first sentence of current § 3.115(a). Accordingly, we propose to add examples of various types of financial institutions. Examples include banks, savings and loan associations, trust companies, and credit unions.

The current language of § 3.115 and the statutory provisions of 12 U.S.C. 3413 explicitly authorize VA to obtain only names and addresses from a financial institution. However, VA also possesses statutory authority to subpoena financial information. According to the Right to Financial Privacy Act, ''A government authority may obtain financial records * * * pursuant to an administrative subpoena or summons otherwise authorized by law if there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.'' 12 U.S.C. 3405. ''Government authority'' is defined in this Act as ''any agency or department of the United States, or any officer, employee, or agent thereof.'' 12 U.S.C. 3401(3). The Act also defines ''law enforcement inquiry'' as ''a lawful

investigation or official proceeding inquiring into a violation of, or failure to comply with, any * * * regulation, rule, or order issued pursuant thereto.'' 12 U.S.C. 3401(8). These provisions give VA the authority, under certain circumstances, to obtain financial information through a subpoena, provided it is necessary in order to determine whether an individual has violated any of the regulations on veterans' benefits. Additionally, 38 U.S.C. 5711(a)(2), authorizes the Secretary and employees to whom the Secretary has delegated such authority to ''require the production of books, papers, documents, and other evidence.''

For example, current §§ 3.660(a), 3.256(a), and 3.277(b) require individuals claiming entitlement to or receiving income-based benefits from VA to promptly report changes in their income. If VA discovers that a current or former beneficiary may have reported a lower amount of income to VA than the financial institution reported to the Internal Revenue Service as having been paid to the beneficiary, VA will ask the individual to verify the amount received. If the individual refuses or fails to respond to VA's request, VA has authority under 12 U.S.C. 3405 to subpoena from the financial institution a statement showing amounts it paid to the individual.

Before issuing a subpoena to a financial institution, 12 U.S.C. 3405(2) requires VA to: (1) Send a copy of the subpoena to the current or former beneficiary; (2) inform the current or former beneficiary of the reason VA is requesting financial information from the financial institution; and (3) explain to the current or former beneficiary the procedures for challenging VA's proposal to issue a subpoena.

VA's authority to issue subpoenas to financial institutions in order to verify the amount of income paid by a financial institution to a current or former VA beneficiary, as well as the circumstances under which they may be issued, are not addressed in part 3 of current 38 CFR. However, we believe this is an issue about which the public should be informed. For example, if VA discovers that a current or former beneficiary, while receiving either pension or parents' dependency and indemnity compensation, may have underreported or failed to report to VA the receipt of income from a financial institution, VA may ask the financial institution that paid the income to provide a statement showing the amount it paid to the individual. We propose to clarify in § 5.133(b) that requests of this type must be made through a subpoena. To ensure readers understand the meaning of the word ''subpoena,'' we propose to define it in paragraph (b). Our definition, which is ''a legal document commanding an individual or organization to provide specified evidence to the issuer of the subpoena,'' is derived from the 2001 edition of *Merriam-Webster's Dictionary of Law*.

The content of paragraph (c)(1) of proposed § 5.133 is derived from current § 3.115(b), while the content of paragraph (c)(2) is derived from 12 U.S.C. 3412(a), which was part of the Right to Financial Privacy Act of 1978. Although we have changed the language taken from these two sources in order to make the proposed rule easier to understand, we intend no change in the substance they convey.

Section 5.134 Will VA accept a signature by mark or thumbprint?

Proposed § 5.134 is derived from current § 3.2130. We are not proposing any changes to the current regulation. Rather, we will incorporate the language of current § 3.2130 at proposed § 5.134.

Section 5.135 Statements Certified or Under Oath or Affirmation

Proposed § 5.135 is based on current § 3.200, which states, in pertinent part, ''All written testimony submitted by the claimant or in his or her behalf for the purpose of establishing a claim for service connection will be certified or under oath or affirmation.'' Instead of referring to ''written testimony'' we propose to use the phrase, ''[a]ny documentary evidence or written assertion of fact'' which we believe is easier for readers to understand. We propose to give VA discretion to consider such a submission that is not certified or under oath or affirmation or to require certification, oath, or affirmation if considered necessary to establish the reliability of a material document. This would give VA discretion to consider documents which are considered reliable under the circumstances of a particular case. It would also give VA discretion to require certification, oath, or affirmation when a submission appears unreliable, which will help ensure program integrity.

Whereas current § 3.200(b) is limited to claims for service connection, we propose to have § 5.135(b) apply to all claims within the scope of part 5. We believe that there is nothing unique about claims for service connection with respect to the reliability of evidence. We believe that the principles stated above should apply equally to all claims for compensation or pension benefits.

Evidence Requirements for Former Prisoners of War (POWs)

Section 5.140 Determining Former Prisoner of War Status

Proposed § 5.140 contains rules relating to the evidentiary and adjudicative considerations in determining prisoner of war (POW) status. Proposed § 5.140 is derived from current § 3.1(y), which sets forth general principles applicable to establishing status as a POW, including definitions and certain evidentiary and adjudicative considerations. We have addressed the various definitions contained in current 3.1(y) in a separate NPRM that restated such definitions in § 5.1 of proposed part 5. *See* 71 FR 16464, 16473. Additional principles establishing former POW status are found in § 3.41, which sets forth special rules applicable to former prisoners of war with Philippine service. These principles are also covered in a separate NPRM. *See* 71 FR 37790, 37794.

Paragraph (a) of proposed § 5.140 restates the current rule that service department determinations of POW status are generally binding on VA, and states the criteria VA will use to decide POW status in all other cases. It also restates the requirement in current § 3.1(y)(3) that the Director of the Compensation and Pension Service must approve all 152 office decisions based on criteria for determining former POW status other than service department findings. In order to recognize the modern dangers presented by non-government forces, we propose to expand the instances in which service department findings will be accepted. Whereas current § 3.1(y)(1) only accepts service department findings that a person was a POW during a period of war when detention or internment was by an enemy government or its agents, under paragraph (a) of proposed § 5.140, VA will also accept a finding by the service department that a person was a POW during a period of war when detention or internment was by a hostile force.

Paragraphs (b), (c), and (d) of proposed § 5.140 restate the content of current § 3.1(y)(2)(i), (y)(2)(ii), and (y)(4), respectively. In paragraph (d), we propose to cross-reference § 5.660, pertaining to ''line of duty'' and derived from current §§ 3.1(m) and 3.301(a), and § 5.661, pertaining to ''willful misconduct'' and derived from current §§ 3.1(n), 3.301(a) through (d), and 3.302. *See* 71 FR 31056, 31062–63.

At the end of the proposed rule, we propose to cross-reference proposed § 5.611, which restates current § 3.41,

relating to POW status and Philippine service. *See* 71 FR 37790, 37795.

Section 5.141 Medical Evidence for Former Prisoners' of War Compensation Claims

Proposed § 5.141 is based in part on those portions of current § 3.304, ''Direct service connection; wartime and peacetime,'' that pertain to former POWs. Except as provided below, no substantive changes are intended to these provisions. Portions of current § 3.304 have already been addressed in a prior NPRM, published as proposed on May 10, 2005. *See* 70 FR 24680. Other provisions of current § 3.304 will be addressed in a separate NPRM.

Proposed paragraph (a) provides information regarding injuries and conditions claimed by a former POW that are obviously due to service. The paragraph states that VA will rate such injuries and conditions without awaiting receipt of service records. This paragraph is derived from the last sentence of current § 3.304(c) and is included to clarify how the general rule in proposed § 5.91, the part 5 version of current § 3.304(c), applies to conditions resulting from POW confinement.

Proposed paragraph (b) provides that where disability compensation is claimed by a former POW, the claimant's statements as to the incurrence or aggravation of an injury or disease during or immediately prior to detention or internment will be viewed as truthful unless there is clear and convincing evidence to the contrary. This is a substantive change based upon expanding current § 3.304(d). VA's practice has been to treat statements by former POWs in the same manner as combat veterans for purposes of 38 U.S.C. 1154(b) in order to recognize the deficiencies or complete absence of many former POWs' service medical records showing evidence of diseases or injuries suffered during or immediately before detention or internment. This substantive change is consistent with current § 3.304(f)(2), pertaining to post-traumatic stress disorder claimed by a former prisoner of war. At the end of paragraph (b), we propose to add a reference to § 3.304(f)(2) to let the reader know the location of a similar provision regarding POWs. We cite to the current part 3 regulation because the proposed part 5 regulation that deals with the same subject matter has not yet been published. Current § 3.304(f)(2) may differ from its eventual part 5 counterpart in some respects.

Proposed paragraph (c) notes that supporting evidence from fellow service members that an injury or disease was incurred during confinement will be considered. This is not a substantive change from part 3 and does not provide a new benefit to former POWs. VA accepts ''buddy statements'' in all cases. We explicitly provide for such evidence here, and discuss how to evaluate that evidence, because such evidence is more frequently encountered in cases relating to POWs.

Proposed paragraph (c) would require VA to consider statements from fellow service members submitted in connection with a former POW's claim for benefits, regarding the former POW's physical condition before capture, the circumstances surrounding the former POW's internment, changes in the former POW's physical condition following release from internment, or the existence of signs or symptoms of disability following the former POW's release from internment.

Paragraph (d) of proposed § 5.141 provides that the lack of medical findings from clinical records made upon a former POW's return to U.S. control will not be determinative of whether service connection is awarded for a particular disability. It is derived from the first sentence of current § 3.304(e).

Proposed paragraph (e) restates the second and third sentences of current § 3.304(e).

Finally, proposed paragraph (f) includes information from the second sentence of current § 3.326(b), which provides that VA will not deny monetary benefits unless the claimant has been offered a complete physical examination at a VA facility. Unlike current § 3.326(b), which states that the examination will be ''conducted at a [VA] hospital or outpatient clinic,'' proposed paragraph (f) does not specify the location of the examination to be provided because an examination may be provided by VA at one of a variety of VA medical facilities, or, in some instances, VA may provide an examination with a private contractor at a non-VA facility. ''[M]edical examination'' used in proposed paragraph (f), as opposed to ''physical examination'' used in current § 3.326(b), clarifies that the examination is not limited to examination for physical disorders but includes examination for mental disorders as well.

General Effective Dates for Awards

Section 5.150 General Effective Dates for Awards or Increased Benefits

Proposed § 5.150 would restate without substantive change the introductory text and paragraph (a) of current § 3.400, which state:

> Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is later.
>
> (a) *Unless specifically provided.* On basis of facts found.

The exceptions to the general effective-date rule, which are currently contained in other provisions of §§ 3.400 through 3.405, would be contained in regulations located proximate to their respective benefit regulations.

In paragraph (a) of § 5.150, we propose not to include the phrase ''facts found'' in current § 3.400(a). Instead, we will only use the phrase ''date entitlement arose,'' which appears in the introductory text of § 3.400. Section 5110(a) of title 38, United States Code, on which the general effective date rule stated in § 3.400 is based, uses ''facts found'' and does not use the phrase ''date entitlement arose.'' Nevertheless, the legislative history of 38 U.S.C. 5110(a) and the regulatory history of 38 CFR 3.400 both suggest that ''facts found'' and ''date entitlement arose'' mean the same thing. Both phrases are derived from Veterans Regulation No. 2(a), promulgated by Exec. Order 6230 (1933), which states that the effective date of an award of pension ''shall be fixed in accordance with the facts found'' except that no awards would be effective before the date of separation from service, date of death, date of the happening of the contingency upon which disability or death pension is allowed, or the date of receipt of the claim therefor, whichever is the later date. The various dates listed in the immediately preceding sentence, except for the date of receipt of the claim, are exceptions to the rule to assign the effective date in accordance with the facts found, and are themselves dates upon which entitlement to various kinds of benefits is predicated. For all practical purposes, these are the relevant ''facts'' upon which entitlement would be based.

VA has consistently so construed Veterans Regulation No. 2(a), a fact made clear by an examination of the effective-date regulations VA issued after Veterans' Regulation No. 2(a). These are as follows: VA Regulation (VAR) 1148 (concerning the assignment of effective dates for ratings made under VA's 1945 Schedule for Rating Disabilities); VAR 1212 (effective date for awards of disability compensation); VAR 2574 (effective date of awards of death compensation or pension), and

VAR 2945 (effective date of payment of dependency and indemnity compensation). VA used the term ''facts found'' in only two of these regulations. VAR 2574 (Jan. 25, 1936) (which cites Veterans Regulation No. 2(a)), VAR 2945 (Jan. 1, 1958) (which was changed from different language to mirror the language of what is now 38 U.S.C. 5110(a)). Instead of using ''facts found,'' VA used phrases such as ''date the evidence shows a compensable or pensionable degree of disability to have existed'' and ''date the evidence shows entitlement.'' VAR 1148 (Jan. 25, 1936). In 1950, VAR 2574 was amended to state that the effective date for an award of death compensation or pension would be the date ''of the veteran's death, date of the happening of the contingency upon which death compensation or pension is allowed, or the date of receipt of [the] application therefor,'' whichever is later. This general effective-date provision is very similar to that of Veterans Regulation No. 2(a) except that it is devoid of the phrase ''fixed in accordance with the facts found.'' Nevertheless, it conveys the same information.

When Congress first consolidated the laws and regulations related to compensation and pension, the present version of what is now 38 U.S.C. 5110(a) first appeared in the statute. Public Law 85–56, section 910(a), 71 Stat. 83, 119 (1957). The purpose of this law was to incorporate existing law into a single act. According to the committee reports, Congress did not intend to make any substantive changes to the effective date provisions. See H.R. Rep. No. 85–279, at 2, *reprinted* in 1957 U.S.C.C.A.N. 1214, 1215 (1957); S. Rep. No. 85–332, at 2, *reprinted in* 1957 U.S.C.C.A.N. 1214, 1241 (1957). This statute also repealed Veterans Regulation No. 2(a). Pub. L. No. 85–56, § 2202(129), 71 Stat. at 167. The committee reports stated that the law ''would repeal those provisions of law * * * which are obsolete, executed, or restated in substance.'' H.R. Rep. No. 85–279, at 2, S. Rep. No. 85–322, at 2. Therefore, Public Law 85–56 was intended to restate the substance of the rule in Veterans Regulation No. 2(a), despite changing the language.

Current § 3.400 uses ''date entitlement arose'' in the introductory text and uses ''facts found'' in paragraph (a). These two phrases have been used interchangeably in the past, though neither has been defined. This also suggests that ''facts found'' and ''date entitlement arose'' mean the same thing. We believe that we should only use one phrase consistently throughout the part 5 to eliminate any confusion over whether ''facts found'' means the same thing as ''date entitlement arose'' and to make the regulations more user-friendly. Therefore, we will use ''date entitlement arose'' in § 5.150. The proposed rule clarifies that the term ''date entitlement arose'' has the same meaning when used in other effective-date regulations throughout part 5.

We also propose to define the phrase ''date entitlement arose'' in paragraph (a)(2) of § 5.150 to make the rule easier to understand. As noted above, the phrase has never been defined in the statute or in the regulations. Proposed paragraph (a)(2) defines ''date entitlement arose'' as the date shown by the evidence to be the date that the claimant first met the requirements for the benefit awarded. This definition accurately expresses the intent of the relevant statutes cited above.

We also propose to add a sentence to emphasize that VA will assume the ''date entitlement arose'' was before the date VA received the claim for benefits unless the evidence indicates otherwise. We believe it is important to provide this guidance because in the majority of cases, claimants meet the requirements for a benefit before they apply for it. In such cases, the general rule mandates that the effective date be the date of receipt of the claim for that benefit, and not some later date.

Proposed § 5.150(b) sets forth a chart that provides readers with the location of other effective-date provisions in part 5, which are exceptions to the general effective date rule of proposed paragraph (a). The chart is intended solely for informational purposes. As proposed, the chart shows both already published and as yet unpublished Part 5 sections. The unpublished sections are included as placeholders; many may change before publication. The Subpart B provisions were published as proposed on January 30, 2004. *See* 69 FR 4820.

Section 5.101(d) of Subpart C was published as proposed on May 10, 2005. *See* 70 FR 24680. Proposed §§ 5.152, 5.153, 5.162(b), 5.164, 5.165, 5.166(c), (d), and 5.177 of Subpart C are contained in this document.

The Subpart D provisions were published as proposed on September 20, 2006. *See* 71 FR 55052.

Sections 5.463 and 5.477 of Subpart F were published as proposed on December 27, 2004. *See* 69 FR 77578.

Sections 5.567 to 5.572 of Subpart G were published as proposed on October 1, 2004. *See* 69 FR 59072. A correction to proposed § 5.570 was published on October 21, 2004. *See* 69 FR 61914. Sections 5.524(c), 5.573, and 5.574 of Subpart G were published as proposed on October 21, 2005. *See* 70 FR 61326.

The Subpart H provisions were published as proposed on March 9, 2007. *See* 72 FR 10860.

The Subpart I provisions were published as proposed on June 30, 2006. *See* 71 FR 37790.

The Subpart K provisions were published as proposed on May 31, 2006. *See* 71 FR 31056.

Section 5.151 Date of Receipt

Current § 3.1(r) sets forth a definition of the phrase ''date of receipt.'' We propose to address that topic in a provision designated as § 5.151. Proposed paragraph (a) would broaden the concept in current § 3.1(r) to include ''documents'' in addition to claims, information, and evidence. Although the language in the proposed Part 5 counterparts of current §§ 3.108, 3.153, and 3.201 does not contain the phrase ''date of receipt,'' proposed paragraph (a) would nevertheless retain the exceptions for these provisions that are contained in current § 3.1(r) because proposed paragraph (a) will refer to a concept rather than merely define the specific term ''date of receipt.''

Proposed paragraph (b) would incorporate provisions from current § 3.1(r) authorizing VA to establish exceptions to the general rule when a natural or man-made disaster or similar event has caused disruption in the process through which VA ordinarily receives correspondence. The intended effect is to ensure that claimants and beneficiaries are not deprived of potential entitlement to benefits because of unexpected delays or impediments through no fault of their own. Section 512(a) of 38 U.S.C., listed as statutory authority for proposed § 5.151, pertains to the Secretary's ability to delegate authority to officials and employees to administer the laws and make decisions. The citation to 38 U.S.C. § 512(a) is used to justify empowering employees and officials to establish procedures in emergency circumstances. Although current § 3.1(r) makes a delegation to the Under Secretary for Benefits, the cited statute does not limit delegation to the Under Secretary for Benefits. Accordingly, proposed paragraph (b) does not contain that limitation.

Section 5.152 Effective Dates Based on Change of Law or VA Issue

We propose to re-state current § 3.114 in § 5.152. The heading for paragraph (b) of proposed § 5.152, ''Reduction or discontinuance of benefits'' differs from the heading of current § 3.114(b), ''Discontinuance of benefits,'' in order to describe more accurately the content of the paragraph, which addresses both reductions of benefits and

discontinuances of benefits. Current § 3.114(b) states that a claimant has 60 days from the date of the notice of a proposed reduction or discontinuance of benefits in which to submit evidence showing the proposed action should not be taken. The last sentence of current § 3.114(b) states that

> [i]f additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

We propose to clarify in § 5.152(b) that if no evidence is received within 60 days, or if evidence is received that does not demonstrate that the proposed action should not be taken, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

Another change has to do with the use of the term ''facts found'' used in current § 3.114 and in 38 U.S.C. 5110(g). As noted in the discussion of proposed § 5.150, VA interprets ''facts found'' and another phrase used in effective date rules, ''date entitlement arose,'' to have the same basic meaning. We are proposing to use only one of these terms in § 5.152, ''date entitlement arose,'' to be consistent.

Section 5.153 Effective Date of Awards Based on Receipt of Evidence Prior to End of Appeal Period

We propose to revise current §§ 3.156(b) and 3.400(q)(1)(i) in order to establish clearer rules regarding the effective dates for awards based on the types of evidence described in current § 3.156(b).

Section 3.156(b) reads as follows:

> New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

Although the words ''effective date'' do not appear in current § 3.156(b), the substantive effect of the paragraph is to establish an appropriate effective date, in tandem with § 3.400(q)(1)(i).

Section 3.400(q)(1)(i) provides that the effective date for a claim reopened based on new and material evidence ''[o]ther than service department records'' that are ''[r]eceived within [the] appeal period or prior to appellate decision * * * will be as though the former decision had not been rendered.'' Under 38 U.S.C. 5110(a), the effective date for an award based on an original claim or a claim reopened after final adjudication (except as otherwise provided) ''shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefore.'' Therefore, if the claim is not ''finally'' decided when VA receives additional evidence, that is, if the evidence is submitted within the appeal period or before an appellate decision is rendered, then the effective date of the award can be as early as the date VA received the ''open'' claim. However, if VA were to treat all evidence submitted after the appeal period has begun as ''new and material evidence,'' then the effective date could not be earlier than the date VA received that evidence (which would be construed as a claim to reopen). Hence, 38 CFR 3.156(b) and 3.400(q)(1)(i) provide a claimant-friendly effective-date rule for awards based on evidence received while a claim is on appeal or before the appeal period expires. This interpretation is consistent with 38 U.S.C. 7105(c), which provides that a regional office denial is ''final'' when the time limit for initiating an appeal to the Board of Veterans' Appeals has expired and no appeal has been filed. The proposed text is also consistent with the Federal Circuit's decision in *Jackson* v. *Nicholson*, 449 F.3d 1204 (Fed. Cir. 2006), which held that current § 3.156(b) does not refer to evidence received by VA after a Board decision has been issued.

Proposed § 5.153 retains this favorable interpretation, but does rephrase the rule. The current regulation can be read to suggest that new and material evidence is needed while the claim is still ''open.'' However, in such cases there is no claim to ''reopen'' because the claim has not been ''closed'' (that is, the claimant could still prevail on that claim).

General Rules on Revision of Decisions

Section 5.160 Binding Effect of VA Decisions

Proposed § 5.160 is derived from current § 3.104, and is intended to clarify when a decision rendered by a decision maker in a VA agency of original jurisdiction is binding on other VA agencies of original jurisdiction. The current version provides that decisions of a VA agency of original jurisdiction,

> shall be *final and binding* on all field offices of [VA] as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A *final and binding* agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 and § 3.2600 of this part.

38 CFR 3.104(a) (emphasis added).

We propose to repeat the language of § 3.104(a) in proposed § 5.160(a) without any substantive change. However, we will not repeat the word ''final'' in § 3.104(a) in proposed § 5.160(a). We believe that use of the word ''final'' in this context may cause confusion because the word ''final'' is used elsewhere in VA's regulations to refer only to agency of original jurisdiction decisions that have not been appealed within the time limits prescribed by statute and regulation for their appeal. *See*, e.g., 38 CFR 20.302(a) (if Notice of Disagreement not filed within 1 year of notice of agency of original jurisdiction decision, that decision shall become ''final''). Further, in 38 CFR 3.160(d), VA defines a ''finally adjudicated claim'' as one that ''has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of 1 year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is the earlier.'' This suggests that an agency of original jurisdiction decision might be simultaneously ''final,'' in the sense implied by § 3.104(a), on the date notice of the decision is given, and ''non-final,'' in the sense implied by § 3.160(d), because the time within which to appeal the decision has not yet expired.

In *Majeed* v. *Principi*, 16 Vet. App. 421, 427–28 (2002), the United States Court of Appeals for Veterans Claims (CAVC) rejected the argument that the phrase ''final and binding'' in § 3.104(a) means that a decision is final and binding as of the date issued because it could be seen to be at odds with the availability of an administrative appeal. VA does not intend that the term ''final and binding'' preclude an administrative appeal. In fact, other VA regulations specifically provide for review of an agency of original jurisdiction decision that has not become final for purposes of appeal. For example, pursuant to 38 CFR 3.2600, a claimant may seek review of an agency of original jurisdiction decision by a Veterans Service Center Manager or Decision Review Officer after filing a Notice of Disagreement. Also, pursuant to 38 CFR 3.105(b), if revision of an agency of original jurisdiction decision is warranted as a result of a difference of opinion, an agency of original jurisdiction may recommend to VA Central Office that the decision be reversed or revised.

VA therefore intends to clarify in this rulemaking that an agency of original

jurisdiction decision is ''binding'' on the same or another agency of original jurisdiction on the same factual basis, barring a change in law, except under the circumstances enumerated in current § 3.104(a). Further, we have changed the cross-references in current § 3.104(a) to §§ 3.105 and 3.2600 to match their part 5 counterparts.

Paragraph (b) of § 3.104 currently provides that decisions made by an agency of original jurisdiction and VA Insurance Service adjudicators, which are ''made in accordance with existing instructions,'' concerning character of service, character of discharge, relationship issues, and other matters, are reciprocally binding when they are based on the same criteria. VA proposes not to include the phrase ''made in accordance with existing instructions'' from this paragraph because the instructions to which it refers are contained in VA procedural manuals rather than regulations in title 38, Code of Federal Regulations. The deletion of this phrase does not imply that VA is not required to follow the laws and regulations pertaining to the making of determinations of the type described in paragraph (b). It merely reflects a judgment that references to internal procedural manuals and other VA-generated documents that lack the force and effect of law are not appropriate for inclusion in the regulations.

Finally, we propose to replace the terms ''adjudication activity'' and ''insurance activity'' contained in § 3.104(b) with ''Veterans Service Center'' and ''VA Insurance Center,'' respectively; again, because these are the more precise modern designations of the relevant entities. These proposed changes would simply modify the terminology to make it easier for the public to understand.

Section 5.161 Review of Benefit Claims Decisions

We propose to repeat the language of § 3.2600 in proposed § 5.161 without any substantive change. We have only changed the cross-references in current § 3.2600 to §§ 3.103 and 3.105 to match their part 5 counterparts.

Section 5.162 Revision of Decisions Based on Clear and Unmistakable Error (CUE)

In § 5.162, we propose to state clearly that VA adjudicative agency decisions that are final will be presumed correct unless there is a showing of clear and unmistakable error (CUE). In addition, this section will state the effective date for awards resulting from the revision or reversal, based on a finding of clear and unmistakable error, of prior final decisions.

Proposed § 5.162 will not deviate in scope from the body of law that precedes it. Consequently, § 5.162 provides that, absent CUE, prior final decisions are accepted as correct. The requirement of a showing of CUE applies only to a ''final decision,'' as defined by proposed § 5.2 to mean ''a decision on a claim for VA benefits with respect to which VA provided the claimant with written notice'' and the claimant either did not file a timely Notice of Disagreement or Substantive Appeal or the Board has issued a final decision on the claim. *See* 71 FR 16464, 16473–74 (March 31, 2006). We also proposed to incorporate 38 U.S.C. 5109A(c) and (d), which state that a CUE claim may be instituted by VA or upon request of the claimant and that a CUE claim may be made at any time after a final decision is made.

We propose not to include the examples of determinations contained in the first sentence of current § 3.105(a) (''decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues''). Because the examples conclude with ''* * * and other issues,'' they would include any determination. Likewise, the proposed rule applies to any determination. By eliminating the examples, we intend to emphasize that the rule applies to any determination and avoid a misperception that the examples are a limitation on the rule.

Section 5.163 Revision of Decisions Based on Difference of Opinion

Current § 3.105(b) provides that where an agency of original jurisdiction believes that revising or amending a previous decision is warranted, based on a difference of opinion, a recommendation will be made to VA Central Office to authorize a change in the decision. We have used the term ''Director of the Compensation and Pension Service'' instead of ''[VA] Central Office'' and used the term ''Veterans Service Center Manager (VSCM)'' instead of ''adjudicative agency'' to accurately reflect long-standing VA practices. Additionally, we propose to state that this section authorizes revisions only when they would lead to a more favorable decision on the claim that was the subject of a prior decision, and that this section does not apply to a prior decision that is final or has been the subject of a Substantive Appeal.

Section 5.164 Effective Dates for Revision of Decisions Based on Difference of Opinion

We propose in § 5.164 to state VA's effective-date provision applicable to revisions of decisions based on difference of opinion. Proposed § 5.164 provides that the effective date of the revision would be the date benefits would have been paid if the previous decision had been favorable.

Section 5.165 Effective Dates for Reduction or Discontinuance of Awards Based on Error

Paragraphs (a), (b), and (c)(1) of proposed § 5.165 are derived from current § 3.500(b)(1) and (2), which govern the effective dates of reductions or discontinuances of awards of compensation, DIC, or pension based on error. In paragraph (a), we propose to exclude from § 5.165 payment amounts that are not authorized by a VA rating decision, such as a payment of an incorrect amount or a duplicative payment. Proposed § 5.165 applies only to reductions or discontinuances of erroneous awards. If a payment has not been authorized by a rating decision, then VA has not made an award of such an erroneous payment and therefore recovery of that payment is not a reduction or discontinuance of an ''erroneous award'' under 38 U.S.C. 5112(b)(9) or (10). We would add in paragraph (a) that ''[s]uch amounts are overpayments, subject to recoupment.''

We propose to rewrite the current language of § 3.500(b) to enhance its readability. We also propose not to include the word ''payee'' and insert in its place the term ''beneficiary.'' The term ''beneficiary'' is consistent with the phrasing of the authorizing statute, 38 U.S.C. 5112(b)(9).

In paragraph (c)(2), we propose to add a new definitional section that will clearly define ''administrative error'' and ''error in judgment.'' This definition will clearly show when these terms are applicable and will be consistent with precedential opinions prepared by VA's General Counsel. VAOPGCPRECs 2–90 (March 20, 1990) and 6–97 (January 18, 1997) held that an administrative error includes an error of fact (for example, VA mistakes or overlooks the facts or commits a purely clerical error) and that an error in judgment includes those instances when VA fails to properly interpret, understand, or follow Department instructions, regulations, or statutes. The proposed definitional section will assist the users of the regulation in determining under what circumstances VA may have committed

administrative error or an error in judgment.

Section 5.166 New and Material Evidence Based on Service Department Records

Current § 3.156(c) addresses those situations when a prior final decision is being reconsidered based on the official service department records. We repeat that language in proposed § 5.166.

General Rules on Protection or Reduction of Existing Ratings

Currently, the rules that protect existing VA disability ratings from either reduction or severance are located in several different subparts within part 3 of title 38, CFR. For example, most of the substantive rules on the subject (38 CFR 3.951 *et seq.*) are located under the undesignated part 3 subheading, ''Protections;'' however, substantive rules relevant to severance of service connection, as well as unique procedural provisions, are also located in current 38 CFR 3.105. Meanwhile, lesser protections afforded to stable ratings are located in § 3.344.

We therefore propose to reorganize these rules under the undesignated subheading, ''General Rules on Protection or Reduction of Existing Ratings,'' in part 5 of title 38, CFR. This reorganization will contain the general rules that relate to the protection of existing ratings, which are found in current 38 CFR 3.105. It will also include those rules pertaining to the protection of the following ratings: Those that have stabilized, those in existence for a 20-year period, those based on the 1925 Schedule of Rating Disabilities, those in effect on December 31, 1958, and those in effect for a 10-year period. These are derived from current §§ 3.344, 3.951 through 3.953, and 3.957, respectively.

This reorganized portion does not include current § 3.950, the rule relating to the awards of pension or compensation to a helpless child, because this rule does not protect an existing rating. It also does not include current § 3.954, the rule relating to awards of burial benefits, which will be addressed in another NPRM. The part 5 rule relating to federal employees' compensation cases, current § 3.958, will be located with the proposed regulations regarding concurrent receipt; the rule relating to tuberculosis (current § 3.959) will be located with the regulations regarding tuberculosis; and the rule relating to Section 306 and Old-Law pension protection (current § 3.960) is located with the regulations regarding pension.

Section 5.170 Calculation of 5-Year, 10-Year, and 20-Year Protection Periods

Current § 3.344 provides that ''ratings which have continued for long periods at the same level (5 years or more)'' cannot be reduced absent a reexamination ''disclosing improvement, physical or mental, in these disabilities.'' We propose in § 5.170 to set forth general provisions governing how VA determines whether a rating has been continuously in place for the 5-year period currently found in § 3.344. This rule also sets forth those provisions that apply to determining whether a 20-year period has been continuous, such that a rating is protected under the part 5 equivalent of 38 CFR 3.951(b). Additionally, proposed § 5.170 determines how to calculate whether service connection has been in effect for 10 years and is, therefore, protected under the part 5 equivalent of 38 CFR 3.957. It is preferable to state the general rules applicable to calculating these periods in one regulation rather than repeat the concepts in multiple regulations.

Proposed paragraph (b) states the general rule that the described periods begin on the effective date of the protected award or rating and end on the date that service connection would be severed or the rating reduced. This provision takes into account any applicable due process provisions contained in current § 3.105 and proposed § 5.176. The method of measuring the duration of a rating is explicit in current §§ 3.951 and 3.957; but it is not explicit in § 3.344. However, the implicit measurement method in § 3.344 is consistent with VA's current practice and policy, and with the interpretation of current § 3.344(c) set forth in *Brown* v. *Brown,* 5 Vet. App. 413 (1993). In that case, the Court held: ''[T]he duration of a rating for purposes of § 3.344(c) must be measured from the effective date assigned that rating until the effective date of the actual reduction. * * * [T]hose results flow from the plain and unambiguous language of the regulation.'' *Brown,* 5 Vet. App. at 418–419. We believe that making the effective-date-measurement rule explicitly applicable to the 5-year protection against reduction set forth in § 3.344, as it is in current §§ 3.951 and 3.957, will help clarify VA's practice on this issue.

The requirement that the 20-year protection period be continuous is set forth in 38 U.S.C. 110, which protects certain ratings that have been ''continuously in force for twenty or more years.'' Therefore, proposed paragraph (c) states that ''a rating is not continuous if benefits based on that rating are discontinued or interrupted because the veteran reentered active service.'' *See* VAOGCPREC 5–95 (holding that a rating discontinued based on reentry into service was not continuous for 20 years for purposes of section 110).

We believe that the holding of VAOGCPREC 5–95 logically should apply to the continuity requirement for the 5-year protection set forth in current § 3.344(c). Explicitly stating this rule in proposed § 5.170(c) will promote consistency in decision making by VA staff.

The rule of 5.170(c) regarding re-entry into active service does not apply to break the 10-year period of proposed § 5.175 for protection of service connection. Under current § 3.654(b), the prior determination ''of service connection is not disturbed'' because of the re-entry into active service. Because service connection remains in effect, the period of continuity is not broken.

Proposed paragraph (d) states that a rating period may be protected without regard to whether the beneficiary actually received VA compensation based on that rating. This is based on current VA policy. We note that this rule is intended to apply to all adjustments, except for reentry of active service, including a beneficiary whose payments were adjusted by deduction, recoupment, apportionment, reduction in compensation due to incarceration, and a beneficiary who elected to receive retirement pay. These common examples are listed in proposed paragraph (d).

Proposed paragraph (e) extends the protections found in current §§ 3.344, 3.951, and 3.957 to retroactive increases in rating or grants of service connection, including those awarded based on clear and unmistakable error (CUE) under current § 3.105(a)/proposed § 5.162. In addition, the rule clearly states that it applies to any protection period even if it includes a period based on a retroactive award. The extension to retroactive awards is not a new VA practice. First, as to retroactive awards not based on a finding of CUE, the practice is well-established, even as to current § 3.344. *See, e.g., Brown* v. *Brown,* 5 Vet. App. 413, 417 (1993). The application of the retroactive protection to the 20-year period in cases based on findings of CUE is required by 38 U.S.C. 110. *See* VAOGCPREC 68–91 (citing H.R. Rep. No. 533, 83rd Cong., 1st Sess. 2 (1953); Pub. L. No. 88–445, 78 Stat. 464 (1964); and VAOGCPREC 16–89). The legislative intent behind applying a retroactive award to form the 20-year

protection should apply as well to the regulatory 5-year protection because the purpose of § 3.344 is similar to the purpose of § 110 in that both protections support the economic and humane considerations noted above. Finally, the proposed regulation provides explicit protection to veterans, and is in keeping with our consistent treatment of the three time periods set forth in current §§ 3.344, 3.951, and 3.957 in other respects, as described in the other paragraphs in this proposed rule.

Section 5.171 Protection of 5-Year Stabilized Ratings

Proposed § 5.171 is derived from current § 3.344. Proposed paragraph (a) restates in plain language the first sentence of current § 3.344(a). Proposed paragraph (b) is primarily derived from the first sentence of current § 3.344(c), which states: ''The provisions of paragraphs (a) and (b) of this section apply to ratings which have continued for long periods at the same level (5 years or more).'' Proposed paragraph (b) rephrases the current rule, as follows: ''For the purposes of this section, if a disability has been rated at or above a specific level for 5 years or more, VA will consider it to be stabilized at that specific level.'' No substantive change is intended.

Proposed paragraph (c) states two criteria that must be present before we will reduce a stabilized rating. The first criterion is stated in proposed paragraph (c)(1), and requires that there be ''[a]n examination [that] shows sustainable material improvement, * * * in the disability.'' The requirement of ''material improvement'' is based on the third sentence of current § 3.344(c), which states, ''[r]eexaminations disclosing improvement, physical or mental, in these disabilities will warrant reduction in rating.'' We propose to change ''improvement'' to ''material improvement.'' ''Material improvement'' is what is intended in current § 3.344(c), as evidenced by the use of the term ''material improvement'' in paragraph (a) of the current regulation. Finally, ''material improvement'' is the standard used to measure a protected or stabilized rating in other similar regulations. *See* 38 CFR 3.327(b)(2)(ii) (disability will not be subject to scheduled reexamination ''[w]hen the findings and symptoms are shown by examinations * * * and hospital reports to have persisted without material improvement for a period of 5 years or more''); 38 CFR 3.343(a) (''[t]otal disability ratings * * * will not be reduced * * *. without examination showing material improvement in physical or mental condition'').

Proposed paragraph (c)(2) states the second criterion that must be present before VA will reduce a stabilized rating, which is that ''[t]he evidence shows that it is reasonably certain that the material improvement will be maintained under the ordinary conditions of life.'' This requirement is drawn directly from the seventh sentence of current § 3.344(a).

We propose not to retain the second-to-last sentence of current § 3.344(c), which states: ''[The provisions of this rule] do not apply to disabilities which have not become stabilized and are likely to improve.'' Proposed paragraph (c) clearly states that this rule applies to the reduction of stabilized ratings. The term ''stabilized ratings'' is clearly defined in proposed paragraph (b), and does ''not apply to disabilities which have not become stabilized.'' Therefore, the second-to-last sentence of current § 3.344(c) is unnecessary.

Proposed paragraph (d) is derived from current § 3.344(a). In the current regulation, paragraph (a) contains ten sentences, nine of which articulate specific and distinct adjudicative rules. Three of these sentences also contain lists of various disabilities that are affected by the specific rule articulated in the sentence. Current paragraph (a) does not organize those ten sentences either by associating similar concepts or by setting the rules out in numbered paragraphs. We apply both of these organizational tools in the proposed rule, in order to improve readability and help users locate the parts of the paragraph that apply to their particular cases.

In essence, § 3.344(a) lists and describes the evidence required by VA to justify the reduction of a stabilized rating. Hence, we propose to title the paragraph that restates most of the rules contained in current § 3.344(a), ''*How VA determines whether there has been material improvement.*''

The proposed rule required significant reorganization of the current rule. In order to show clearly what we have done, we have reproduced below the current regulation, with numbers before each of the 10 sentences. Then, we have indicated how our proposed rule would dispose of each sentence of the existing rule.

(a) Examination reports indicating improvement. [1] Rating agencies will handle cases affected by change of medical findings or diagnosis, so as to produce the greatest degree of stability of disability evaluations consistent with the laws and Department of Veterans Affairs regulations governing disability compensation and pension. [2] It is essential that the entire record of examinations and the medical-industrial history be reviewed to ascertain whether the recent examination is full and complete, including all special examinations indicated as a result of general examination and the entire case history. [3] This applies to treatment of intercurrent diseases and exacerbations, including hospital reports, bedside examinations, examinations by designated physicians, and examinations in the absence of, or without taking full advantage of, laboratory facilities and the cooperation of specialists in related lines. [4] Examinations less full and complete than those on which payments were authorized or continued will not be used as a basis of reduction. [5] Ratings on account of diseases subject to temporary or episodic improvement, e.g., manic depressive or other psychotic reaction, epilepsy, psychoneurotic reaction, arteriosclerotic heart disease, bronchial asthma, gastric or duodenal ulcer, many skin diseases, etc., will not be reduced on any one examination, except in those instances where all the evidence of record clearly warrants the conclusion that sustained improvement has been demonstrated. [6] Ratings on account of diseases which become comparatively symptom free (findings absent) after prolonged rest, e.g. residuals of phlebitis, arteriosclerotic heart disease, etc., will not be reduced on examinations reflecting the results of bed rest. [7] Moreover, though material improvement in the physical or mental condition is clearly reflected the rating agency will consider whether the evidence makes it reasonably certain that the improvement will be maintained under the ordinary conditions of life. [8] When syphilis of the central nervous system or alcoholic deterioration is diagnosed following a long prior history of psychosis, psychoneurosis, epilepsy, or the like, it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations. [9] Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in prior diagnosis or possibly a disease entity independent of the service-connected disability. [10] When the new diagnosis reflects mental deficiency or personality disorder only, the possibility of only temporary remission of a super-imposed psychiatric disease will be borne in mind.

At the outset, we note that, as discussed above, sentence 1 of § 3.344(a) is reflected in the proposed paragraph (a) and sentence 7 of § 3.344(a) is reflected in proposed paragraph (c)(2).

Proposed paragraph (d)(1) is derived from current § 3.344(a) sentences 2, 3, and 4, which together emphasize the requirement that only a complete examination, including a review of the full medical record, can serve as a basis for a reduction under this section. The items needed for a complete medical record are in the proposed rule. The list

includes all of the items in the current rule.

Proposed paragraph (d)(2) restates in plain language current § 3.344(a) sentence 5, which states, ''lists those diseases that will not be reduced on any one examination, absent evidence showing sustained improvement.'' The list of diseases contained in the existing rule is set off as indented ''bullet points,'' to improve readability. In addition, we note that the term ''manic depressive'' is no longer an accepted term in the psychiatric community. It has been replaced by the term ''Bipolar Disorders.'' *See* American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 382–401 (4th ed. 2000). We therefore propose to use the term ''Bipolar Disorders'' instead of using ''manic depressive.'' In addition, we note that the term ''psychoneurotic reaction'' is no longer an accepted term in the psychiatric community. It has been replaced by the term ''Anxiety Disorders.'' *See* American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 429–484 (4th ed. 2000). We therefore propose to use the term ''Anxiety Disorders'' instead of using ''psychoneurotic reaction.''

The intent behind sentence 5 of § 3.344(a) is not that every single piece of evidence of record clearly warrants the conclusion that sustained improvement has been demonstrated. Such a literal interpretation would lead to an absurd result because in a case where a rating has been in effect for 8 years, the evidence from 6–8 years would not show sustained improvement; only more recent evidence would show sustained improvement. Sentence 5 uses ''all'' to refer to the evidentiary record as a whole. We propose to not include the word ''all'' in paragraph (d) to clarify that VA does not intend that every single piece of evidence of record must clearly warrant the conclusion that sustained improvement has been demonstrated, but rather that the evidentiary record as a whole must clearly warrant such a conclusion.

Proposed paragraph (d)(3) restates in plain language current § 3.344(a) sentence 6.

Proposed (d)(4) provides a statement of VA's policy as to when it will find ''material improvement'' to exist, as follows: ''(4) Material improvement will be held to exist only where, after full compliance with the procedure outlined in this paragraph (d), the medical record clearly demonstrates that the disability does not meet the requirements for the currently assigned disability rating.''

Proposed paragraph (d)(5) reflects the first, ninth, and tenth sentences of current § 3.344(a), and references a similar rule, 38 CFR 4.13. Section 4.13 states that in reevaluating a case based on a change in diagnosis, ''The repercussion upon a current rating of service connection when change is made of a previously assigned diagnosis or etiology must be kept in mind. The aim should be the reconciliation and continuance of the diagnosis or etiology upon which service connection for the disability had been granted.'' Section 4.13 is similar to § 3.344(a) sentence 1, but the language of § 4.13 more clearly places emphasis on the protection of the existing rating. Therefore, we explicitly require consideration of the part 4 rule when VA is confronted with evidence of a change in diagnosis.

Proposed paragraph (d)(6) restates without alteration current § 3.344(a) sentence 8.

Proposed paragraph (e) restates, in plain language, current § 3.344(b). We note that the current rule requires VA to cite ''the former diagnosis with the new diagnosis in parentheses,'' whereas the proposed rule would require VA to cite ''the former diagnosis with the new diagnosis, *if any,* in parentheses'' (emphasis added). This change clarifies that proposed paragraph (e) applies to any basis for reduction, not just to reductions based on a changed diagnosis.

Section 5.172 Protection of Continuous 20-Year Ratings

Proposed § 5.172 is based on current § 3.951(b), which protects disability ratings and ratings of permanent and total disability for pension purposes that have been in effect for at least 20 years.

Proposed paragraph (a) restates in plain language the protection in current § 3.951(b) afforded to disabilities rated for periods in which the beneficiary was receiving compensation. It would not include the phrase ''under laws administered by the Department of Veterans Affairs'' because there is no ambiguity concerning whether this regulation applies to ratings under VA regulations.

Proposed paragraph (b) restates in plain language the current protection afforded in current § 3.951(b) to a rating of permanent total disability for pension purposes.

Proposed paragraph (c) states that the 20-year protection against reduction applies ''whether or not the veteran elects to receive disability compensation or pension during all or any part of the 20-year period.'' This additional language reflects the holding of *Salgado* v. *Brown*, 4 Vet. App. 316, 320 (1993) (''The Court holds that the protection afforded by section 110 of title 38 of the United States Code applies to ratings for compensation purposes, whether or not a veteran elects to receive a monetary award.''). Because 38 U.S.C. 110 applies to both pension and compensation, we propose to include pension in proposed paragraph (c).

Section 5.173 Protection Against Reduction of Disability Ratings When Revisions Are Made to the Schedule for Rating Disabilities

Proposed § 5.173 is derived from current §§ 3.951 and 3.952. Section 3.951(a) states that VA will not reduce any disability rating in effect on the effective date of a revision of the applicable Schedule for Rating Disabilities, based on such revisions, unless medical evidence establishes that the rated disability has actually improved. Current § 3.952 applies that protection, with some modification, to ratings assigned under the Schedule of Disability Ratings, 1925, which were the basis of compensation on April 1, 1946, when the current Schedule of Disability Ratings took effect. Proposed § 5.173 combines the general rule in current § 3.951(a) with the specific rule in current § 3.952, into a single regulation titled, ''*Protection against reduction of disability ratings when revisions are made to the Schedule for Rating Disabilities.*'' At the end of the proposed regulation, we cross-reference proposed § 5.176, the regulation that describes the process required before reducing a rating.

Proposed paragraph (a) restates in plain language the general rule in current § 3.951(a), as follows: ''VA will not reduce a disability rating in effect on the effective date of a revision of the applicable Schedule for Rating Disabilities unless medical evidence establishes that the rated disability has actually improved, except when the rating was assigned under the 1925 Schedule of Disability Ratings (as provided in paragraph (b) of this section).''

Proposed paragraph (b) of § 5.173 restates in plain language the protections afforded under current § 3.952. These changes are meant to make the rules easier to follow; no substantive changes are intended.

Section 5.174 Protection of Entitlement to Benefits Established Before 1959

Proposed § 5.174 is based on current § 3.953. We propose not to include current § 3.953(b), which refers to emergency officers' retirement pay payable to veterans of World War I. We

believe it is very unlikely that VA will receive any more claims for this benefit. However, if such a claim were to be received, Section 11, Public Law 85–857 would be used to adjudicate the claim.

Section 5.175 Protection or Severance of Service Connection

Proposed § 5.175 is derived from current §§ 3.957 and 3.105(d). Proposed § 5.175(a) incorporates current § 3.957, which states that service connection for disability or death may be protected if it has been in effect for 10 years or more. Such a rating may not be severed unless any of the following are shown: (1) The original grant was obtained through fraud; or, (2) military records clearly show that the person identified as a veteran did not have the requisite qualifying service; or, (3) military records clearly show that the veteran's discharge from service was a bar to service connection. *See* 38 CFR 3.12. We would include the current rule in the provision governing severance of service connection because the rule advises claimants of circumstances when a protected rating may be severed.

Proposed § 5.175(b) provides that severance of service connection may also occur when evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon VA), subject to §§ 5.152 and 5.176. This paragraph further provides that a change in medical diagnosis may be a basis for severing service connection if the examining physician or physicians or other proper medical authority certifies that, in light of all accumulated evidence, the diagnosis that was the basis of the award is clearly erroneous. That certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion that the diagnosis is erroneous.

Section 5.176 Due Process Procedures for Severing Service Connection or Reducing or Discontinuing Compensation Benefits

Proposed § 5.176 re-states current § 3.105(d), (e). Current § 3.105(d) and (e) state that a claimant has 60 days from the date of the notice of a proposed severance of service connection or reduction or discontinuance of benefits in which to submit evidence showing the proposed action should not be taken. The last sentence of both current § 3.105(d) and current § 3.105(e) states that

> [i]f additional evidence is not received within that period, final rating action will be taken and the award will be reduced or discontinued * * * effective the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final rating action expires.

We propose to clarify in § 5.176(c) that if no evidence is received within 60 days, or if evidence is received that does not demonstrate that the proposed action should not be taken, VA will notify the beneficiary that VA is severing service connection or reducing or discontinuing the benefit.

Section 5.177 Effective Dates for Severing Service Connection or Discontinuing or Reducing Benefit Payments

Proposed § 5.177 contains the effective date provisions related to severance of service connection and reduction or discontinuance of benefits. It is derived from various provisions of current § 3.105. We propose in paragraph (a) to restate the provisions found in the introductory paragraph of § 3.105 regarding effective dates for reductions or discontinuances of suspended awards. We propose in paragraph (c) to list the three exceptions to § 5.177, which are derived from the introductory paragraph of § 3.105 and current § 3.500(b). We propose not to include the exception for cases where the award of service connection was ''clearly illegal'' because such cases would properly fall within § 3.105 and proposed § 5.177(d).

We propose in paragraphs (d) through (i), to state the specific type of benefit that is the subject of the particular effective date rule and to explain when the benefit will be reduced, stopped, or severed. These effective date provisions are from paragraphs (c) through (h) of the current version of § 3.105.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not significantly impact any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action 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.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100,

Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: February 8, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to further amend 38 CFR part 5, as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart C to read as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart C—Adjudicative Process, General

General Evidence Requirements

Sec.

5.130 Submission of statements, evidence, or information affecting entitlement to benefits.
5.131 Applications, claims, and exchange of evidence with Social Security Administration (SSA)—death benefits.
5.132 Claims, statements, evidence, or information filed abroad; authentication of documents from foreign countries.
5.133 Information VA may request from financial institutions.
5.134 Will VA accept a signature by mark or thumbprint?
5.135 Statements certified or under oath or affirmation.
5.136–5.139 [Reserved]

Evidence Requirements for Former Prisoners of War (POWS)

5.140 Determining former prisoner of war status.
5.141 Medical evidence for former prisoners' of war compensation claims.
5.142–5.149 [Reserved]

General Effective Dates for Awards

5.150 General effective dates for awards or increased benefits.
5.151 Date of receipt.
5.152 Effective dates based on change of law or VA issue.
5.153 Effective date of awards based on receipt of evidence prior to end of appeal period.
5.154–5.159 [Reserved]

General Rules on Revision of Decisions

5.160 Binding effect of VA decisions.
5.161 Review of benefit claims decisions.
5.162 Revision of decisions based on clear and unmistakable error (CUE).
5.163 Revision of decisions based on difference of opinion.
5.164 Effective dates for revision of decisions based on difference of opinion.
5.165 Effective dates for reduction or discontinuance of awards based on error.
5.166 New and material evidence based on service department records.
5.167–5.169 [Reserved]

General Rules on Protection or Reduction of Existing Ratings

5.170 Calculation of 5-year, 10-year, and 20-year protection periods.
5.171 Protection of 5-year stabilized ratings.
5.172 Protection of continuous 20-year ratings.
5.173 Protection against reduction of disability ratings when revisions are made to the Schedule for Rating Disabilities.
5.174 Protection of entitlement to benefits established before 1959.
5.175 Protection or severance of service connection.
5.176 Due process procedures for severing service connection or reducing or discontinuing compensation benefits.
5.177 Effective dates for severing service connection or discontinuing or reducing benefit payments.
5.178–5.179 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart C—Adjudicative Process, General

General Evidence Requirements

§ 5.130 Submission of statements, evidence, or information affecting entitlement to benefits.

(a) *Statement of VA policy concerning submission of written statements, evidence, or information.* (1) It is VA's general policy to allow submission of statements, evidence, or information by e-mail, facsimile (fax) machine, or other electronic means, unless a VA regulation, form, or directive expressly requires a different method of submission (for example, where a VA form directs claimants to submit certain documents by regular mail or hand delivery). This policy does not apply to the submission of a claim, Notice of Disagreement, Substantive Appeal, or any other submissions or filing requirements covered in parts 19 and 20 of this chapter.

(2) Paragraph (a)(1) of this section merely concerns the method by which written statements, evidence, or information is submitted to VA. Requirements regarding the content of the submission must still be met.

(b) *VA action following submission of statements, evidence, or information.* Except as otherwise provided, after a beneficiary or his or her fiduciary or authorized representative provides VA with a statement, evidence, or information that affects entitlement to benefits, either orally or in writing, VA may take action affecting the beneficiary's entitlement to benefits based upon the statement, evidence, or information.

(c) *Notice and documentation or oral statements.* Except as provided in paragraph (d) of this section, VA will not take action based on oral statements unless the VA employee receiving the information meets the following conditions:

(1) During the conversation in which the beneficiary, representative, or fiduciary provides the statement, the VA employee:

(i) Identifies himself or herself as a VA employee who is authorized to receive the statement (this means that the VA employee must be authorized to take actions under §§ 2.3 or 3.100 of this chapter);

(ii) Verifies the identity of the provider as the beneficiary or his or her fiduciary or authorized representative by obtaining specific information about the beneficiary that is contained in the beneficiary's VA records, such as Social Security number, date of birth, branch of military service, dates of military service, or other information; and

(iii) Informs the provider that the statement may be used to calculate benefit amounts; and

(2) During or following the conversation in which the beneficiary, representative, or fiduciary provides the statement, the VA employee documents in the beneficiary's VA record all of the following:

(i) The specific statement provided.

(ii) The date such statement was provided.

(iii) The identity of the provider.

(iv) The steps taken to verify the identity of the provider as being the beneficiary or his or her fiduciary or authorized representative.

(v) The statement of the employee that the provider was informed that the statement may be used for the purpose of calculating benefits amounts.

(d) *Exceptions to paragraph (c) notice and documentation requirements.* Paragraph (c) of this section does not apply to the following:

(1) Oral statements made at a VA hearing; and

(2) Oral statements recorded by VA personnel in reports of medical treatment or examination.

(Authority: 38 U.S.C. 501(a))

§ 5.131 Applications, claims, and exchange of evidence with Social Security Administration (SSA)—death benefits.

(a) *Dual-purpose SSA and VA application forms.* A claim for death benefits received by SSA on a form jointly prescribed by VA and SSA claiming such benefits is considered to be a claim for VA death benefits (including dependency and indemnity compensation (DIC), death pension, and accrued benefits). The claim will be deemed to have been received by VA on the date that it was received by SSA.

(b) *Evidence filed with SSA.* Evidence received by SSA in conjunction with a claim under paragraph (a) of this section is considered received by VA on the date that SSA received the evidence.

(c) *SSA request of copies or certifications of evidence filed with VA.* At SSA's request, VA will furnish copies or certifications of evidence that a claimant has filed with VA in support of a claim for VA death benefits, provided that the release of this evidence fully complies with all requirements in any applicable laws and regulations that protect the confidentiality of VA records.

(Authority: 38 U.S.C. 501(a), 5101(b)(1), 5105)

§ 5.132 Claims, statements, evidence, or information filed abroad; authentication of documents from foreign countries.

(a) *Claims and evidence filed abroad.* A claim, or statements, information, or evidence in support of a claim, may be submitted to a Department of State representative in a foreign country. Any claim, statement, information, or evidence filed in a foreign country will be considered received by VA on the date that it was received by the Department of State representative in that foreign country.

(b) *Authentication of foreign documents—generally.* Foreign documents listed in paragraph (c) of this section do not require authentication. All other foreign documents must be authenticated as specified in paragraph (d) of this section. ''Foreign documents'' means documents that are signed under oath or affirmation in the presence of an official in a foreign country. Examples of foreign documents include affidavits, marriage certificates, and birth certificates that have been created, executed, or validated by a foreign government. ''Authentication'' means that an official listed in paragraph (d) of this section verifies that the foreign document, including each signature, stamp, and seal appearing on it, is genuine and has not been altered.

(c) *Authentication of certain foreign documents not required.* VA does not require authentication of the following types of foreign documents:

(1) Documents approved by the Deputy Minister of Veterans Affairs for the Department of Veterans Affairs, Ottawa, Canada.

(2) Documents bearing the signature and seal of an officer authorized to administer oaths for general purposes.

(3) Documents signed before a VA employee authorized to administer oaths under § 2.3 of this chapter.

(4) Affidavits prepared in the Republic of the Philippines that are certified by a VA representative who is located there and who has the authority to administer oaths.

(5) Copies of public or church records from any foreign country used to establish birth, adoption, marriage, annulment, divorce, or death, provided that the documents have the signature and seal of the custodian of these records and there is no contrary evidence of record that tends to cast doubt on the correctness of the documents.

(d) *Authentication of foreign documents required.* Foreign documents not listed in paragraph (c) of this section must be authenticated by:

(1) An officer of the Department of State authorized to authenticate documents; or

(2) The Consul of a friendly government whose signature and seal is verified by the Department of State.

(e) *Photocopies of foreign documents.* VA will accept photocopies of any of the foreign documents described in paragraphs (c) and (d) of this section if VA determines that the photocopies satisfy the requirements of § 5.180.

(Authority: 38 U.S.C. 501(a))

§ 5.133 Information VA may request from financial institutions.

(a) *Names and addresses.* If VA needs to verify a person's correct name or address, VA may request this information from a financial institution, such as a bank, savings and loan association, trust company, or credit union. In its request, VA must certify that the name or address is necessary in order to administer properly its benefit programs and cannot be located by a reasonable search of VA records.

(b) *Financial information.* VA may ask a financial institution to provide financial records of a current or former claimant or a current or former beneficiary if such evidence is necessary to determine whether such person has failed to comply with a statute, regulation, rule, or order. This request, however, must be made through a subpoena. (A subpoena is a legal document commanding an individual or organization to provide specified evidence to the issuer of the subpoena. See § 2.2 of this chapter for information on VA's authority to issue subpoenas.) Before the date VA serves a subpoena on a financial institution, VA must:

(1) Serve or mail a copy of the subpoena to the beneficiary; together with

(2) A written explanation of the purpose of VA's request for financial information and the procedure for challenging the subpoena. *See* 12 U.S.C. 3405.

(c) *Limitations on use of information.* Unless permitted under the Right to Financial Privacy Act (codified at 12 U.S.C. 3401, *et seq.*), VA may not:

(1) Use information obtained from a financial institution for any purpose other than the administration of VA benefits programs; or

(2) Share this information with any other individual, group, or government entity.

(Authority: 12 U.S.C. 3401, 3405, 3412, 3413; 38 U.S.C. 501, 5711, 5319)

§ 5.134 Will VA accept a signature by mark or thumbprint?

VA will accept signatures by mark or thumbprint if:

(a) They are witnessed by two people who sign their names and give their addresses, or

(b) They are witnessed by an accredited agent, attorney, or service organization representative, or

(c) They are certified by a notary public or any other person having the authority to administer oaths for general purposes, or

(d) They are certified by a VA employee who has been delegated authority by the Secretary under 38 CFR 2.3.

(Authority: 38 U.S.C. 5101)

§ 5.135 Statements certified or under oath or affirmation.

(a) All oral testimony presented by claimants and witnesses on their behalf will be under oath or affirmation (*see* § 5.82(d)(2)).

(b) Any documentary evidence or written assertion of fact submitted by the claimant or on his or her behalf for the purpose of establishing a claim for service connection should be certified or under oath or affirmation. VA may consider such a submission that is not certified or under oath or affirmation or

may require certification, oath, or affirmation if considered necessary to establish the reliability of a material document. Documentary evidence includes records, examination reports, and transcripts material to the issue received by VA from State, county, or municipal governments, recognized private institutions, or contract hospitals.

(Authority: 38 U.S.C. 501)

§§ 5.136 through 5.139 [Reserved]

Evidence Requirements for Former Prisoners of War (POWs)

§ 5.140 Determining former prisoner of war status.

(a) *Basis for determination.* The definition of ''hostile force'' set forth in paragraph (3) of the definition of ''Former prisoner of war (or former POW)'' in § 5.1 applies to this section. VA will accept a finding by the appropriate service department that a person was a POW during a period of war when detention or internment was by an enemy government or its agents, or a hostile force, except when a reasonable basis exists for questioning that finding. The Director of the Compensation and Pension Service must approve all regional office determinations not based on service department findings. VA will apply paragraphs (b), (c), and (d) of this section and make its own determination of POW status if:

(1) The detention or internment occurred during a period other than a period of war; or

(2) If a service department has not made a finding; or

(3) A reasonable basis exists for questioning a service-department finding.

(b) *Circumstances of detention or internment.* To be considered a former POW, a serviceperson must have been forcibly detained or interned under circumstances comparable to those under which persons generally have been forcibly detained or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions. In the absence of evidence to the contrary, VA will consider that each individual member of a particular group of detainees or internees experienced the same circumstances as those experienced by the group.

(c) *Reason for detention or internment.* For the purposes of determining POW status, VA will not consider the reason a service member was detained or interned, except where allegations exist that the service member violated the laws of a foreign government. A period of detention or internment by a foreign government for an alleged violation of its laws cannot be used to establish POW status, unless the charges were a sham intended to make it appear that the detention or internment was proper.

(d) *Line of duty.* VA will consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detention or internment was the proximate result of the service member's own willful misconduct. *See* § 5.660 (defining line of duty) and § 5.661 (defining willful misconduct).

Cross-reference: *See* § 5.611 (concerning POW status and Philippine service).

(Authority: 38 U.S.C. 101(32))

§ 5.141 Medical evidence for former prisoners' of war compensation claims.

(a) *Injuries and other conditions of a former prisoner of war (POW).* As soon as sufficient evidence for a rating is available, VA will rate injuries or other conditions of a former POW that obviously were incurred in service, without awaiting receipt of the claimant's medical and other service records.

(b) *Statements by a former POW.* VA will presume true a statement by a former POW that an injury or disease was incurred or aggravated during (or immediately before) detention or internment if the statement is consistent with the circumstances, conditions, or hardships of detention or internment (or is consistent with the former POW's situation immediately before detention or internment). The presumption of truth as to such a statement is rebutted by clear and convincing evidence to the contrary. *See also* § 3.304(f)(2) (pertaining to post-traumatic stress disorder claimed by a former POW).

(c) *Evidence from fellow service members.* Evidence from fellow service members may be used to support an allegation of incurrence or aggravation of an injury or disease during detention or internment. In evaluating evidence from fellow service members that relates to a claim for disability compensation by a former POW, VA will take into account the fellow service member's statements, including statements regarding any of the following:

(1) The former POW's physical condition before capture;

(2) The circumstances during the former POW's detention or internment;

(3) The changes in the former POW's physical condition following release from detention or internment; or

(4) The existence of signs and symptoms consistent with a claimed disability following the former POW's release from detention or internment.

(d) *The absence of clinical records.* If disability compensation is claimed by a former POW, VA will not consider as determinative the lack of history or findings in clinical records made upon the claimant's return to United States control.

(e) *Disabilities first reported after discharge.* If any disability is first reported after discharge, especially if the claimed disability is poorly defined and not obviously of intercurrent origin, VA will determine whether the claimed disability is etiologically related to the POW experience. VA will consider the circumstances of the claimant's detention or internment, the duration of detention or internment, and the pertinent medical principles.

(f) *Examination requirement.* If service connection for disabilities claimed by a former POW cannot be established otherwise, VA will provide the claimant a complete medical examination.

Cross-references: Definition of prisoner of war. *See* § 5.1. Presumptive service connection for diseases specific to prisoners of war. *See* § 5.264(c).

(Authority: 38 U.S.C. 1154)

§§ 5.142–5.149 [Reserved]

General Effective Dates for Awards

§ 5.150 General effective dates for awards or increased benefits.

(a) *General rule.* Except as otherwise provided, the effective date of an award of pension, compensation, dependency and indemnity compensation, or monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran, based on an original claim, a claim reopened after final disallowance, or a claim for increase, will be the later of:

(1) The date of receipt of the claim for the benefit awarded; or

(2) The date entitlement arose. For the purposes of this part, ''date entitlement arose'' means the date shown by the evidence to be the date that the claimant first met the requirements for the benefit awarded. VA will assume that entitlement arose before the date of receipt of the claim unless the evidence shows that entitlement arose after that date.

(b) *Location of other effective-date provisions in part 5.* The following chart is intended to provide assistance in locating various other effective-date provisions in this part. It is provided for informational use only.

Effective date provision	Part 5 location
(1) SUBPART B—SERVICE REQUIREMENTS FOR VETERANS	
(i) Individuals and groups designated by the Secretary of Defense as having performed active military service	§ 5.27(c).
(ii) Effect of discharge upgrades by Armed Forces boards for the correction of military records (10 U.S.C. 1552) on eligibility for VA benefits.	§ 5.34(d).
(iii) Effect of discharge upgrades by Armed Forces discharge review boards (10 U.S.C. 1553) on eligibility for VA benefits.	§ 5.35(e).
(2) SUBPART C—ADJUDICATIVE PROCESS, GENERAL	
(i) Filing a claim for death benefits	§ 5.53(c)(5).
(ii) New and material evidence	§ 5.56(b).
(iii) Requirement to provide Social Security numbers	§ 5.101(c), (d).
(iv) Effective dates based on change of law or VA issue	§ 5.152.
(v) Effective date of awards based on receipt of evidence prior to end of appeal period	§ 5.153.
(vi) Revision of decisions based on clear and unmistakable error (CUE)	§ 5.162(b).
(vii) Effective dates for revision of decisions based on difference of opinion under § 5.163	§ 5.164.
(viii) Effective dates for reduction or discontinuance of awards based on error	§ 5.165.
(ix) New and material evidence based on service department records	§ 5.166(c), (d).
(x) Effective dates for severing service connection or discontinuing or reducing benefit payments	§ 5.177.
(3) SUBPART D—DEPENDENTS AND SURVIVORS	
(i) Evidence of dependency-reduction or discontinuance of VA benefits	§ 5.181(c).
(ii) Effective date for additional benefits based on the existence of a dependent	§ 5.183.
(iii) Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent	§ 5.184.
(iv) Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to marriage or remarriage.	§ 5.197.
(v) Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to divorce or annulment.	§ 5.198.
(vi) Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person.	§ 5.204.
(vii) Effective date of resumption of benefits to a surviving spouse due to termination of a remarriage	§ 5.205.
(viii) Effective date of resumption of benefits to a surviving spouse who stops holding himself, or herself, out as the spouse of another.	§ 5.206.
(ix) Effective date of award of pension or dependency and indemnity compensation to, or based on the existence of, a child born after the veteran's death.	§ 5.230.
(x) Effective date of reduction or discontinuance—child reaches age 18 or 23	§ 5.231.
(xi) Effective date of reduction or discontinuance—terminated adoptions	§ 5.232.
(xii) Effective date of reduction or discontinuance—stepchild no longer a member of the veteran's household	§ 5.233.
(xiii) Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self support.	§ 5.234.
(xiv) Effective date of an award of benefits due to termination of a child's marriage	§ 5.235.
(4) SUBPART E—CLAIMS FOR SERVICE CONNECTION AND DISABILITY COMPENSATION	
(i) Effective dates—award of disability compensation based on direct service connection	§ 5.310.
(ii) Effective dates—award of disability compensation based on presumptive service connection	§ 5.311.
(iii) Effective dates—increased compensation due to increased disability	§ 5.312.
(iv) Effective dates—reduction or severance of service-connected disability compensation	§ 5.313.
(v) Effective dates—discontinuance of total disability rating based on individual unemployability	§ 5.314.
(vi) Effective dates—reduction or discontinuance of additional disability compensation based on parental dependency	§ 5.315.
(vii) Effective dates—award of additional disability compensation based on decrease in the net worth of dependent parents.	§ 5.316.
(viii) Effective dates—Special monthly compensation under §§ 5.331 through 5.332	§ 5.333.
(ix) Effective dates—Additional compensation for aid and attendance payable for a veteran's spouse	§ 5.334.
(x) Effective date: Tuberculosis, special compensation for arrested	§ 5.349.
(xi) Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospitalization, medical or surgical treatment, examinations, or vocational rehabilitation training.	§ 5.352(a)(2).
(xii) Effective dates for disability or death due to hospitalization, medical or surgical treatment, examinations, or vocational rehabilitation training.	§ 5.353.
(5) SUBPART F—NONSERVICE-CONNECTED DISABILITY PENSIONS AND DEATH PENSIONS	
(i) Permanent and total disability ratings for Improved Disability Pension purposes	§ 5.381(b)(2).
(ii) Effective dates for Improved Disability Pension	§ 5.383.
(iii) Effective dates for awards of special monthly pension	§ 5.392.
(iv) Automatic adjustment of maximum annual pension rates	§ 5.401(a).
(v) Effective dates for Improved Pension awards based on a change in net worth	§ 5.415.
(vi) Effective dates for changes to Improved Pension payments due to a change in income	§ 5.422.
(vii) Time limits to establish entitlement to Improved Pension or to increase the annual Improved Pension amount based on income.	§ 5.424(b), (c).
(viii) Effective dates for Improved Death Pension	§ 5.431.
(ix) Effective date of discontinuance of Improved Death Pension payments to a beneficiary no longer recognized as the veteran's surviving spouse.	§ 5.433.

Effective date provision	Part 5 location
(x) Award, or discontinuance of award, of Improved Death Pension to a surviving spouse where Improved Death Pension payments to a child are involved.	§ 5.434(b), (c).
(xi) Effective dates of improved pension elections	§ 5.463.
(xii) Effective dates for section 306 and old-law pension reductions or discontinuances	§ 5.477.
(6) SUBPART G—DEPENDENCY AND INDEMNITY COMPENSATION, DEATH COMPENSATION, ACCRUED BENEFITS, AND SPECIAL RULES APPLICABLE UPON DEATH OF A BENEFICIARY	
(i) Awards of dependency and indemnity compensation benefits to children when there is a retroactive award to a school child.	§ 5.524(c).
(ii) Effective dates for DIC or death compensation awards	§ 5.567.
(iii) Effective dates for discontinuance of DIC or death compensation payments to a person no longer recognized as the veteran's surviving spouse.	§ 5.568.
(iv) Effective date for award, or termination of award, of DIC or death compensation to a surviving spouse where DIC or death compensation payments to children are involved.	§ 5.569.
(v) Effective date for reduction in DIC—surviving spouses	§ 5.570.
(vi) Effective date for an award or increased rate based on amended income information—parents' DIC	§ 5.571.
(vii) Effective date for reduction or discontinuance based on increased income—parents' DIC	§ 5.572.
(viii) Effective date for dependency and indemnity compensation rate adjustments when an additional dependent files an application.	§ 5.573.
(ix) Effective dates of awards and discontinuances of special monthly dependency and indemnity compensation	§ 5.574.
(7) SUBPART H—SPECIAL AND ANCILLARY BENEFITS FOR VETERANS, DEPENDENTS, AND SURVIVORS	
(i) Medal of Honor pension	§ 5.580(c).
(ii) Awards of VA benefits based on special acts or private laws	§ 5.581(d).
(iii) Special allowance payable under section 156 of Pub. L. 97–377	§ 5.588(f).
(iv) Effective dates of awards for certain disabled children of Vietnam veterans	§ 5.591.
(v) Clothing allowance	§ 5.606(e).
(8) SUBPART I—BENEFITS FOR CERTAIN FILIPINO VETERANS AND SURVIVORS	
(i) Filipino veterans and their survivors: Effective dates for benefits at the full-dollar rate	§ 5.614.
(ii) Filipino veterans and their survivors: Effective dates of reductions and discontinuances for benefits at the full-dollar rate.	§ 5.618.
(9) SUBPART K—MATTERS AFFECTING THE RECEIPT OF BENEFITS	
(i) Remission of forfeiture	§ 5.680(c)(2).
(ii) Effective dates—forfeiture	§ 5.681.
(iii) Presidential pardon for offenses causing forfeiture	§ 5.682(b), (d).
(iv) Renouncement of benefits	§ 5.683(c), (e)(1)(ii).
(10) SUBPART L—PAYMENTS AND ADJUSTMENTS TO PAYMENTS	
(i) Benefits paid to a child attending an approved educational institution	§ 5.695(c)–(g).
(ii) General effective dates for reduction or discontinuance of benefits	§ 5.705.
(iii) Eligibility verification reports	§ 5.708(f).
(iv) Adjustment in benefits due to reduction or discontinuance of a benefit to another payee	§ 5.710(b).
(v) Disappearance of veteran for 90 days or more	§ 5.711(b)(2), (c)(2), (d)(1).
(vi) Resumption of payments when a payee's whereabouts become known	§ 5.712.
(vii) Restriction on VA benefit payments to an alien located in enemy territory	§ 5.713.
(viii) Reduction of Improved Pension when a veteran is receiving domiciliary or nursing home care	§ 5.720(a)(4), (d).
(ix) Reduction of Section 306 Pension when a veteran is receiving hospital care	§ 5.721(a)(4), (d).
(x) Reduction of Old-Law Pension when a veteran is receiving hospital care	§ 5.722(a)(4).
(xi) Reduction of Improved Pension when a veteran or surviving spouse is receiving Medicaid-covered nursing home care.	§ 5.723(b).
(xii) Reduction of special monthly compensation involving aid and attendance when a veteran is receiving hospital care	§ 5.724(b), (e), (f).
(xiii) Reduction of special monthly pension involving aid and attendance for Improved Pension when a veteran is receiving hospital care.	§ 5.725(b), (d), (e).
(xiv) Reduction of special monthly pension involving aid and attendance for Old-Law Pension or Section 306 Pension when a veteran is receiving hospital care.	§ 5.726(b), (e).
(xv) Resumption of Section 306 Pension and special monthly pension involving aid and attendance when a veteran is discharged or released from hospital care.	§ 5.727(b), (e), (f).
(xvi) Resumption of Old-Law Pension and special monthly pension involving aid and attendance when a veteran is discharged or released from hospital care.	§ 5.728(b), (d), (e).
(xvii) General effective dates for awarding, reducing, or discontinuing VA benefits because of an election	§ 5.743.
(xviii) Prohibition against receipt of active military service pay and VA benefits for the same period	§ 5.746(c), (d)(1).
(xix) Procedures for elections between VA benefits and FECA compensation	§ 5.752(b).
(xx) Effect of election of compensation under the Radiation Exposure Compensation Act of 1990 on payment of certain VA benefits.	§ 5.754(d).
(xxi) Payment of multiple VA benefits to a surviving child based on the service of more than one veteran	§ 5.762(c)(6)(ii).

Effective date provision	Part 5 location
(xxii) Payment of dependents' educational assistance (DEA) and VA pension or dependency and indemnity compensation (DIC) for the same period.	§ 5.764(a)(3).
(11) SUBPART M—APPORTIONMENTS TO DEPENDENTS AND PAYMENTS TO FIDUCIARIES AND INCARCERATED BENEFICIARIES	
(i) Effective date of apportionment grant or increase	§ 5.783.
(ii) Effective date of apportionment discontinuance or reduction	§ 5.784.
(iii) Determinations of incompetency	§ 5.791(d).
(iv) Effective date after certification or when a beneficiary regains competency	§ 5.794.
(v) Payments upon reaching age of majority	§ 5.795(b).
(vi) Incarcerated beneficiaries—general provisions and definitions	§ 5.810(c).
(vii) Discontinuance of pension during incarceration	§ 5.813(b)(2).
(viii) Apportionment where a primary beneficiary is incarcerated	§ 5.814(e).
(ix) Resumptions of disability compensation, dependency and indemnity compensation, or death compensation upon a beneficiary's release from incarceration.	§ 5.815(a), (b)(1), (c)(2).
(x) Resumptions of pension upon a beneficiary's release from incarceration	§ 5.816(b), (c)(1).

(Authority: 38 U.S.C. 501, 5110(a))

§ 5.151 Date of receipt.

(a) *General*. The date of receipt of a document, claim, information, or evidence is the date on which it was received by VA, except as provided in paragraph (b) of this section, in specific provisions for claims or evidence received in a foreign country by a Department of State representative (§ 5.132(a)) or in the Social Security Administration (§§ 5.131(a) or 5.131(b)), or in rules of the Department of Defense relating to initial claims filed at or before separation.

(b) *Exception to date-of-receipt rule*. VA may establish, by notice published in the **Federal Register**, exceptions to paragraph (a), using factors such as postmark or the date the claimant signed the correspondence, when VA determines that a natural or man-made interference with the normal channels through which VA ordinarily receives correspondence has resulted in one or more VA regional offices experiencing extended delays in receipt of documents, claims, information, or evidence from claimants served by the affected office or offices to an extent that, if not addressed, would adversely affect such claimants through no fault of their own.

(Authority: 38 U.S.C. 501(a), 512(a), 5110)

§ 5.152 Effective dates based on change of law or VA issue.

(a) *Effective date of award*. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the date entitlement arose, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 1822, 5110(g))

(b) *Reduction or discontinuance of benefits*. Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If VA receives no additional evidence within the 60-day period, or the evidence received does not demonstrate that the proposed action should not be taken, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

(Authority: 38 U.S.C. 5112(b)(6))

§ 5.153 Effective date of awards based on receipt of evidence prior to end of appeal period.

VA will consider information or evidence received before the expiration of the period for initiating or perfecting an appeal to the Board, or before the Board renders a decision (if a timely appeal was filed), without regard to whether the information or evidence is ''new and material.'' An award of the benefit sought based on that information or evidence is effective on the date prescribed by § 5.150.

(Authority: 38 U.S.C. 501)

§§ 5.154–5.159 [Reserved]

General Rules on Revision of Decisions

§ 5.160 Binding effect of VA decisions.

(a) *General rule*. A decision of a duly constituted rating agency or other agency of original jurisdiction shall be binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A binding agency decision shall not be subject to revision on the same factual basis except by duly

constituted appellate authorities or except as provided in §§ 5.161, 5.162, and 5.163 of this part.

(b) *Particular issues.* A decision made by a Veterans Service Center on any one of the issues listed below is binding on the VA Insurance Center, and vice versa, unless the decision was based on clear and unmistakable error. Absent clear and unmistakable error, neither a Veterans Service Center nor the VA Insurance Center may change a decision of the other if doing so would involve applying the same criteria and be based on the same facts. The issues to which this paragraph (b) applies are:

(1) Line of duty;

(2) Character of discharge;

(3) Relationship;

(4) Dependency;

(5) Domestic relations issues such as marriage, divorce, adoption and child custody and support;

(6) Homicide; and

(7) Findings of fact of death or presumption of death.

(Authority: 38 U.S.C. 501)

§ 5.161 Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to review of that decision under this section. The review will be conducted by a Veterans Service Center Manager or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under § 5.82.

(d) The reviewer may grant a benefit sought in the claim notwithstanding § 5.163, but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (*see* § 5.162).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001.

(Authority: 38 U.S.C. 5109A, 7105(d))

§ 5.162 Revision of decisions based on clear and unmistakable error (CUE).

(a) *General.* In the absence of clear and unmistakable error (CUE), VA will accept all final decisions as correct. Where evidence establishes such CUE, a prior decision will be reversed or revised. Review to determine whether CUE exists in a case may be instituted by VA on its own motion or upon request of the claimant. A request for revision of a VA decision based on CUE may be made at any time after that decision is made.

Cross-reference: Explanation of what constitutes CUE and what does not. See § 20.1403 of this chapter.

(b) *Effect of revision on benefits.* For the purpose of granting benefits, a new decision that constitutes a reversal or revision of a prior decision on the grounds of CUE has the same effect as if the new decision had been made on the date of the prior decision. For effective dates for reductions or discontinuances, based on CUE, VA will apply § 5.165(c)(1). However, for reductions or discontinuances based on CUE resulting from an act of commission or omission by the beneficiary or with the beneficiary's knowledge, VA will apply § 5.165(b).

(Authority: 38 U.S.C. 5109A)

§ 5.163 Revision of decisions based on difference of opinion.

If the Veterans Service Center Manager (VSCM) within an agency of original jurisdiction (AOJ) believes that revision of a previous AOJ decision (that is not final and has not been the subject of a Substantive Appeal) is warranted, based on a difference of opinion, and that revision would lead to a more favorable decision on the claim that was the subject of that previous decision, the VSCM will recommend such revision to the Director of the Compensation and Pension Service of the Veterans Benefits Administration for a binding determination.

(Authority: 38 U.S.C. 501)

§ 5.164 Effective dates for revision of decisions based on difference of opinion.

If a decision is revised based on difference of opinion under § 5.163, the effective date of the revision is the date the benefits would have been paid if the previous decision had been favorable.

(Authority: 38 U.S.C. 501, 5110)

§ 5.165 Effective dates for reduction or discontinuance of awards based on error.

(a) *Scope.* The rules in this section apply when determining the proper effective date to assign for the reduction or discontinuance of VA benefits based on error. This section does not apply to a payment amount not authorized by a rating decision, such as a payment of an incorrect amount or a duplicative payment. Such amounts are overpayments, subject to recoupment.

(b) *Effective date of reduction or discontinuance based on beneficiary error.* If an award was based on an act of commission or omission by the beneficiary or any act of omission or commission with the beneficiary's knowledge, VA will pay a reduced rate or discontinue benefits effective the latest of the following dates:

(1) The effective date of the award;

(2) The date preceding the act of commission or omission; or

(3) The date entitlement to the benefit ceased.

(c) *VA administrative error.* (1) *Effective date.* Except as provided in

§ 5.177 (d) and (f), if an award was based solely on administrative error or an error in judgment by VA, VA will pay a reduced rate or discontinue benefits effective the first of the month that follows the month for which VA last paid benefits.

(2) *Administrative error or an error in judgment.* Administrative errors or errors in judgment include:

(i) Overlooking facts;

(ii) Clerical errors; or

(iii) Failure to follow or properly apply VA instructions, regulations, or statutes.

(Authority: 38 U.S.C. 5112(b)(9) and (10))

§ 5.166 New and material evidence based on service department records.

(a) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding § 3.156(a). Such records include, but are not limited to:

(1) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of this § 5.166 are met;

(2) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(3) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(b) Paragraph (a) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department, the Joint Services Records Research Center, or from any other official source.

(c) An award made based all or in part on the records identified by paragraph (a) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

(d) A retroactive rating of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive rating will be assigned accordingly, except as it may be affected by the filing date of the original claim.

(Authority: 38 U.S.C. 501(a))

§§ 5.167–5.169 [Reserved]

General Rules on Protection or Reduction of Existing Ratings

§ 5.170 Calculation of 5-year, 10-year, and 20-year protection periods.

(a) VA will apply the following principles in determining whether service connection has been ''in effect'' for the 10-year period in § 5.175 and whether a rating has been ''continuous'' for the 5-year period in § 5.171 or the 20-year period in § 5.172.

(b) A protection period begins on the effective date of the rating decision and ends on the date that service connection would be severed or the rating would be reduced, after due process has been provided.

Cross-reference: Due process provisions for reducing compensation benefits or severing service connection. *See* § 5.176.

(c) For purposes of §§ 5.171 and 5.172, a rating is not continuous if benefits based on that rating are discontinued or interrupted because the veteran reentered active service.

Cross-reference: Rule on discontinuance of awards based on reentry into active service. *See* § 3.654(b).

(d) A rating period may be protected even if the beneficiary did not receive VA compensation based on that rating. This includes a beneficiary whose payments were adjusted by deduction, recoupment, apportionment, reduction in compensation due to incarceration, or because the beneficiary elected to receive retirement pay.

(e) A retroactive increase or award of service connection, including one made under § 5.162 of this part (revision based on clear and unmistakable error), which results in a veteran being rated or awarded service connection for a period of 5, 10, or 20 years will be protected under §§ 5.171, 5.175, and 5.172, respectively, of this part. This paragraph applies to any protection period, even if it includes a period based on a retroactive award.

Cross-reference: Specific procedural due process in reducing ratings or severing service connection. *See* § 5.176.

(Authority: 38 U.S.C. 110, 501, 1159)

§ 5.171 Protection of 5-year stabilized ratings.

(a) *Purpose.* VA will adjudicate cases affected by change of medical findings or diagnosis to produce the greatest degree of stability of disability ratings consistent with the laws and regulations governing disability compensation and pension.

(b) *Stabilized rating.* For the purposes of this section, if a disability has been rated at or above a specific level for 5 years or more, VA will consider it to be stabilized at that specific level.

(c) *Material improvement.* VA will not reduce a stabilized rating unless there is evidence of material improvement. VA may reduce a stabilized rating when:

(1) An examination shows sustainable material improvement, physical or mental, in the disability, as explained in paragraph (d) of this section; and

(2) The evidence shows that it is reasonably certain that the material improvement will be maintained under the ordinary conditions of life.

(d) *How VA determines whether there has been material improvement.* VA will consider the following when determining whether a disability has undergone material improvement:

(1) In order to reduce a stabilized rating, there must be evidence of an examination demonstrating improvement. Examinations less complete than those on which payments were authorized or continued will not be used as a basis for reduction. A complete medical record includes all of the following, when such records exist:

(i) The entire case history;

(ii) Medical-industrial history;

(iii) Records related to treatment of intercurrent diseases and exacerbations, including hospital reports, bedside examinations, examinations by designated physicians, and examinations that reflect the results of tests conducted by laboratory facilities and the cooperation of specialists in related lines;

(iv) Private and VA medical examination records; and

(v) Special examinations indicated as a result of general examination.

(2) VA will not use only one examination as the basis for a reduction of stabilized ratings assigned to diseases that tend to show temporary or episodic improvement, unless the evidence of record clearly demonstrates sustained improvement. Diseases subject to temporary or episodic improvement include but are not limited to:

(i) Arteriosclerotic heart disease;

(ii) Bronchial asthma;

(iii) Epilepsy;

(iv) Gastric or duodenal ulcer;

(v) Bipolar disorders or other psychotic reaction;

(vi) Anxiety disorders;

(vii) Many skin diseases.

(3) VA will not reduce a stabilized rating assigned to a disease that becomes comparatively symptom free (findings absent) after bed rest based on an examination that reflects the results of bed rest.

(4) Material improvement will be held to exist only where, after full compliance with the procedure outlined in this paragraph (d), the medical record clearly demonstrates that the disability does not meet the requirements for the currently assigned disability rating.

(5) Where there is evidence of a change in diagnosis, VA will follow 38 CFR 4.13 (''Effect of change of diagnosis''), as well as this section. VA will consider whether evidence of a change in diagnosis represents a progression of the previously diagnosed condition, an error in prior diagnosis, or a disease entity independent of the service-connected disability. When a new diagnosis reflects only a mental deficiency or personality disorder, VA will consider the possibility of temporary remission of a super-imposed psychiatric disease.

(6) When syphilis of the central nervous system or alcoholic deterioration is diagnosed following a long prior history of psychosis, psychoneurosis, epilepsy, or the like, it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations.

(e) *Reexamination.* If VA cannot conclude that a reduction is warranted after considering the evidence as described in paragraphs (c) and (d) of this section, VA will continue the rating in effect, citing the former diagnosis with the new diagnosis, if any, in parentheses, with a notation that the rating will be continued pending reexamination to be conducted on a date to be determined on the basis of the facts of each individual case.

(Authority: 38 U.S.C. 501)

Cross-reference: For specific procedural due process in reducing ratings, *see* § 5.176.

§ 5.172 Protection of continuous 20-year ratings.

(a) *Compensation rating.* If a disability has been rated at or above a specific level for 20 years, VA may not reduce the rating below such level unless the rating was based on fraud.

(b) *Pension rating.* VA will not reduce a permanent total disability rating for pension purposes that has been continuously in effect for 20 or more years, unless the rating was based on fraud.

(c) *Effect of election regarding receipt of disability compensation.* The provisions of paragraph (a) or (b) of this section apply whether or not the veteran elects to receive disability compensation or pension during all or any part of the 20-year period.

(Authority: 38 U.S.C. 110)

§ 5.173 Protection against reduction of disability ratings when revisions are made to the Schedule for Rating Disabilities.

(a) *General.* VA will not reduce a disability rating in effect on the effective date of a revision of the applicable Schedule for Rating Disabilities unless medical evidence establishes that the rated disability has actually improved, except when the rating was assigned under the 1925 Schedule of Disability Ratings (as provided in paragraph (b) of this section).

(Authority: 38 U.S.C. 1155)

(b) *Ratings under 1925 Schedule.* (1) VA will reduce a rating that was assigned under the 1925 Schedule of Disability Ratings that was the basis of compensation on April 1, 1946, when the rated disability has undergone a sustained material improvement that would have required a reduction under the 1925 Schedule.

(2) Subject to paragraph (b)(3) of this section, VA will modify a rating that was assigned under the 1925 Schedule when an increased rating is appropriate under the Schedule for Rating Disabilities in part 4 of this chapter. After such modification, VA will assign all future ratings of that disability under the Schedule for Rating Disabilities in part 4 of this chapter. The increase in disability level must not be temporary (due to hospitalization, surgery, etc.). If a temporary increased rating is assigned, VA will restore the prior rating under the 1925 Schedule after the period of increase has elapsed unless:

(i) The permanent residuals require reduction under the 1925 Schedule; or

(ii) An increased rating is appropriate under the Schedule for Rating Disabilities in part 4 of this chapter.

(3) VA will not increase a rating assigned under the 1925 Schedule when the changed condition represents an increased degree of disability under either the 1925 Schedule or the Schedule for Rating Disabilities in part 4 of this chapter, but the rating provided by the Schedule for Rating Disabilities in part 4 of this chapter is less than the rating in effect under the 1925 Schedule on April 1, 1946.

Cross-reference: For procedural due process before reduction of rating under this section, *see* § 5.176.

(Authority: 38 U.S.C. 501)

§ 5.174 Protection of entitlement to benefits established before 1959.

(a) *Persons in receipt of or entitled to receive benefits on December 31, 1958.* Any person receiving or entitled to receive benefits under any public law administered by VA on December 31, 1958, may, except where there was fraud, clear and unmistakable error of fact or law, or misrepresentation of material facts, continue to receive such benefits as long as the conditions warranting such payment under those laws continue. VA will pay the greater benefit under the previous law or the corresponding current section of title 38 U.S.C. in the absence of an election to receive the lesser benefit.

(Authority: Section 10, Pub. L. 85–857)

(b) *Service connection established under prior laws.* Awards of service connection and the rate of disability compensation paid under prior laws repealed by Public Law 85–56 are protected, provided that the conditions warranting such status and rate continue and the award was not based on fraud, misrepresentation of facts, or clear and unmistakable error. With respect to such protected awards, VA may award compensation and special monthly compensation under current law if such award would result in compensation payment at a rate equal to or higher than that payable on December 31, 1957. Where a changed physical condition warrants re-rating of service-connected disabilities, the amounts of compensation and special monthly compensation will be determined under 38 U.S.C. 1114.

(Authority: Pub. L. 85–86; Pub. L. 85–857)

§ 5.175 Protection or severance of service connection.

(a) *Protected service connection.* (1) VA may not sever service connection that has been in effect for 10 years or more unless evidence shows that:

(i) The original grant was obtained through fraud, or;

(ii) It is clear from military records that the person identified as a veteran did not have the requisite qualifying military service or the veteran's discharge from service is of a type to prevent service connection as described in § 5.30.

(2) The protection afforded in this section extends to determinations of service connection that were the basis for grants of entitlement to dependency and indemnity compensation or death compensation.

(b) *Severance of service connection.* (1) VA will sever service connection when evidence establishes that it is clearly and unmistakably erroneous (the

burden of proof being upon VA), subject to §§ 5.152 and 5.176.

(2) A change in diagnosis may be accepted as a basis for severance of service connection if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis that was the basis of the award of service connection is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion that the diagnosis is erroneous.

(Authority: 38 U.S.C. 1159, 5104)

§ 5.176 Due process procedures for severing service connection or reducing or discontinuing compensation benefits.

Except as provided in § 5.83(c), when VA is contemplating severing service connection or reducing or discontinuing compensation benefit payments (including those based on individual unemployability), VA will:

(a) Prepare a rating proposing severance of service connection or reduction or discontinuance of compensation benefit payments and setting forth all material facts and reasons;

(b) Consistent with § 5.83, notify the beneficiary at his or her latest address of record of the contemplated action and furnish detailed reasons therefor; and

(c) Allow the beneficiary 60 days from the date of the notice proposing severance, reduction, or discontinuance, to present additional evidence to show that service connection should be maintained, the rating should not be reduced, or the benefits should remain intact. If VA receives no additional evidence within the 60-day period, or the evidence received does not demonstrate that the proposed action should not be taken, VA will notify the beneficiary that VA is severing service connection or reducing or discontinuing the benefit.

(Authority: 38 U.S.C. 501, 1159)

§ 5.177 Effective dates for severing service connection or discontinuing or reducing benefit payments.

(a) *Suspended awards.* If an award has been suspended and it is determined that no additional payments are in order, VA will discontinue the award effective the first of the month that follows the month for which VA last paid benefits.

(b) *Running awards.* If an award is running, VA will discontinue the award effective as appropriate under paragraphs (d) through (i) of this section.

(c) *Exceptions.* This section does not apply if:

(1) There is a change in law or a VA administrative issue or a change in interpretation of law or VA issue; if so, § 5.152 applies (effective dates based on change of law or VA issue);

(2) An award was erroneous due to an act of commission or omission by the beneficiary or with the beneficiary's knowledge; if so, § 5.165(b) applies; or

(3) An award was based solely on administrative error or an error in judgment by VA; if so, § 5.165(c) applies in cases other than severance of service connection under paragraph (d) of this section or reduction of compensation under paragraph (f) of this section.

(d) *Severance of service connection.* This paragraph (d) applies when VA severs service connection. In such cases, two 60-day periods apply. After applying the 60-day notice period described in § 5.176, VA will sever service connection effective the first day of the month after a second 60-day period beginning on the day of notice to the beneficiary of the final decision.

(e) *Character of discharge or line of duty.* This paragraph (e) applies when VA discontinues benefits based on a determination as to character of discharge or line of duty. In such cases, two 60-day periods apply. After applying the 60-day notice period described in § 5.176, VA will discontinue benefits effective the first day of the month after a second 60-day period beginning on the day of notice to the beneficiary of the final decision.

(f) *Disability compensation.* This paragraph (f) applies when VA reduces or discontinues disability compensation because of a change in service-connected disability or employability status. In such cases, two 60-day periods apply. After applying the 60-day notice period described in § 5.176, VA will pay a reduced rate or discontinue compensation effective the first day of the month after a second 60-day period beginning on the day of notice to the beneficiary of the final decision.

(g) *Pension.* This paragraph (g) applies when VA reduces or discontinues pension payments because of a change in disability or employability status. In such cases, VA will reduce the rate or discontinue pension effective the first day of the month after a second 60-day period beginning on the day of notice to the beneficiary of the final decision.

(h) *Chapter 18 monetary allowance.* This paragraph (h) applies when VA reduces or discontinues payments of a monetary allowance under 38 U.S.C. chapter 18 for children with certain birth defects. In such cases, VA will pay a reduced rate or discontinue the monetary allowance effective the first day of the month that follows the end of the 60-day notice period concerning the proposed reduction or discontinuance. The 60-day notice period is the one described in § 5.176.

(i) *Other.* The effective date for other reductions or discontinuances of benefit payments will be based upon the reasons for the change as described in § 3.500 through § 3.503 of this chapter.

(Authority: 38 U.S.C. 1110, 1131, 1117, 5112)

§§ 5.178–5.179 [Reserved]

[FR Doc. E7–9542 Filed 5–21–07; 8:45 am]

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May 22, 2007

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75
Sealing of Abandoned Areas; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB52

Sealing of Abandoned Areas

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Emergency temporary standard; Notice of public hearings; Notice of close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners face when underground seals separating abandoned areas from active workings fail. MSHA has concluded from its investigations of mine explosions that occurred and other recent reports, that additional immediate action is necessary to protect miners. This ETS includes requirements to strengthen the design, the construction, the maintenance, and the repair of seals, as well as requirements for sampling and controlling atmospheres behind seals. It also increases the level of overpressure for new seals, thus implementing the requirements of the Mine Improvement and New Emergency Response (MINER) Act of 2006.

DATES: This emergency temporary standard is effective May 22, 2007. This standard must be replaced with a final rule within 9 months. MSHA will hold public hearings on July 10, 2007, July 12, 2007, July 17, 2007 and July 19, 2007 at the locations listed in the Public Hearings section below under the **SUPPLEMENTARY INFORMATION** section of this document. If individuals or organizations wish to make an oral presentation for the record, the Mine Safety and Health Administration (MSHA) is asking that you submit your request at least 5 days prior to the hearing dates. The comment period will close on July 6, 2007.

ADDRESSES: Comments must be clearly identified and may be submitted by any of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-Comments@dol.gov.* Include ''RIN 1219–AB52'' in the subject line of the message.

(3) *Telefax:* (202) 693–9441. Include ''RIN 1219–AB52'' in the subject.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Sign in at the receptionist's desk on the 21st floor.

Docket: Comments can be accessed electronically at *www.msha.gov* under the ''Rules and Regs'' link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia.

MSHA maintains a listserve that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register**. To subscribe to the listserve, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

Information Collection Requirements: Comments concerning the information collection requirements must be clearly identified as such and sent to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) OMB: All comments must be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) MSHA: Comments must be clearly identified by RIN 1219–AB46 as comments on the information collection requirements and transmitted either electronically to *zzMSHA-Comments@dol.gov,* by facsimile to (202) 693–9441, or by regular mail, hand delivery, or courier to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

Hearings: Locations of the public hearings are in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd, Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441. (telefax).

SUPPLEMENTARY INFORMATION: The outline of this ETS is as follows:

I. Public Hearings
II. Introduction
III. Basis for the Emergency Temporary Standard
  A. Regulatory Authority
  B. Grave Danger
IV. Discussion of the Emergency Temporary Standard
  A. Background
  B. General Discussion
  C. Section-by-Section Analysis
V. Executive Order 12866
  A. Population-at-Risk
  B. Benefits
  C. Compliance Costs
VI. Feasibility
  A. Technological Feasibility
  B. Economic Feasibility
VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)
  A. Definition of a Small Mine
  B. Factual Basis for Certification
VIII. Paperwork Reduction Act of 1995
  A. Summary
  B. Details
IX. Other Regulatory Considerations
X. References
XI. Emergency Temporary Standard—Regulatory text

I. Public Hearings

MSHA will hold four public hearings on the ETS. The public hearings will begin at 9 a.m. and end after the last speaker speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date	Location	Phone
July 10, 2007	Lakeview Golf Resort and Spa, One Lakeview Drive, Morgantown, WV 26508	800–624–8300
July 12, 2007	Crowne Plaza Hotel, 1375 South Broadway, Lexington, KY 40504	859–255–4281
July 17, 2007	Embassy Suites Denver, 7525 East Hampden Avenue, Denver, CO 80231	303–696–6644
July 19, 2007	Sheraton Birmingham Hotel, 2101 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203	205–324–5000

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests.

At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions. A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript will also be available on MSHA's Home Page at *http://www.msha.gov,* under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

II. Introduction

This ETS is issued under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), 30 U.S.C. 811(b). The ETS establishes or revises standards in part 75—subpart D—Ventilation. These new standards strengthen the design, construction, maintenance, and repair of seals and monitoring and control of atmospheres behind seals in order to reduce the risk of seal failure and the risk of explosions in abandoned areas of underground coal mines.

In accordance with section 101(b)(3) of the Mine Act, an Emergency Temporary Standard (ETS) serves as both a final rule with immediate effect and a proposed rule to establish a final rule through the notice and comment process. Therefore, the final rule may differ from an ETS just as any final rule may differ from a proposed rule. The Mine Act states that the ETS is a temporary standard and must be superseded by a final rule within nine months. The Legislative History of the Mine Act reinforces the statutory language regarding the ETS serving as a proposed rule ''so that all views can be carefully considered in connection with the issuance of a permanent standard.'' S. Rept. 181, 95th Cong., 1st Sess. 24 (1977).

The preamble discusses specific provisions that may be included in the final rule and MSHA solicits comments on these provisions.

III. Basis for the Emergency Temporary Standard

A. Regulatory Authority

Section 101(b) of the Mine Act provides that:

1. The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the **Federal Register** if [s]he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

2. A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

3. Upon publication of such standard in the **Federal Register**, the Secretary shall commence a proceeding in accord with section 101(a) [involving notice and comment], and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

An ETS is an extraordinary measure provided by the Mine Act to enable MSHA ''to react quickly to grave dangers that threaten miners before those dangers manifest themselves in serious or fatal injuries or illnesses.'' S. Rept. 181, 95th Cong., 1st Sess. 23 (1977). Additionally, ''* * * once the Secretary has identified a grave danger that threatens miners the Committee expects the Secretary to issue an emergency temporary standard as quickly as possible, not necessarily waiting until [she] can investigate how well that grave danger is being managed or controlled in particular mines.'' *Senate Report at 24.* An ETS takes effect upon publication in the **Federal Register**, and is a fully enforceable standard.

To assure the comprehensive protection of miners, the ETS authority applies to all types of grave dangers without qualification. The legislative history of the Mine Act emphasizes that ''to exclude any kind of grave danger would contradict the basic purpose of emergency temporary standards protecting miners from grave dangers.'' S. Rept. 181, 95th Cong., 1st Sess., 24 (1977). The ETS authority thus covers dangers arising from exposure to toxic or physically harmful substances or agents and to ''other hazards.'' It applies to dangers longstanding or novel, to dangers that ''result from conditions whose harmful potential has just been discovered'' or to which large numbers of miners are ''newly exposed.'' *Id.*

A record of fatalities or serious injuries is not necessary before an ETS can be issued because ''[d]isasters, fatalities, and disabilities are the very thing this provision is designed to prevent.'' *Id.* at 23. At the same time, the legislative history of the Mine Act is clear that an ETS is not limited to new dangers in the mining industry: ''That a danger has gone unremedied should not be a bar to issuing an emergency standard. Indeed, if such is the case the need for prompt action is that much more pressing.'' *Id.* at 24.

When issuing an ETS, MSHA is ''not required to prove the existence of grave danger as a matter of record evidence prior to taking action.'' *Id.* The legislative history expressly recognizes ''the need to act quickly where, in the judgment of the Secretary, a grave danger to miners exists.'' *Id.* The ETS is a critical statutory tool that MSHA can use to take immediate action to prevent the loss of life in the mines. MSHA accordingly has employed an ETS previously to order ''hands-on'' training for miners in the use of self-contained self-rescue (SCSR) devices 52 FR 24373 (June 30, 1987), to order certain training and mine evacuation procedures for underground coal mines 67 FR 76658 (December 12, 2002) and to order new accident notification timeframes, provide new safety equipment, training and drills in mine emergency evacuations 71 FR 12252, (March 9, 2006).

B. Grave Danger

Based on MSHA's accident investigation reports of the Sago and Darby mine explosions,[1] the National Institute for Occupational Safety and Health's (NIOSH) reports on explosion testing and modeling, MSHA's in-mine seal evaluations, and review of technical literature, MSHA has determined that new comprehensive standards for seal design approval, strength and installation approval, construction, maintenance and repair, sampling and monitoring, training and recordkeeping

[1] MSHA Report of Investigation/Mine Explosion, Sago Mine, January 2, 2006 and MSHA Report of Investigation/Mine Explosion, Darby Mine Number 1, May 20, 2006. These reports can be found on MSHA's Web site at: *http://www.msha.gov.*

are necessary to immediately protect miners from hazards of sealed areas.

Underground coal mines are dynamic work environments in which the working conditions can change rapidly. Caved, mined-out areas may contain coal dust and accumulated gas which can be ignited by rock falls, lightning, and in some instances, fires started by spontaneous combustion. Seals are used to isolate and contain this environment of the active workings of the mine. Adequate seals are crucial to prevent an explosion from propagating to the outby side of the seal where miners work or travel. Seals must therefore be designed to withstand elevated pressures and contain explosions by preventing potentially explosive or toxic gasses from migrating into the active working areas of underground coal mines. Miners rely on seals to protect them from the hazardous and sometimes explosive environments within the sealed area.

The existing safety standards for construction of solid-concrete block seals adopt specific construction criteria. Existing requirements addressing construction of seals using equivalent alternative materials and methods were established, as an interim measure, in MSHA's Program Information Bulletin No. P06–16, ''Use of Alternative Seal Methods and Materials Pursuant to 30 CFR 75.335(a)(2)),'' issued on July 19, 2006 (July 2006 PIB). Under the July 2006 PIB, MSHA increased the strength requirements for new alternative seals to reliably withstand an overpressure of at least 50 pounds per square inch gauge (psig) in the conditions in which they will be installed as demonstrated by well-defined and certified engineering designs. An alternative seal design could also be approved based on actual test results validating the psig. All seal construction must be approved by the District Manager in the mine's ventilation plan. To be considered for approval, mine operators must have a professional engineer (PE) who is knowledgeable in structural engineering to certify seal designs and supporting data. In addition, the proposed ventilation plan must provide that a senior mine management official (such as mine manager, superintendent, etc.) certify that the construction, installation, and materials used were in accordance with the mine's approved ventilation plan. Furthermore, the July 2006 PIB requires an assessment of the atmosphere behind existing alternative seals to determine the potential for an explosion and to assess seal integrity. The July 2006 PIB requires the operator to take remedial actions which may include inerting the sealed atmosphere, increasing the capacity of the existing seal to withstand at least 50 psig overpressure, constructing an additional alternative seal having this capacity, or constructing a solid-concrete seal. Finally, the July 2006 PIB requires that high risk seals, (such as if failure could adversely affect miners' safety) and seals with a poor performance history will require additional actions to better protect miners, including periodic monitoring of the atmosphere behind the seals.

MSHA determined in the Sago accident that even though the seals were not constructed as approved in the ventilation plan, they still could withstand an explosion overpressure of 21 psi. In the Agency's root cause analysis of the Sago accident, MSHA found that: (1) The seals were not capable of withstanding the forces generated by the explosion; (2) The atmosphere in the sealed area was not monitored and it contained explosive methane/air mixtures; (3) Lightning was the most likely ignition source for the explosion with the energy transferring onto an abandoned pump cable in the sealed area and providing an ignition source for the explosion. MSHA found that the explosive forces generated behind the sealed area in the Sago accident were at least 93 psi.

In the Darby accident, MSHA found that the seals were improperly constructed and had an inadequate pressure rating. MSHA also concluded that the use of an oxygen acetylene cutting torch to cut a metal strap outby a seal was the most likely ignition source. MSHA further concluded that when seals are improperly constructed, they present a hazard to miners, even when ignition sources are located outby the seal.

When seals are improperly constructed and maintained, air may leak excessively through the seals, which may result in explosive conditions inby the seals. The air leakage causes increased levels of hazardous conditions whereby introduction of ignition sources could cause an explosion. Air leakage from the sealed area to active working areas could also contaminate the atmospheres, resulting in miners being exposed to potential explosions or toxic gasses.

In addition, the ETS requires that insulated cables and metallic objects through or across seals be removed from the area to be sealed, and prohibits welding, cutting or soldering with an arc or flame within 150 feet of a seal. The July 2006 PIB's interim action has serious limitations in that it fails to provide comprehensive protection for miners from the dangers of explosions in sealed areas: it only permits testing as one method of demonstrating seal strength; it does not address explosion forces generated behind a sealed area that are greater than 50 psi; it requires only a one-time assessment of the atmosphere behind the seal rather than a sampling plan approved by MSHA as required under the ETS; although the July 2006 PIB states that periodic monitoring of sealed areas may be required for high risk seals (such as if failure could adversely affect miners' safety), a periodic monitoring frequency was not specified in the July 2006 PIB; the July 2006 PIB does not address the hazard of welding, cutting, and soldering with an arc or flame in close proximity to a seal. Therefore, hazards in existing sealed areas present a grave danger to miners.

The Secretary has therefore determined that miners are exposed to grave danger if existing and new seals are not properly constructed, maintained, monitored, and repaired in accordance with this ETS.

In addition, for the above-stated reasons under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B) and (d)(3), MSHA finds good cause exists to dispense with notice and comment and make the ETS effective immediately. To delay the effective date of the ETS is contrary to the public interest because any delay in the ETS effective date further exposes miners to grave danger from inadequately designed, constructed, maintained, and repaired seals.

IV. Discussion of the Emergency Temporary Standard

A. Background

In the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), the predecessor to the existing Mine Act, Congress first recognized that mine operators must seal abandoned and isolated areas of underground coal mines for the protection of miners' safety:

> In the case of mines opened on or after the operative date of this title, or in the case of areas developed on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revisions thereof approved by the Secretary and adopted by the operator, so that, as each set of cross entries, room entries, or panel entries of the mine are abandoned, they can be isolated from active workings of the mine with explosion-proof bulkheads.

Pub. L. 91–173 (Dec. 1969) Section 303(2)(3)).

In the conference report filed in the House, the statement of the managers on

the part of the House stated, regarding the requirement that an abandoned area of a mine either be ventilated or sealed that:

> [t]he determination of which method [(ventilated or sealed)] is appropriate and the safest at any mine is up to the Secretary or [her] inspector to make, after taking into consideration the conditions of the mine, particularly its history of methane and other explosive gases. The objective is that [s]he require the means that will provide the greatest degree of safety in each case. * * * When sealing is required, such sealing shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active working of the mine.
>
> Under the conference substitute, paragraph (3) of section 303(z) provides that, in the case of mines opened on or after the operative date of this title, or in the case of areas developed on or after such date in mines opened prior to such date, the mining system shall be designed, in accordance with a plan and revisions thereof approved by the Secretary and adopted by the operator, so that, as each set of cross entries, room entries, or panel entries of the mine are abandoned, they can be isolated from active workings of the mine with explosion-proof bulkheads approved by the Secretary or his inspector.
>
> The managers expect the Secretary to take the lead in improving technology in this area of controlling methane accumulations in gob areas and to improve upon this important section 303(z).

Conf. Rep. No. 91–761, 91Fst Cong. 1st Sess., 82 (Dec. 16, 1969) (statement of the managers on part of the House) (emphasis added).

The Mine Act interim mandatory standards required seals to be ''made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.'' 30 U.S.C. 863(z)(2).

On May 15, 1992, as part of a comprehensive revision of its regulations for ventilation of underground coal mines, MSHA published standards for construction of seals in § 75.335 of the ventilation standards. The standard requires seals to be constructed of solid concrete blocks at least six inches by eight inches by sixteen inches, but allows seals to be constructed using alternative methods and materials, provided, among other things, that the seal is capable of withstanding a horizontal static pressure of 20 psi. MSHA based this threshold on a U.S. Bureau of Mines 1971 report entitled ''Explosion-Proof Bulkheads—Present Practices.''

A number of manufacturers developed materials, such as cementitious foams and glass-fiber material, which were tested and subsequently deemed suitable for use in alternative seals and marketed under various trade names. MSHA required the manufacturers to have full-scale seals be subjected to explosion testing at NIOSH's Lake Lynn Experimental Mine (Lake Lynn). MSHA then intended for mine operators to construct seals as constructed and tested at Lake Lynn.

On January 2, 2006, an explosion at the Sago Mine in Upshur County, West Virginia caused the death of twelve miners. Later that year, on May 20, 2006, an explosion at the Darby Mine No. 1 in Harlan County, Kentucky, caused the death of five miners. Common to both of these accidents was the failure of the seals in the mine. The failed seals in both mines were constructed with the same approved alternative material for a 20 psi seal. None of the failed seals were constructed in the same manner as they were constructed at Lake Lynn. Therefore, MSHA issued a moratorium on alternative methods and materials for construction of new seals (Program Information Bulletin (PIB) No. P06–11, June 1, 2006, reissued on June 12, 2006 as PIB No. P06–12.).

Following these underground coal mine disasters in 2006, Congress passed and the President signed the MINER Act. Section 10 of the MINER Act requires that the Secretary issue mandatory health and safety standards for seals of abandoned areas no later than December 15, 2007. It also requires the Secretary to revise the current standard to increase the 20 psi standard for alternative seals.

Seal failures at the Sago Mine and Darby No. 1 Mine in 2006 raised awareness of the problems with seal construction and the design criterion of a 20-psi static horizontal pressure. MSHA continued its investigation of these and other failures of alternative seals, and conducted in-mine evaluations of existing alternative seals. It also reviewed the history of seals in the United States and other countries. Presently, most coal producing countries have coal mine seal requirements that are in excess of a 20-psi overpressure. As a result of MSHA's continued investigations and in-mine evaluations, MSHA increased the strength of alternative seals to 50 psi and addressed a number of other issues related to the construction and the effectiveness of current alternative and solid concrete block seals in Program Information Bulletin No. P06–16, ''Use of Alternative Seal Methods and Materials Pursuant to 30 CFR 75.335(a)(2)),'' issued on July 19, 2006 (July 2006 PIB).

On February 8, 2007, NIOSH issued a draft report, ''Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines'' (2007 NIOSH Draft Report). The draft report states that ''mine seals and their related systems such as the monitoring, inertization and ventilation systems require the highest level of engineering and quality assurance. Successful implementation of the seal design criteria and recommendations in this report should reduce the risk of seal failure due to explosions in abandoned areas of underground coal mines.'' (2007 NIOSH Draft Report at 40). In the executive summary of the draft report, NIOSH makes recommendations for formulating seal design criteria.

B. General Discussion

Existing § 75.334(a) requires that inactive areas of underground coal mines be ventilated or sealed. Most inactive areas are sealed because of ground control, ventilation issues, and the long-term costs of maintaining ventilation and roof support in inactive areas. Seals are also installed to withstand overpressures resulting from explosions in inactive areas and to prevent the potentially explosive methane/air mixtures from migrating to the working areas.

A methane/air mixture becomes explosive when 5 percent to 15 percent methane is present with at least a 12 percent oxygen concentration. If an ignition source is available, then an explosion can occur and create high overpressures. The homogeneity of the methane/air mixture contributes to its explosiveness. The homogeneity of the methane/air mixture can vary depending on the elevation and the methane liberation of the sealed area and outside factors such as the current temperature and barometric pressure. The speed of an explosion and the physical characteristics of a sealed area can increase the force of the explosion such that detonations and significant pressure piling are possible.

In order to address mine conditions that influence the magnitude of overpressures in explosions, seals need to be designed and constructed properly and then inspected on a periodic basis and properly maintained to ensure their reliability. The 2007 NIOSH Draft Report states as follows:

> NIOSH engineers examined seal design criteria and practices used in the U.S., Europe and Australia and then classified seals into their various applications. Next, NIOSH engineers considered various kinds of explosive atmospheres that can accumulate within sealed areas and used simple gas explosion models to estimate worst case explosion pressures that could impact seals. Three design pressure pulses (pressure-time curves) were developed for the dynamic structural analysis of new seals under the conditions in which those seals may be used: unmonitored seals where there is a

possibility of methane-air detonation behind the seal; Unmonitored seals with little likelihood of detonation; and monitored seals where the amount of potentially explosive methane-air is strictly limited and controlled. These design pressure pulses apply to new seal design and construction.

For the first condition, an unmonitored seal with the possibility of detonation, the recommended design pulse rises to 4.4 MPa (640 psi) and then falls to the 800 kPa (120 psi) constant volume explosion overpressure. For unmonitored seals without the possibility of detonation, a less severe design pulse that simply rises to the 800 kPa (120 psi) constant volume explosion overpressure, but without the initial spike, may be employed. For monitored seals, engineers can use a 345 kPa (50 psi) design pulse if monitoring can assure (1) that the maximum length of explosive mix behind a seal does not exceed 5 m (15 ft) and (2) that the volume of explosive mix does not exceed 40% of the total sealed volume. Use of this 345 kPa (50 psi) design pulse requires monitoring and active management of the sealed area atmosphere.

Based on MSHA's accident investigation reports of Sago and Darby mine explosions, NIOSH reports on explosion testing and modeling, MSHA's in-mine seal evaluations, and review of technical literature, MSHA identified a number of issues pertinent to the construction and efficacy of current alternative and solid concrete block seals.

C. Section-by-Section Analysis

1. Sec. 75.335 Seals Requirements

The ETS increases seal strength requirements for construction of new seals and, where necessary, establishes new requirements for monitoring and inerting atmospheres of sealed areas. New § 75.335(a) provides that seals constructed in underground coal mines after May 22, 2007 must be designed, constructed and maintained in accordance with MSHA approval of a mine operator's design application and installation procedures incorporated in the ventilation plan.

The ETS establishes a three-tiered approach for overpressure loading criteria applicable to new seals: (1) 50 psi overpressure; (2) 120 psi overpressure; and (3) an overpressure greater than 120 psi. For purposes of this ETS, MSHA intends that overpressure be any pressure exerted by the forces of an explosion that is above normal atmospheric pressure. In developing these overpressure loading criteria, MSHA relied upon the 2007 NIOSH Draft Report, the Agency's safety and health experience with respect to seals and underground mining conditions and investigations, and accepted scientific and engineering principles.

Under the ETS, if a mine operator monitors and maintains the atmosphere in these areas inert, new § 75.335(a)(1) requires a seal design to withstand at least 50 psi overpressure. If a mine operator does not monitor and maintain atmospheres in these areas inert, new § 75.335(a)(2) requires a seal design to withstand at least 120 psi overpressure. A seal design that will withstand an overpressure greater than 120 psi is required under new § 75.335(a)(3) when the mine operator does not monitor and maintain the atmosphere within sealed areas inert and when: (1) The atmosphere in the area is likely to contain homogeneous mixtures of methane between 4.5 percent and 17.0 percent, and oxygen exceeding 17.0 percent throughout the entire sealed area; (2) or pressure piling is likely due to opening restrictions near the proposed seal area; or (3) other conditions are encountered, such as the likelihood of a detonation in the proposed seal area. Where the conditions in § 75.335(a)(3) are likely to occur, the mine operator must revise the ventilation plan required by existing § 75.370 to address the appropriate seal strength.

The ETS does not require mine operators to upgrade seals constructed prior to May 22, 2007. However, new § 75.335(b) enhances the protection afforded miners under the previous standard by requiring, among other things, that atmospheres in the sealed areas be monitored and inerted. If a mine operator does not monitor and inert the atmosphere in an existing sealed area, the strength of the seals must be increased to 120 psi or greater.

a. Sec. 75.335(a)

New paragraph (a)(1) requires that seals be constructed to withstand 50 psi overpressure. However, mine operators who construct these seals must monitor the atmosphere behind the seals and maintain them inert. Mine operators are currently required to construct seals that will withstand 50 psi overpressure under the July 2006 PIB. In addition, the July 2006 PIB required mine operators to assess atmospheres behind alternative seals and take remedial action where necessary. The 2007 NIOSH Draft Report also recommends a 50 psi overpressure for monitored and managed atmospheres behind sealed areas. Monitoring sealed areas allows the mine operator to know the composition of potentially hazardous gases in sealed areas. Use of a 50 psi overpressure seal requires the mine operator to maintain an inert atmosphere in the sealed area since explosions cannot occur within inert atmospheres.

MSHA believes that in mines that liberate significant volumes of methane, the atmosphere in sealed areas will become inert naturally. In mines that produce very small volumes of methane, the atmosphere in sealed areas may never approach explosive methane/air mixtures of 5 percent. However, some mines may need to actively inert the atmosphere in the sealed area. To inert, an inert gas such as nitrogen or carbon dioxide may be injected into the sealed area through boreholes or pipes extending through the seals. The gas may be obtained from a bulk plant and trucked to the mine site and pumped into the sealed area through a borehole or pipe into the seal. It also may be produced at the mine using a nitrogen generator, Tomlinson Boiler, or other inertization device. This process is commonly used in underground coal mines in the United States during firefighting activities and in other countries where spontaneous combustion is common. MSHA is interested in receiving comments regarding: (1) The economic and technological feasibility of monitoring and inerting sealed atmospheres; and (2) methods of inerting sealed atmospheres.

New paragraph (a)(2) requires 120 psi overpressure if the sealed atmosphere is not monitored and maintained inert except as provided in new paragraph (a)(3). This provision allows mine operators to install seals that withstand 120 psi overpressure if they do not choose to monitor and inert the sealed atmosphere. In MSHA's experience, the overwhelming majority of underground coal mine explosions are typically deflagrations. A deflagration occurs when the flame of an explosion propagates through unburned fuel at a velocity below the speed of sound. The faster the flame travels, the higher the pressures become. Maximum pressures in a deflagration involving methane or coal dust are limited to approximately 120 psi without the occurrence of detonation or significant pressure piling. MSHA accident reports during the past 30 years do not reference an underground coal mine explosion in the United States that generated an overpressure of greater than 120 psi except in the rare instance when detonation occurred.

New paragraph (a)(3) also addresses overpressures resulting from pressure piling and detonations. Methane is explosive between 5 percent and 15 percent and requires at least 12 percent oxygen to ignite. (NIOSH 2006, IC 9486) When ignited, an explosion can occur. To account for correction factors of

methane detection equipment and potential contamination of the samples, the ETS requires that methane concentrations between 4.5 percent and 17.0 percent shall be used to determine an explosive atmosphere. If ignited, large volumes of homogeneous explosive methane/air mixtures in a sealed area can generate high explosion overpressures. The homogeneity of methane/air mixtures in a sealed area is affected by a number of factors such as elevation, temperature, methane liberation, and barometric pressure. Based on Agency experience, MSHA anticipates that there will be few mines that have homogeneous explosive methane/air mixtures throughout the entire area to be sealed. Commenters are encouraged to submit information, with supporting documentation, regarding the number of mines that may have homogeneous explosive methane/air mixtures throughout the entire area to be sealed.

MSHA believes that detonations and significant pressure piling may occur under certain situations. Detonations in underground coal mines are rare. A detonation occurs when the flame of an explosion propagates through the unburned fuel at a velocity exceeding the speed of sound (1129 feet per second). Pressures resulting from a detonation involving methane or coal dust can exceed 250 psi. Pressure piling occurs when the atmosphere ahead of the flame front is compressed prior to the arrival of the flame. When the flame burns through this compressed mixture, an increase in the explosion pressure occurs. Thus, if this mixture is compressed to 45 psi prior to the flame arriving, the resulting explosion pressure could exceed 300 psi. Pressure piling can occur when the physical configuration through which the explosion will propagate inhibits the flow of gases for pressure equalization, such as decreasing the number of entries, decreasing the size of the entries, or obstructing the entry.

The ETS does not specify a seal strength under paragraph (a)(3). Under this provision, the mine operator would submit a strength requirement based on mine-specific conditions that are likely to result in pressure piling or detonation in the sealed area. The mine operator must first recommend the seal strength in the ventilation plan. MSHA expects that mine operators will submit a thorough engineering analysis conducted by a person knowledgeable in explosions and explosion overpressures, based on the conditions in the mine. After the seal strength is approved by the District Manager, the process in § 73.336 will apply. MSHA expects that in these few instances, the District Manager and the Office of Technical Support will coordinate MSHA activities related to the approval process. MSHA believes that most mine operators who encounter homogenous explosive methane/air mixtures and pressure piling in the entire sealed area will monitor and inert the atmosphere in sealed areas. Although the recommended maximum seal strength in the 2007 NIOSH Draft Report is 640 psi, MSHA has no empirical or other data, at this time, demonstrating that mine conditions exist that will necessitate seals stronger than 120 psi. MSHA requests comments from the mining community on the appropriateness of the strategy in this ETS for addressing seal strength greater than 120 psi.

In the ETS, MSHA considered a performance-based approach to the strength requirement for seals. However, MSHA included specific numbers for the strength of seals in the ETS as the agency believes this represents a more appropriate approach. MSHA specifically solicits comments on the Agency's approach to the strength requirement for seals.

MSHA is also interested in receiving comments on the appropriateness of the three-tiered approach to seal strength in the ETS. If commenters believe a different regulatory approach should be developed for the final rule the Agency would like commenters to provide: (1) The details for such a strategy, (2) rationale for such a strategy; and (3) feasibility of using such strategy. The Agency particularly seeks the views of the mining community regarding whether there are other effective alternatives to the requirements in the ETS with respect to providing the most appropriate and protective action for miners exposed to hazards of existing sealed areas. Commenters should provide supporting data, and specific alternatives, including information on technological and cost implications.

Most existing seals were constructed to withstand a static horizontal pressure of 20 psi. MSHA also considered requiring mine operators to remove existing seals and replace them with seals that withstand at least 50 psi. Currently, the Agency believes that replacing existing seals is impractical, and in some instances, may create safety hazards. In addition, these existing seals must be monitored and the atmospheres behind them must be maintained inert. The atmosphere inby and outby the seals near the roof, ribs, or floor adjacent to the seal may contain low oxygen and/or explosive methane/air mixtures that are highly hazardous to miners' safety. In addition, the conditions inby the seals, such as bad roofs, roof falls, and water accumulations, may prevent the mine operator from making changes to provide adequate ventilation inby the seals. MSHA seeks comments on the feasibility of including in the final rule a requirement that existing seals be removed and replaced with a higher strength seal.

Another regulatory option that MSHA considered is whether to require mine operators to build new seals outby existing seals. In some cases, this may not be feasible because the seals may have been constructed too close to the outby corner of the pillar so that there is insufficient space to build new seals in the same pillar; and there may not be an additional open entry outby the existing seals allowing for construction of new seals.

MSHA also considered whether to require mine operators to reinforce existing seals. The Agency is concerned with the feasibility of this option and whether such a requirement could expose miners to greater hazards as discussed earlier in this preamble. MSHA, however, will continue to explore technological advances addressing feasible and safe methods to reinforce existing seals in underground coal mines. Commenters are encouraged to submit information and supporting data regarding new technologies to reinforce seal strength.

Existing § 75.335(a) included minimum specifications for seals constructed of solid concrete blocks after November 15, 1992. Also, existing § 75.335 (a)(2) allowed mine operators to use alternative construction methods or materials to construct a seal provided the seal could withstand a static horizontal pressure of 20 psi (subsequently increased to 50 psi in the July 2006 PIB). In addition, the method of installation and material used had to be approved by the District Manager under MSHA's ventilation plan procedures in § 75.370 based on a 1971 report entitled ''Explosion-Proof Bulkheads—Present Practices,'' issued by the former U.S. Bureau of Mines. According to that report, when a sealed atmosphere has adequate incombustible material and minimum coal dust accumulations, it is doubtful that pressures exceeding 20 psi could occur very far from the origin of the explosion. The primary disadvantage of this level of explosion protection is that current evidence establishes that explosions of coal dust or methane can generate explosion pressures of 120 psi, without detonation or pressure piling.

Previous § 75.335(a)(2) also included measures to prevent exposed timber

seals from quickly failing in a fire or other mine emergency. New construction of timber seals must meet the requirements set forth in this ETS.

b. Sec. 75.335(b) Sampling and Monitoring Requirements

ETS § 75.335(b) establishes new sampling and monitoring requirements for sealed areas. This provision requires that on the effective date of this ETS, a certified person, as defined under existing § 75.100, must immediately monitor atmospheres in all existing sealed areas when seals are outgassing, such as when the barometric pressure in the sealed area exceeds the pressure on the outby side of the sealed area. MSHA intends for mine operators to establish a baseline analysis over a 14-day sampling period, as specified under § 75.335(b)(5)(iii), followed by weekly sampling under paragraph (b)(1) of this section. While sampling is being conducted, mine operators must train certified persons in sampling procedures and develop a sampling protocol to be included in the ventilation plan and submitted to the District Manager for approval.

This provision also requires that for seals constructed prior to May 22, 2007 and seals designed for 50 psi overpressure according to ETS § 75.335(a)(1), mine operators shall develop and follow a protocol to monitor methane and oxygen concentrations and to maintain an inert atmosphere in sealed areas. The protocol shall be approved in the ventilation plan. The sampling protocol must ensure that an inert atmosphere behind the seal area is maintained. An explosion will not occur in an inert atmosphere. The July 2006 PIB and this ETS require mine operators to conduct an atmospheric assessment behind existing alternative seals to determine the potential for an explosion and assess seal integrity. This ETS requirement enhances protection of miners working in the active portions of the mine adjacent to sealed areas where existing seals were installed prior to this ETS. In addition, this provision protects the miner where 50 psi seals will be installed under this rule. MSHA recognizes that conditions in mines may vary and mine operators can more appropriately address their specific conditions in the ventilation plan. During 2006, MSHA inspected existing seals. The inspections revealed that some mine operators were not adhering to their approved ventilation plan for seal installation and construction. The ETS emphasizes the importance of sampling sealed atmospheres to ensure that they remain inert.

ETS § 75.335(b)(1) requires that a trained certified person sample atmospheres of sealed areas weekly when the barometric pressure is decreasing or the seal is outgassing. Because the information obtained during sampling of a sealed area is critical to the safety of miners, the ETS requires sampling to be conducted by a certified person. At least one sample shall be taken at each set of seals. If a seal is ingassing, such as when the barometric pressure outside the sealed area exceeds the pressure on the inby side of the sealed area during the weekly examinations, the ETS requires that a sample shall be collected during the next weekly examination to determine if the seal will outgas. If the seal is ingassing during the second consecutive weekly examination, the operator shall examine that seal daily until the seal is outgassing, unless the seal does not outgas. In this circumstance, an alternative protocol must be developed to effectively evaluate the atmosphere in the sealed area and submitted to the District Manager for approval. Although the ETS does not specify the length of time that the seal must be examined to determine if it will outgas, MSHA intends to require mine operators to develop the alternative protocol within a reasonable timeframe. The District Manager may approve different sampling frequencies and locations in the ventilation plan or approve the use of atmospheric monitoring systems in lieu of weekly sampling. The mine operator shall revise the protocol in the ventilation plan if repeated sampling indicates that a seal is not likely to outgas.

MSHA expects that the certified person will conduct sampling required under the ETS as part of the examinations of seals required in existing § 75.360 and § 75.364 and base the time of these examinations on the barometric conditions to the extent possible. All seals and the strata around them will leak air, resulting in an air exchange near the seal during barometric changes. MSHA does not expect the air leakage to significantly impact the atmosphere in a large portion of the sealed area, but it may affect the atmosphere at a sampling location when the seal is ingassing. Therefore, it is important that samples be representative of the atmospheric conditions in the larger portion of the sealed area, rather than just the area immediately inby the seal.

The certified person must take at least one sample at each set of seals during the weekly examination. Each newly constructed seal must be equipped with two sampling pipes. In accordance with the ETS, MSHA expects that most mines will need to take only one sample from a seal in each set of seals. However, the number of seals that need to be sampled will be determined from the results of the 14-day sampling period specified in paragraph (b)(5)(iii) of this section.

If the seal is ingassing during the examination, the certified person must attempt to take a sample during the next weekly examination. After a second attempt is made and the seal is still ingassing, attempts must be made daily until the seal outgasses. If repeated sampling indicates that a seal is not likely to outgas, then the mine operator must submit an alternative protocol to the District Manager. The alternative protocol must address a means to effectively evaluate the atmosphere in the sealed area. The alternate protocol may address various means such as: (1) The use of a borehole or previously installed sampling line to obtain samples, (2) pressure balancing of the ventilation system to make the seals outgas, or (3) the use of inert gas injection.

The District Manager may approve different sampling frequencies and locations in the ventilation plan. This is intended to address those instances when the atmosphere in the sealed area is unstable, close to the explosive range, or subject to other hazardous conditions, such as a history of spontaneous combustion, which make it necessary to sample at a greater frequency. However, a less frequent sampling strategy may be approved in the ventilation plan if the atmosphere in the sealed area is stable and not at all close to explosive range. For example, the oxygen must be significantly below 10 percent, and methane far less than 3 percent or far greater than 20 percent.

Sampling requirements also addresses instances when an adequate evaluation of the atmosphere in the sealed area cannot be obtained with the sampling pipes located 15 feet inby the seal and into the center of the first connecting crosscut inby the seal. In some sealed areas, the District Manager may find it necessary to require in the ventilation plan that samples be obtained at additional locations to determine that the atmosphere is inert. Additional samples may need to be taken at mines with sealed areas that are very large, have multiple sets of seals, connect with another mine, have flooded areas, have capped shafts, or in other circumstances which may cause samples of the atmosphere taken near the seals not to be representative of the entire sealed area.

The ETS also allows the use of an Atmospheric Monitoring System (AMS)

in lieu of a person physically taking samples on a weekly basis. The use of AMS is discussed more fully under paragraph (b)(5)(vi) of this section.

MSHA believes that the sampling strategy in this ETS will yield results that reflect a reasonable representation of the atmosphere in a sealed area. MSHA is requesting comments addressing the sampling approach in this ETS. The agency is particularly interested in comments concerning sampling, and the sampling frequency, including sampling only when a seal is outgassing. The Agency requests comments on whether another sampling approach is more appropriate for a final rule, such as when the seal is ingassing. MSHA also requests comments, information, and experiences of the mining community concerning sampling sealed areas.

Paragraph (b)(2) requires that certified persons shall be trained in sampling procedures included in the protocol at paragraph (b)(5) of this section prior to conducting sampling. This requirement would ensure that certified persons conducting the sampling have the training necessary to use the sampling devices and knowledge of the sampling protocol requirements in the mine's ventilation plan.

This training shall be conducted by persons with knowledge of the requirements in paragraph (b)(5) of this section. Training may be conducted by a variety of people, including a manufacturer's representative, ventilation engineer or a certified person at the mine. MSHA expects the operator to utilize appropriate people to conduct the training.

At a minimum, this training should include:

1. Relevant information in the mine's ventilation plan;
2. Sampling procedures including equipment and methods to be used;
3. Location of sampling points and sampling pipes;
4. The baseline analysis of oxygen and methane concentrations in a sealed area over a 14-sampling day period;
5. Frequency of sampling for each set of seals;
6. Recording procedures required in paragraph (b)(6) of this section;
7. Sampling frequency in the mine's ventilation plan, if an AMS is used; and
8. General information concerning mine gases present in sealed areas.

Training should include specific actions to take in implementing the operator's ''action plan'' when methane concentrations are at one of three different ranges and oxygen concentrations are 10.0 percent or greater.

MSHA recognizes that the amount of time required to train a certified person will vary. For this reason, MSHA is not specifying a minimum amount of time for training, but instead a requirement that is performance-oriented. MSHA anticipates that mine operators will adjust the time required for this training based on the complexity of sampling procedures, sampling protocol, and existing knowledge and skill level of the certified person. MSHA also expects operators will include ''hands-on'' training during this session to assure that the certified person demonstrates the necessary skills and abilities to perform the tasks. Hands-on training would mean that a certified person demonstrates to the trainer the necessary skills and abilities to perform the testing for oxygen and methane. Hands-on training includes practical application of the type of sampling equipment and the methods to be used at the mine. Examples of this type of training include calibration of sampling equipment, setup of equipment, and recognition of the proper functioning of equipment.

All certified persons shall receive refresher training annually to ensure that they maintain the competence necessary to effectively perform the requirements in paragraph (b)(5) of this section. Annual retraining shall be required within 12 months of the person receiving initial or annual training. For example, a certified person receiving initial training in May 2007 is expected to complete annual retraining no later than the end of May 2008. The month that the refresher training is completed establishes the anniversary month for the next annual retraining. This is consistent with other MSHA training requirements.

This ETS also requires mine operators to certify the date and content of the training provided to the certified person. Operators are required to retain these certifications for one year from the time training was conducted. This provision is similar to other certification requirements in part 75 in which the operator certifies by signature and date that training was provided.

ETS § 75.335(b)(3) states that the atmosphere in the sealed area is considered inert when any of the following conditions occur:

(1) The oxygen concentration is less than 10.0 percent;

(2) The methane concentration is less than 3.0 percent; or

(3) The methane concentration is greater than 20.0 percent.

This ETS provision is consistent with MSHA guidance published in the July 2006 PIB. The explosive range of methane is 5 to 15 percent when the oxygen level is 12 percent or more (IC 9486, 2007 NIOSH Draft Report). To allow for the inaccuracy of methane and oxygen detection equipment and potential contamination of the samples, oxygen less than 10.0 percent, methane concentration less than 3.0 percent and methane concentration greater than 20.0 percent were used to determine an inert atmosphere.

ETS § 75.335(b)(4) requires that when oxygen concentrations are 10.0 percent or greater and methane concentrations are from 3.0 percent to 20.0 percent in a sealed area, the mine operator shall take two additional gas samples at one hour intervals. If the two additional gas samples are from 3.0 percent to 20.0 percent methane and oxygen is 10.0 percent or greater, then the mine operator shall initiate actions required in ETS § 75.335(b)(4)(i) or (ii). The ranges for methane and oxygen in this paragraph include a margin of safety, account for errors in instrumentation or sampling methods (NIOSH IC 9486), and allow the mine operator to obtain confirming samples before implementing the actions outlined in (b)(4)(i) and (b)(4)(ii). However, because the atmosphere in the sealed area is critical to the safety of miners, the ETS requires that samples be taken at one-hour intervals under § 75.335(b)(4).

Paragraphs (b)(4)(i) and (b)(4)(ii) of the ETS require the mine operator to implement the action plan specified in the protocol or to withdraw all persons from the affected area when the specified concentrations are encountered. Historically, when methane levels reached 4.5 percent in active areas of mines, miners were withdrawn from the areas that were dangerous due to high concentrations of methane. However, withdrawal of miners is not required if, under paragraph (b)(4)(i), the operator chooses to implement the action plan to address the actions to be taken by mine operators when the specified concentrations in § 75.335(b)(4) are reached; these concentrations provide a margin of safety. However, the action plan must be approved in the mine's ventilation plan and must provide protection to miners equivalent to withdrawal under paragraph (b)(4)(ii). MSHA requests comments on this approach and whether it provides adequate protection for miners. Commenters are encouraged to submit specific language, with supporting data for MSHA to consider for development of a final rule.

ETS § 75.335(b)(5) establishes the elements that must be addressed in a mine operator's sampling protocol and

actions to be taken when sampling results indicate that the atmosphere behind the sealed area is not inert. Paragraph (b)(5)(i) requires that the mine operator specify sampling procedures, including the type of equipment and methods to be used by the mine operator for the sampling program. MSHA believes most mine operators will use hand-held methane and oxygen detection equipment that they currently have at the mine site. Other operators may need to purchase detectors capable of measuring high levels of methane. Although the mine operator may collect samples in containers to be analyzed by a gas chromatograph, the operator must specify in the protocol when the sample will be analyzed and the procedures that will be followed when the sample results indicate action levels are reached. The methods to be used should include the physical connections to the sample pipes as well as the length of time the detector or pump should be operated to collect the sample. The length of time will be dependent on the length of the sampling pipes.

ETS § 75.335(b)(5)(ii) requires that the mine operator specify in the sampling protocol the location of sampling points used for the sealed area in a set of seals. The sampling points should be identified on a mine map, or the operator should have a narrative description of the location of the sampling points that can be readily identified on a mine map.

ETS § 75.335(b)(5)(iii) requires that the mine operator specify procedures in the protocol to establish a baseline analysis of oxygen and methane concentrations at each sampling point over a 14-day sampling period. For existing seals, the mine operator must begin this sampling upon the effective date of this rule. For newly constructed seals, the mine operator must begin this sampling upon completion of the seal construction.

The baseline shall be established after the atmosphere in the sealed area is inert or the trend reaches equilibrium. These samples would be taken by approved hand-held gas detectors or equipment that collects samples in containers to be analyzed by gas chromatograph. These samples need to be collected over a consecutive 14-day sampling cycle to establish a baseline for a future sampling cycle at each sampling point. Samples need only be taken when the seals are outgassing during the baseline period to ensure samples are representative of the larger area inby the seals. If the seals are not outgassing during any of the days of sampling, the baseline sampling period needs to be extended until 14 samples are taken. Once a baseline is established, the seals need to be sampled at least weekly. MSHA is requesting comments on this sampling approach. The agency is particularly interested in comments concerning the establishment of a baseline, including sampling only when a seal is outgassing and whether it is appropriate to sample the atmosphere in sealed areas during ingassing. MSHA also requests comments, information, and experiences with sampling sealed areas, including data, analytical information, establishment of equilibrium, and trends.

ETS § 75.335(b)(5)(iv) establishes the frequency of sampling at each seal or set of seals. Once a baseline is established, the seals must be sampled at least weekly while the seals are outgassing. Weekly examinations under existing § 75.364 cannot exceed a 7-day interval. Mine operators may conduct sampling required under this ETS in conjunction with weekly examinations under existing § 75.364. Depending on the location and the results of sampling, MSHA may require that seals or sets of seals be sampled at different sampling intervals. Additionally, there may be circumstances where seals or sets of seals within a single sealed area, have a different sampling frequency.

ETS § 75.335(b)(5)(v) requires that the mine operator specify size and conditions of the sealed area. Some mine-specific conditions inby the sealed area may include the type of mining, the presence of pillared areas, the average mining height, the occurrence of bottom mining, any entry restrictions near the seals, the size of the sealed area and the number of seals in each set of seals. This information is important to determine the appropriate seal strength.

ETS § 75.335(b)(5)(vi) requires that the protocol address an atmospheric monitoring system (AMS) to monitor sealed areas, where applicable. MSHA may approve use of an AMS to monitor methane and oxygen levels and pressure differentials across the seals in lieu of a person physically taking or collecting methane samples. The AMS consists of sensors to monitor methane and oxygen levels in the sealed area and the pressure differential across the seal.

ETS § 75.335(b)(5)(vii) requires that the protocol include an action plan addressing hazards presented and actions taken when gas samples indicate oxygen concentrations of 10.0 percent or greater for each of the following ranges of methane concentrations: (1) 3.0 percent or greater but less than 4.5 percent; (2) 4.5 percent or greater but less than 17.0 percent; and (3) 17.0 percent to 20 percent. MSHA expects the action plan to address the risk to miners based on the location of seals, the locations of escapeways, the size and nature of the sealed area, potential impact of seal failure on the mine ventilation system, and the exposure to miners to any potential seal failures. MSHA may require additional sampling when methane ranges are between 3.0 and up to 4.5 percent and from over 17.0 percent to 20 percent, as well as possible changes to the ventilation system, or the addition of inert gas to the sealed area. A methane range between 4.5 and 17.0 percent and an oxygen level greater than 10 percent requires the mine operator to follow the action plan set forth in the protocol in the ventilation plan or to evacuate miners from the affected area of the mine. If miners must be withdrawn, the only persons who may remain in the affected area are those persons referred to in section 104(c) of the Mine Act.

ETS § 75.335(b)(6) requires that the certified person promptly record each sample result from sealed areas, including the location of sampling points, and oxygen and methane concentrations. The results of oxygen and methane samples must be recorded as the percentage of oxygen and methane measured by the certified person. Also, the ETS requires, where applicable, that the certified person promptly record monitoring results from AMS systems.

If sampling and monitoring results indicate the presence of a hazardous condition to miners, the certified person must record the hazardous condition found in accordance with existing § 75.363 (Hazardous conditions; posting, correcting and recording). Also § 75.335(b)(6) requires that hazardous conditions be corrected immediately or the area must be posted. In addition, records of hazardous conditions must be reviewed and countersigned by the mine foreman, or equivalent mine official, by the end of the mine foreman's or equivalent mine officials next regularly scheduled working shift.

ETS § 75.335(b)(7) requires that the mine operator retain sampling records at the mine for at least one year from the date of sampling. A one year retention period permits the mine operator to track trends or changes. The one year retention period is consistent with existing §§ 75.360 and 75.364.

c. Sec. 75.335(c) Welding

ETS § 75.335(c) prohibits the use of open flames or arc associated with welding, cutting, and soldering activities within 150 feet of a seal. MSHA intends to apply this

requirement to seals when their construction has been completed. The use of an oxygen acetylene cutting torch to cut a metal strap at a seal was the most likely ignition source in the Darby Mine No. 1 explosion in 2006. Although the metal strap should have been removed before the seal was constructed, the event underscores the importance of the potential dangers when working near seals, and emphasizes the dangers of using open flames near a seal. A methane enriched atmosphere can leak through the seal or surrounding strata into the active area of the mine. The methane may accumulate and form a methane layer outby the seal. If ignited, a flame can propagate into the sealed area. The 150-foot limit is consistent with an existing requirement in § 75.1002(a)(1) that non-permissible equipment be excluded within 150 feet of pillar workings or longwall faces. In determining the 150-foot distance, MSHA provides guidance in MSHA's Program Policy Manual (Volume V-Coal Mines February 2003, Release V–33) which states that the 150-foot distance shall be measured by following the shortest distance that air can travel (tight string distance) through crosscuts, entries or other openings. MHSA does not believe that this requirement will present significant practical or technical problems for the underground coal mining industry. MSHA is requesting comments from the mining community on the appropriateness of the ETS requirement regarding open flames associated with welding, cutting and soldering activities within 150 feet of a seal and the feasibility of this requirement. MSHA suggests that commenters provide specific rationale in support of their position, and include alternatives, if applicable.

d. Sec. 75.335(d) Sampling Pipes

ETS § 75.335(d) revises previous § 75.335(b) and requires each newly constructed seal to have at least two sampling pipes. One sampling pipe must extend into the sealed area approximately 15 feet as required by previous § 75.335(b). This provision of the ETS is based upon sampling procedures recommended in the 1979 MSHA study, ''Interpreting the State of a Mine Fire.'' The study shows that in sampling situations involving fires behind sealed areas, sampling pipes should extend at approximately 15 feet toward the fire. This distance also applied to atmospheric sampling in sealed areas for non-fire situations. The area directly inby a seal is more likely to be affected by ingassing during normal barometric changes.

Under this provision, the second sampling pipe must extend into the first connecting crosscut inby each seal and to the center of the first connecting crosscut in the middle of the intersection. MSHA has included this new provision in the ETS so that the operator can obtain a representative sample of the sealed area. The Agency believes that sampling points within the first connecting crosscut will provide a more representative sample of the sealed area because this atmosphere is less likely to be affected by ingassing. The District Manager may require more than two sampling locations in the ventilation plan under § 75.335(b)(1).

ETS § 75.335(d) requires that each sampling pipe be equipped with a shut-off valve and an appropriate fitting for taking atmospheric samples behind the seals. A tapered fitting, for example, may be connected at the tip of the sampling pipe to easily accommodate a flexible tube attached to a gas analyzer.

The ETS allows for other types of sampling methods that may be used to monitor sealed atmospheres. ETS § 75.335(b) allows a mine operator to use an atmospheric (gas) monitoring system when appropriate. Although MSHA no longer requires that sampling pipes be installed with the sampling end of the pipe to be about 12 inches from the roof and in the centerline of the entry, the most appropriate placement of the sampling end of the pipe should be about 12 inches from the roof. The ETS affords flexibility to mine operators for the placement of the sampling end to allow more accurate sampling strategies to better protect miners. Therefore, the ETS requires that the location of sampling points be specified in the protocol provided under ETS § 75.335(b)(5). MSHA requests comments regarding the appropriate number and location of sampling pipes for a final rule.

e. Sec. 75.335(e) Water Drainage Systems

ETS § 75.335(e) requires that a corrosion-resistant, water drainage system be installed in the seal at the lowest elevation within the set of seals. Water accumulations can affect the integrity of seals since they are not designed to impound water. Previous § 75.335(c)(2) required each water drainage pipe to have a water trap outby the seal. MSHA required the water trap to prevent the exchange of air through the seal and propagation of an explosion. New seal designs under the ETS, however, must meet performance requirements for a drainage system which prevents the exchange of air and the accumulation and impoundment of mine water inby the seals. The ETS also allows for use of new and innovative designs. MSHA has determined that the ETS provision enhances the level of protection afforded under the previous standard. ETS § 75.336(a)(1)(i) requires that drainage system designs be approved by MSHA, and ETS § 75.336(b)(3)(iii)(I) requires estimation of the volume of water flow in the ventilation plan. Depending on the size and mine floor elevations of the sealed area, it may be necessary for more than one seal in a set of seals to contain a water drainage pipe. These provisions provide flexibility and additional oversight by MSHA to help ensure safe and effective water drainage systems to protect miners from seal failure due to water impoundment. The ETS prohibits seals from impounding water.

MSHA requests comments from the mining community on the ETS requirement for water drainage systems for seals, including effective alternatives for a final rule.

2. Sec. 75.336 Seal Design Applications and Installation Approval

The ETS requires that seal design applications and installation procedures be approved by MSHA prior to construction. The ETS approval requirements for seals are derived from previous § 75.335(a)(2), the July 2006 PIB, and Procedure Instruction Letter (PIL) No. I–06–V–09, ''Procedures for Approval of Alternative Seals,'' issued on August 21, 2006 (August 2006 PIL) and are consistent with existing requirements for approving coal mine impoundments in § 77.216–2. Paragraph (a) requires that seal design applications be submitted to MSHA's Office of Technical Support for approval. Seal design applications must conform to the provisions provided in paragraph (a)(1) or (a)(2) which address seal design and installation approval. Once a seal design is approved by MSHA, a mine operator may use the design in accordance with new provisions in paragraph (b) of this section and the requirements of existing ventilation standards in §§ 75.370, 75.371, and 75.372, which address the submission and approval of the ventilation plan.

Previous §§ 75.335(a), (b), and (c) that address design parameters of seals are transferred to ETS §§ 75.336 (a) and (b) and are revised. These previous provisions required mine operators to either use a seal constructed of solid concrete blocks or seals constructed of alternative methods and materials if approved in the mine's ventilation plan. Under the new provisions, a manufacturer or mine operator may submit an application for approval

which can include any seal design. Seal designs specified in previous § 75.335 may be submitted to MSHA for approval, provided the proposed design meets the strength requirements of ETS § 75.335(a). The provisions of ETS § 75.336(a) are derived from the July 2006 PIB that established criteria to guide the District Managers' approval of the use of alternative seals in ventilation plans. These provisions are also derived from the August 2006 PIL that established uniform procedures for application of MSHA regulations related to review and approval of ventilation plans, which include alternative seals constructed in underground coal mines after July 19, 2006. Installation of seals is required to be approved by the District Manager in the ventilation plan in accordance with ETS § 75.336(b).

a. Sec. 75.336(a)(1) Engineering Design Applications

ETS § 75.336(a)(1), which is derived from the August 2006 PIL, sets forth specific requirements that an engineering design application must include. The requirements in paragraphs (a)(1)(i) through (iii) are new and are based on sound engineering principles. They require that a seal design application shall: (1) Address design calculations and analyses, (2) include certification by a professional engineer, and (3) include a Seal Design Table. The documentation required under this paragraph includes design calculations, drawings, and specifications. Design calculations are required, since they provide the technical basis for developing drawings and specifications and serve as the record of the engineering design. Drawings and specifications provide detailed information necessary to construct seals, technical requirements for a seal, and important information and guidance to be followed during seal construction.

These ETS requirements are consistent with existing approval requirements for various mining-related products under subchapter B—Testing, Evaluation, and Approval of Mining Products for permissibility and for approval of impoundment designs under existing § 77.216. Existing approval regulations require applicants to submit substantial engineering documentation as the basis for approval. The engineering documentation provides MSHA with evidence that the design meets accepted engineering practices and principles.

ETS § 75.336(a)(1)(i) requires each engineering design application to address essential design parameters. This information is required for MSHA to make a thorough assessment of the design application to ensure that the seal design will reliably withstand a specific overpressure, and to verify that the seal design is certified according to ETS § 75.336(a)(1)(ii). MSHA will review the application for evidence that each of these design parameters is sufficiently addressed.

The design application should show the placement of gas sampling pipes required under § 75.335(b). Also, the application must address a water drainage system. The drainage system must be corrosion-resistant and should not be subject to detrimental environmental conditions. The dimensions, material type, and components of the water drainage system should be specified. The application should show how the water drainage system will prevent both the exchange of air and the propagation of an explosion through the water drainage system. Also, the application should show how the water drainage system will be able to withstand the applicable overpressure in ETS § 75.335(a).

The design application must address air leakage and should specify the method and materials used to minimize air leakage along the perimeter of each seal and through any construction joints or cracks that could develop. Consistent with previous § 75.335(a)(iv) that required that a sealant material should have a flame-spread index of 25 or less, the mine operator must address the flame-spread index. The flame spread index is established through recognized laboratory testing such as that designated by ASTM E162–07, ''*Surface Flammability of Materials Using a Radiant Heat Energy Source*'' or equivalent.

The design application must include appropriate information to address fire resistance, such as methods and materials used to provide at least one-hour fire resistance. The fire resistance is established through recognized laboratory testing. The seal material should not fail or allow transfer of sufficient heat while being subjected to a fire test incorporating an ASTM E–119–07 time/temperature heat input, or equivalent, for one hour.

A pressure-time curve provides the necessary loading criterion for a seal design and must be provided in the seal design application. The pressure-time curve provides the reflected overpressure and constant-volume pressure plotted as a function of a specific time period. Pressure-time curves for the 50-psi and 120-psi seal strength requirements of ETS § 75.335(a) are provided in the 2007 NIOSH Draft Report. Alternative pressure-time curves may be used for designs provided the pressure-time curves are submitted to MSHA's Office of Technical Support for approval.

The applicant must document the entry dimensions for which the seal design is applicable and the engineering design and analysis. MSHA expects the design documentation, the design assumptions, references of design standards and guidance, material properties and relevant test data, presumptive geotechnical properties and information, geotechnical test data used to substantiate presumed geotechnical properties, data to address the long-term durability of seal materials, loading criteria, design calculations, and the identification of computer software used and the computer input and output files with the critical design values indicated. The design should also address the factors used to account for the variability in material properties, geologic conditions, and the quality of construction. For example, the applicant must show that an appropriate approach was used to derive the geotechnical and material design values. The design should also show the methodology and the procedures used to evaluate all potential failure modes of the seal and strata. MSHA considers design standards and guidance documents as appropriate references, such as Army TM 5–1300, ''*Structures to Resist the Effects of Accidental Explosions,*'' American Concrete Institute ACI 318–05, ''*Building Code Requirements for Structural Concrete and Commentary,*'' and American Concrete Institute ACI 440.2R–02, ''*Design and Construction of Externally Bonded FRP Systems for Strengthening Concrete Structures.*''

Specifications must be provided in the seal design application to define the performance requirements for construction materials and equipment used. Test methods and reference to industry standards for materials (e.g., American Society for Testing and Materials) that will be used in seal construction must also be included in the application. For construction materials whose properties and performance are not well-researched or well-documented, the applicant would be required to provide data substantiating long-term durability and strength.

Applications must provide construction specifications adequately addressing the preparation of the site for seal construction. For example, construction specifications must include rock and coal removal requirements for the foundation. Specifications for foundations must

address both the horizontal and vertical surfaces of the mine opening. Keys formed in rock and coal to increase the lateral restraint must be excavated with equipment that minimizes fracturing and breakout. The applicant must also specify the necessary actions to be taken to prevent water accumulation in the seal construction area since water accumulation could affect material strength. Necessary storage conditions for construction materials, such as moisture, heat, or shelf life should be specified. Construction specifications should also address formwork when a seal construction involves cast-in-place and pneumatically-applied materials.

The application must list provisions that specify quality control procedures for construction and include requirements for material sampling and testing. Material testing should be conducted by personnel certified by professional organizations such as the American Concrete Institute and by Nationally-Recognized Testing Laboratories to ensure proper quality control testing.

The seal design should establish the maximum allowable convergence a seal may undergo without affecting the structural integrity of the seal. The design should also address other physical limitations for a seal, such as the time required following construction to achieve the specified material strength. For example, the time required for an explosive atmosphere to develop in a sealed area must exceed the time required for the seal construction material to achieve its specified strength. The specified strength of a material must take into account variability in strength of the material. The required material strength ensures that the installed material strength of the seal exceeds the specified design strength.

The professional engineer designated in ETS § 75.336(a)(1)(ii) is responsible for the preparation, signing, dating, sealing, and issuing of engineering documents for the design of a seal. Engineering decisions and actions that must be made by and must be the responsibility of the professional engineer are:

1. The selection or development of design standards or methods, and materials to be used in seal construction;
2. Development and preparation of the structural analyses and design computations, drawings, and specifications;
3. The selection or development of techniques or methods of testing to be used in evaluating materials used either during seal construction or following completion of seal construction; and
4. The development of construction procedures.

ETS § 75.336(a)(1)(iii) requires that a Seal Design Table that discusses characteristics related to mine-specific construction be included in the application. These characteristics include the maximum entry width and height for which the specific design is applicable, specified strength of the seal material, thickness of the seal, and the reinforcement and foundation anchorage requirements for the seal. The mine operator may provide additional information in the seal design application.

EXAMPLE CONCRETE SEAL DESIGN TABLE

Entry dimensions (ft)	Thickness (ft-in)	Specified unconfined compressive strength (psi)	Reinforcement	Foundation anchorage

b. Sec. 75.336(a)(2) Full-Scale Explosion Test Application

ETS § 75.336(a)(2) provides requirements for seal applications that are based on full-scale explosion testing. ETS § 75.336(a)(2)(i) requires that explosion tests be certified by a professional engineer knowledgeable in structural engineering that full-scale tests were conducted in accordance with current, prudent engineering practices and the results are applicable to an underground coal mine. Current, prudent engineering practices should include the preparation, signing, dating, certifying and issuing of engineering documents for the design of a seal. The decisions and actions that are the responsibility of the professional engineer are the same as stated above.

ETS § 75.336(a)(2)(ii) requires that the application include technical information related to the methods and materials used during a successful full-scale explosion test. The testing should include, at a minimum, the following blast loadings: (1) The reflected overpressure due to the blast wave of a methane explosion, and (2) the constant-volume pressure due to the exothermic reaction of the combustion of methane. The overpressures stated in ETS § 75.335(a)(1) serve as the minimum peak reflected overpressures that a seal should be capable of withstanding. Ideally, the seal should be tested to its predicted ultimate strength to determine the actual strength of the seal. For example, seals should be tested with the face perpendicular to the direction of a blast wave and subjected to a reflected overpressure, rather than a side-on overpressure. The testing program must address projectile impact on the seals.

ETS § 75.336(a)(2)(ii) requires the applicant to provide technical information related to the methods and material used to construct and test the seals. The properties and laboratory test data of the materials are required. The laboratory test data should be provided by personnel certified by professional organizations such as the American Concrete Institute and by a Nationally-Recognized Testing Laboratory to ensure proper quality control testing. MSHA intends to substantiate the design values used in the analysis and the full-scale testing of the seals.

ETS § 75.336(a)(2)(iii) requires that the application include proper documentation. Proper documentation includes engineering analyses, construction drawings and specifications, and data that address seal material, fire resistance and flame-spread index. The applicant must establish the materials and materials properties required for adequate seal construction. Construction documentation is required to ensure that the seals are properly built and reliable, to address air leakage, and to verify that the material properties of the seal will meet the specified strength criteria.

ETS § 75.336(a)(2)(iv) requires the application to include an engineering analysis addressing differences between actual full-scale test support conditions and the range of support conditions that could be encountered in an underground coal mine. MSHA recognizes that the test site may have different support conditions than an underground coal mine. This information must ensure that a tested

seal design will reliably function as designed in an underground coal mine.

ETS § 75.336(a)(2)(v) requires a Seal Design Table be included in the application that discusses characteristics related to mine specific seal construction. These characteristics include the maximum entry width and height for which the specific design is applicable, specified strength of the seal material, thickness of the seal and the reinforcement and anchorage requirements for the seal. Additional information may be provided at the discretion of the designer.

Entry dimensions (ft)	Thickness (ft-in)	Specified unconfined compressive strength (psi)	Reinforcement	Foundation anchorage

c. Sec. 75.336(a)(3)

ETS § 75.336(a)(3) is consistent with existing § 77.216(2)(b) and Approval Policy 1009, and specifies that MSHA will notify the applicant if additional information or testing is required. The applicant must provide this information, arrange for any additional or repeat tests related to this additional information, and notify the Agency of the location, date, and time of such tests.

d. Sec. 75.336(a)(4)

The applicant, under ETS § 75.336(a)(4), will be notified by MSHA in writing, whether the design is approved or denied. If the design is not approved, MSHA will specify, again in writing, the deficiencies of the application, or necessary revisions for approval. This provision is consistent with existing § 77.216–2 and Approval Policy 1009.

e. Sec. 75.336(a)(5)

ETS § 75.336(a)(5) is consistent with existing § 77 .216–3 and requires the approval holder to promptly contact MSHA's Office of Technical Support, in writing, of all deficiencies, such as design or material flaws, when they become aware. MSHA's intent is that ''promptly'' means the approval holders are expected to contact MSHA as soon as they have knowledge that a deficiency exists.

f. Sec. 75.336(b) Mine Specific Application; Seal Design Approval in the Ventilation Plan

The ETS requires the mine operator to use an approved seal design, provided the District Manager approves installation of the design in the ventilation plan. The requirements in this section are consistent with Procedure Instruction Letter No. I06–V–9 (August 2006) that established uniform procedures for application to MSHA for approval of alternative seals constructed after July 19, 2006.

ETS § 75.336(b) is new and requires that mine operators use an MSHA-approved seal design. The mine ventilation plan that addresses the installation of seals must be approved by the District Manager prior to the mine operator initiating seal construction in the mine. The Darby and Sago mine explosions revealed problems with seal construction. MSHA's accident investigation report into both explosions states that the seals were constructed without mortar between the joints. MSHA determined that overpressure was a problem in both the Sago and Darby accidents. Adequate seals are crucial to contain explosions and prevent potentially explosive or toxic gasses from migrating into the active working areas of underground coal mines. MSHA is requiring that seal installation be approved in the ventilation plan to help ensure that seals are appropriately installed to effectively protect miners.

Under ETS § 75.336(b), the mine operator must use an approved seal design provided the installation is approved in the ventilation plan. These design documents will serve as historical references. Seal design applications must provide information that the seal will withstand the appropriate overpressure from an explosion in accordance with current, prudent engineering practices, design codes and guidelines, and the seal strength requirements of ETS § 75.335(a).

ETS § 75.336(b)(1) requires the mine operator to retain a copy of the seal design approval information for as long as the seal is needed to serve the purpose for which it was built. MSHA intends to review mine operators' seal design approvals at the mine site to evaluate and address construction and other installation-related issues.

ETS § 75.336(b)(2) requires the mine operator to designate a professional engineer to conduct or have oversight of seal installation. The professional engineer is required to certify that the site-specific seal design complies with the provisions of paragraph(a) of this section. The professional engineer will help ensure that proper seal design implementation and related analyses are performed by qualified personnel and ensure seals are constructed according to the drawings and specifications. A copy of the certification must be submitted to the District Manager with the information provided in ETS § 75.336(b)(3). The mine operator must keep a copy of the certification for as long as the seal is needed to serve the purpose for which it was built.

ETS § 75.336(b)(3) lists specific information that a mine operator must address in the ventilation plan. This information will be used by the District Manager to evaluate a seal installation and determine whether the seal design is appropriate for a particular site. Paragraph (b)(3)(i) requires that mine operators include the MSHA Technical Support Approval Number of the seal design. Paragraph (b)(3)(ii) requires a mine map certified by a professional engineer showing the proposed seal location and surrounding areas to be submitted.

ETS § 75.336(b)(3)(iii) requires specific information about the mine site. This information may be included on the mine map of the area to be sealed. Paragraph (b)(3)(iii)(A) requires that the type of seal be included in the ventilation plan. The type of seal must be identified by the approval number provided in (b)(3)(i) of this paragraph.

ETS § 75.336(b)(3)(iii)(B) requires mine operators to include safety precautions to be taken before seals achieve their specified strength. Safety precautions could include withdrawing miners a safe distance from the seal installation site or actively inerting the sealed area.

ETS § 75.336(b)(3)(iii)(C) requires that the mine operator include methods to address site-specific conditions that may affect the strength and applicability of a seal. These conditions could include: the mine opening dimensions and an estimate of dimension increases due to site preparation, such as the removal of weak roof, floor strata or friable coal; consideration of the local geology and mine conditions of the seal installation location; and a description of the ground conditions, which may include anchorage pull-test information. Other factors such as variability in material properties, geotechnical

properties, geologic conditions, and the quality of construction should be considered to ensure that a seal can reliably withstand the overpressures. Adverse ground conditions, such as convergence, may be unsuitable for certain types of seals. These conditions should be addressed and resolved by the professional engineer.

ETS § 75.336(b)(3)(iii)(D) requires that the mine operator specify construction techniques for each type of seal. This could include equipment, procedures, materials and general mine safety information. This information is required to help ensure that the seal is properly constructed.

ETS § 75.336(b)(3)(iii)(E) requires the mine operator to address seal construction site preparation which should include localized mine water drainage and foundation preparation as required in each seal design. The foundation refers to the horizontal and vertical surfaces of the mine opening. Keys or hitches formed in rock and coal to increase the lateral restraint should be excavated with equipment that minimizes the fracturing and breakout of strata. Strata with open joints should be addressed.

ETS § 75.336(b)(3)(iii)(F) requires the mine operator to include the sequence of seal installations. Ventilation controls should be managed during seal construction until the final seals are installed.

ETS § 75.336(b)(3)(iii)(G) requires the mine operator to provide the projected completion date of each set of seals. Changes in ventilation controls may be necessary as seal construction progresses and may occur on a daily basis. MSHA intends for seals to be installed in a timely manner.

ETS § 75.336(b)(3)(iii)(H) requires the mine operator to specify supplemental roof support to be installed inby and outby each seal. Supplemental support provides long-term stability for each seal, and it is important that the Agency know the type of support used in the sealed area. The competency of the strata surrounding the seal is critical to its long-term stability.

ETS § 75.336(b)(3)(iii)(I) requires the mine operator to provide an estimation of the water flow and the dimensions of the water drainage system. This information will be used by MSHA to evaluate whether the water drainage system is appropriate since seals must not impound water.

ETS § 75.336(b)(3)(iii)(J) requires the mine operator to specify the methods used to ventilate the entries outby the seals after completion. Ventilation is necessary to control methane which outgasses from the sealed area. Information about the ventilation methods will help MSHA assess the adequacy of the ventilation plan.

ETS § 75.336(b)(3)(iii)(K) requires the mine operator to specify methods and materials used to maintain each type of seal. Mine operators should include information to address minor repair of cracks, spalls, and small air leaks through and about the perimeter of each seal to control leakage. Roof deterioration, roof falls, and sloughing of the coal pillars may adversely affect the overall strength of a seal by compromising the structural integrity of the supporting strata.

ETS § 75.336(b)(3)(iii)(L) requires the mine operator to specify methods to address shafts and boreholes within the sealed area. The mine operator should specify how and when each borehole will be plugged and each shaft will be filled during the sealing process.

ETS § 75.336(b)(3)(iii)(M) requires the mine operator to provide any additional information requested by the MSHA District Manager for inclusion in the ventilation plan. This provision will ensure that any new developments in technology or any problems related to site-specific conditions in sealing may be addressed by the mine operator through the ventilation plan.

MSHA requests comments on the appropriateness of the ventilation plan contents and whether additional information should be included. Commenters should submit information in support of their positions, including data related to projected cost and technological feasibility.

3. Sec. 75.337 Construction and Repair of Seals

This ETS includes new provision § 75.337 addressing requirements for: preparation of the area to be sealed; supervision of seal construction and repair; certification that the seal was built in accordance with the provisions in ETS § 75.336(b); notification to MSHA concerning construction schedules; and training miners and senior mine management officials in the construction and repair of seals. Repairs addressed by this section are limited to non-structural repairs. The scope of these repairs is related to general maintenance and includes: Excessive air leakage through and around seals; repair of minor cracks; spalling of seal coating; water drainage systems; and sampling pipes. This section of the ETS is based on MSHA experience with mine ventilation plans under existing §§ 75.334, 75.370, and 75.371, and regarding worked-out areas and areas where pillars are being recovered. MSHA believes these ETS provisions are necessary to adequately protect miners' health and safety.

a. Sec. 75.337(a) Site Preparation

ETS § 75.337(a) requires removal of insulated cables from the area to be sealed and removal of metallic objects through or across seals. Paragraph (a)(1) requires removal of all insulated cables, including hanging, buried, and cables within conduit, from the sealed area before seals are built. This requirement is included in the ETS because a spark could be developed if a length of insulated cable were inductively coupled to an electromagnetic pulse, such as those generated by lightning strikes. These sparks can ignite an explosive methane/air mixture. After the SAGO explosion, MSHA contracted with Sandia Corporation, the operator of Sandia National Laboratories (Sandia), to perform modeling and testing to determine if it were possible for lightning to cause electrical energy to enter the Sago Mine and cause an explosion. Sandia has preliminarily determined that a lightning strike could create enough energy in the sealed area to ignite methane.

Typically, as mine operators complete mining activities in an area, they recover the more valuable cables and may only leave behind damaged or deteriorated cables. MSHA anticipates that the removal of abandoned cables will not be a significant burden for mine operators and would not adversely affect future mining activities. This requirement would improve miners' safety because removal of cables reduces the hazard of an explosion caused by an electrical discharge.

MSHA believes that removal of insulated cables and metallic objects through or across seals is feasible and will not involve significant technical or practical problems. MSHA solicits comments on these measures.

ETS § 75.337(a)(2) requires metallic objects that pass through or across a seal to be removed. Gas sampling pipes and water drainage systems required by ETS § 75.335(d) and (e), and form ties approved in the seal design provided by ETS § 75.336 are allowed in the sealed area.

Metallic material can provide a conduit for electrical current to enter the sealed area and ignite methane/air mixtures. It is necessary to limit the use of conductors that may pass around or across seals. Screen, straps, rails, channels, and water pipes are typical metallic materials that are required to be removed under the ETS. Removal of metallic objects through or across seals before they are built will reduce the

hazard of methane explosions and improve miner safety.

b. Sec. 75.337(b) Supervision of Construction and Repair of Seals

ETS § 75.337(b) requires a certified person designated by the mine operator to directly supervise the seal construction and repair process and make appropriate examinations. After the Sago Mine and Darby No. 1 Mine explosions, MSHA inspected seals in underground coal mines across the country. The Agency has determined that some seals were not built correctly. This new provision requires that seal construction for all seals built after May 22, 2007 be directly supervised by a certified person. Existing § 75.100 defines certified person and requires that person to obtain certification from the Secretary of Labor or the State in which the coal mine is located. A certified person shall directly supervise the construction of each seal throughout the construction or repair process. This new provision will assure that all activities related to seal construction, repair, and examination are performed safely and in accordance with appropriate requirements.

ETS § 75.337(b)(1) requires a certified person to examine each seal construction or repair site prior to beginning seal construction or repair to ensure that the site conditions are in accordance with the approved ventilation plan.

ETS § 75.337(b)(2) requires a certified person to observe the construction or repair process during each shift that construction or repair take place. This provision will help ensure construction or repairs of seals conform to the approved seal design and site specific information provided under § 75.336(b).

ETS § 75.337(b)(3) requires a certified person to perform an examination of each seal or repair to verify that the seal or repair is complete. The District Manager may require that each examination include an assessment of any supplemental roof support, ventilation of the seals, sampling pipes and appropriate fittings, and the water drainage system as provided in the ventilation plan under ETS § 75.336(b).

ETS § 75.337(b)(4) requires the certified person certify each seal construction or repair by initialing the date and time of their examination to verify that the required examinations were made.

ETS § 75.337(b)(5) requires a record be made in a book or a log provided for that purpose to affirm that the examinations were conducted. The record shall describe any deficiencies in site preparation, such as construction, repairs, seal completion, and hazardous conditions and any corrections made. The record must be made by the certified person conducting the examination when the examiner arrives on the surface at the end of the shift. The record shall be countersigned by the mine foreman or equivalent mine official. Records of the deficiencies and the corrective actions provide valuable safety information about seal conditions and sealed areas in the mine and the effectiveness of corrective measures.

The recordkeeping requirement for examination of seals would allow MSHA to determine if examinations have been conducted, if results are valid, and that deficiencies in site preparation, construction, repairs, and seal completion found were corrected. By requiring that a record be countersigned, MSHA expects that the mine foreman or equivalent mine official must review the record before countersigning. This provision makes certain that a mine foreman or equivalent mine official is responsible for oversight of seal installation. The countersignature shall be made by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift.

The records of examinations required under ETS § 75.337(b)(5) shall be kept at the mine for one year. ETS § 75.338 sets out additional seal recordkeeping duration requirements.

c. Sec. 75.337(c) Certification of Construction by Senior Mine Management

ETS § 75.337(c) requires that upon completion of construction of each seal, a senior mine management official, such as a mine manager or superintendent, certify that the construction, installation, and materials used were in accordance with the approved mine ventilation plan. This requirement assures that a senior mine management official takes responsibility for making sure that seals are constructed in accordance with the provisions under ETS § 75.336(b).

d. Sec. 75.337(d) Notification to MSHA

ETS § 75.337(d)(1) requires the mine operator to notify the local MSHA field office between two and fourteen days prior to commencement of seal construction. This requirement provides MSHA the opportunity to observe seal construction. This is particularly critical when a mine operator is installing a new seal design or the mine liberates large amounts of methane.

ETS § 75.337(d)(2) requires the mine operator to notify the MSHA District Manager, in writing, within 5 days of completion of each set of approved seals. This provision allows the District Manager to be informed when all construction is completed. This is a critical time period during the construction of seals. It involves the time period during which seals are achieving full strength and the atmosphere inby the seals may be transitioning into or through a potentially explosive methane/air mixture. MSHA may decide to inspect the newly sealed area, or sample the atmosphere.

ETS § 75.337(d)(3) requires the mine operator to submit to the MSHA District Manager quality control test results required in ETS § 75.336. Material test results shall be sent to MSHA and must include all seal testing and tests of seal construction materials.

e. Sec. 75.337(e) Training

Failure of a seal may result in significant injury, loss of life and/or significant economic loss. Based on recent explosion investigations, MSHA learned that numerous persons involved in constructing seals that failed were not adequately trained. As a result, installation, construction, and repair tasks and the level of quality control exercised during these activities are critical to preventing seal failures and protecting miners.

Under ETS § 75.337(e), the mine operator is responsible for providing training to miners constructing or repairing seals, certified persons supervising seal construction, repair, and examinations described in (b)(1) of this section, and senior mine management officials described in paragraph (c) of this section.

The training shall address materials and procedures required in the approved seal design in the mine's ventilation plan. For example, material training could include how to construct reinforced concrete, masonry block, gunite, and cementitious foam seals. Additionally, training shall include procedures in tasks such as hitching, evacuating weak materials, supporting and stabilizing roofs, and installing sampling pipes and water drainage systems.

Training under this paragraph is also required for persons repairing seals. In addition to the training required for constructing seals, further training may be necessary for repairing a damaged seal. This training could include tasks such as patching small cracks, sealing leaks, and maintaining water drainage systems.

MSHA recognizes that the amount of time required for training in constructing or repairing seals will vary.

For this reason, MSHA is not proposing a minimum amount of time for the training. MSHA expects mine operators to adjust the time for this training based on the complexity of the seal design in the ventilation plan, construction or repair procedures, materials used, and existing knowledge and skill levels of persons receiving the training. Also, changes in the approved seal design or approved ventilation plan will require retraining.

This paragraph also requires mine operators to certify the date that training was provided. Operators are required to retain these certifications for one year from the time training was conducted. This provision is similar to other certification requirements in Part 75 where the operator certifies by signature and date that training was provided.

MSHA requests comments on the provisions provided in this section. In particular, MSHA requests comments concerning the scope and possible alternatives to the requirements related to site preparation, examinations, and notification provisions.

4. Sec. 75.338 Seals Records

ETS § 75.338(a) sets out the recordkeeping duration required for records created under ETS §§ 75.335, 75.336, and 75.337. For the convenience of the mining community, these requirements are listed in the table entitled ''Table § 75.338(a) Seal Recordkeeping Requirements.'' The table lists the record which must be kept, the section requiring the record, and the required retention time.

TABLE TO § 75.338(a). SEAL RECORDKEEPING REQUIREMENTS

Record	Section reference	Retention time
(1) Protocol to monitor methane and oxygen and maintain an inert atmosphere.	75.335(b)	Same as ventilation plan requirements.
(2) Training of certified persons	75.335(b)(2)	1 year.
(3) Gas sampling records	75.335(b)(6)	1 year.
(4) Approved seal design	75.336(b)(1)	As long as the seal is needed to serve the purpose for which it is built.
(5) Certification of provisions of approved seal design is addressed.	75.336(b)(2)	As long as the seal is needed to serve the purpose for which it is built.
(6) Record of examinations	75.337(b)(5)	1 year.
(7) Seal construction certification	75.337(c)	As long as the seal is needed to serve the purpose for which it is built.
(8) Certification of training	75.337(e)	1 year.

ETS § 75.338(b) applies to seal records required to be kept under the ETS, except for the certification required under ETS § 75.337(b)(4) which must be retained at the seal site. Operators must retain records at the mine site. The mine operator may retain records in a computer system elsewhere, provided they are immediately accessible from the mine site by electronic transmission. Records must be secure and not subject to alteration.

ETS § 75.338(c) requires that the operator allow access to any record to an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, the authorized representative of miners, or other interested parties, upon request. Mine operators are to promptly provide access to any record listed in the table in paragraph (a) of this section. MSHA expects that an operator show due diligence in providing access to required records. Whenever an operator ceases to do business, the operator will be required to transfer all records required to be maintained by this part to any successor operator.

5. Conforming Changes to Other Sections in Part 75

Existing paragraph (ff) of § 75.371 requires the mine operator to provide a description of methods and materials to be used to seal worked out areas when they are different from those specified in paragraph (a)(1) of § 75.335. The provisions in existing paragraph (a) of § 75.335 are revised and moved to paragraph (b) of § 75.335 and paragraph (b)(3) of § 75.336. Therefore, paragraph (ff) is revised to reference sampling requirements provided by paragraph (b) of § 75.335 and ventilation plan contents requirements provided by paragraph (b)(3) of § 75.336.

V. Executive Order 12866

Executive Order (E.O.) 12866 (58 FR 51735) as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review (67 FR 9385)) requires regulatory agencies to assess both the costs and benefits of regulations. To comply with Executive Order 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for the ETS. The REA contains supporting data and explanation for the summary materials presented in sections V–IX of this preamble, including the covered mining industry, costs and benefits, feasibility, small business impact, and paperwork. The REA is located on MSHA's Web site at *http://www.msha.gov/regsinfo.htm.* A copy of the REA can be obtained from MSHA's Office of Standards, Regulations and Variances. MSHA requests comments on all the estimates of costs and benefits presented in this ETS and in the REA.

MSHA has determined that the ETS would not have an annual effect of $100 million or more on the economy and, therefore, it is not an economically ''significant regulatory action'' pursuant to Sec. 2(f) of E.O. 12866.

A. Population-at-Risk

The ETS applies to all underground coal mines in the United States. Based on preliminary MSHA data, there were 670 underground coal mines, employing 42,667 miners, operating in the U.S. in 2006. Of these, 372 underground coal mines use seals. These 372 mines employ 33,684 miners, of which 30,095 work underground.

B. Benefits

To provide a preliminary quantitative estimate of benefits, MSHA analyzed the explosions in sealed areas that have taken place since 1993, and especially studied the two accidents in 2006 where the seals failed and fatalities occurred: the Sago mine explosion, where 12 miners died, and the Darby No. 1 mine explosion, where 5 miners died. It is reasonable to assume that if the ETS had been in effect, all 17 of these miners' lives might have been saved. Fourteen of these lives might have been saved by the 2006 ETS and final rule on emergency mine evacuation. However, three of the miners that perished in the Sago and Darby accidents died

immediately from the explosion impact. They could not have been saved by the emergency mine evacuation rule. For purposes of estimating benefits, MSHA attributes the saving of three miners' lives to this ETS and splits the remaining 14 lives between this ETS and the 2006 emergency mine evacuation rule. Hence, MSHA attributes the saving of 10 lives to this ETS (3 + (14 ÷ 2) = 10).

MSHA has good data on explosions in sealed areas only since 1993. During the period 1993–2006 (14 years) there were 13 explosions in sealed areas. However, only 11 of these explosions caused any seal damage and thus had the potential to cause fatalities or injuries. Only two of these 11 explosions actually caused fatalities or injuries. A strict division, (10 lives)/(14 years), would suggest that the ETS will save approximately 0.7 lives per year if the explosions followed approximately the same distribution as they did since 1993.

However, MSHA believes that the risk from explosions in sealed areas has been increasing during this time period because the number of seals has been increasing. MSHA did not allow alternative seals until 1992. Prior to 1992, most mines did not seal, but instead ventilated. During the period from 1993 through 2006, mines went through a transition period of shifting from ventilation to seals. The current risk from explosions in sealed areas is therefore higher than the historic risk during this transition period.

MSHA roughly estimates that, on average, during that transition period, the number of mines using seals was no more than ⅔ of the number of mines that currently use seals. Furthermore, the number of seals in mines is cumulative. During this period of increased seal use, MSHA roughly estimates that the average number of seals in mines that used seals was no more than 2/3 of the number in mines that currently use seals. MSHA specifically asks for comment on these estimates. After adjusting this estimate to account for the increased future risk, the ETS will save approximately 1.6 lives per year, since (10/14/⅔/⅔) = 1.6. This is MSHA's best estimate on the number of lives saved per year due to this rulemaking.

MSHA also developed a higher risk estimate, based primarily on the distribution of miners put at risk and the characteristics of the explosions themselves. MSHA also asks for comment on these calculations.

In the 11 explosions in sealed areas with property damage, approximately 688 miners total were underground at the time of the explosions. This is an average of 62.5 miners per explosion that were put at risk. In the two explosions at Sago and Darby only a total of 35 miners were underground at the time of the explosions, for an average risk exposure of 17.5 miners per explosion. Fortunately, no explosions in sealed areas at larger mines (so far) have caused any injuries or fatalities.

If an explosion with the characteristics of the explosions at Sago or Darby occurs at a larger mine, many more lives potentially could be lost. Assuming the risk of fatality from an explosion in a sealed area is about the same at both large and small mines, and the number of potential fatalities is proportional to the number of miners working underground, during the other explosions studied by MSHA, then a higher risk estimate of the benefits of the ETS is approximately 5.7 lives saved per year, since 1.6 x (62.5/17.5) = 5.7.

MSHA also calculated the cumulative risk faced by a miner over a 45 year working life. The 372 existing underground coal mines that seal employ 33,684 miners; of these, 30,095 work underground. Under MSHA's best estimate, the ETS will save 1.6 lives per year, which means that the risk of fatality per year per 1,000 miners is 0.053. Over a 45-year working lifetime, the risk of fatality from an explosion in a sealed area is 2.4 per 1,000 miners. If the ETS will save the higher estimate of benefits of 5.7 lives per year, then the risk of fatality per year per 1,000 miners is 0.191. Over a 45-year working lifetime, the risk of fatality from an explosion in a sealed area is 8.5 per 1,000 miners.

With the provisions of the ETS in effect, an explosion is less likely to occur behind seals that are being actively monitored to maintain an inert atmosphere. The provisions of the ETS also strengthen seals to better withstand explosions, which reduces immediate miner injuries and fatalities and gives miners more time to react to a situation involving an explosion.

MSHA requests comments on the benefit estimates developed above and in the REA, as well as on the assumptions and data sources that MSHA used.

C. Compliance Costs

MSHA estimates that the ETS will result in total yearly costs for underground mine operators and contractors of approximately $39.7 million. Total first year costs will be approximately $43.2 million. Disaggregated by mine size, yearly costs will be $2.6 million for the 83 mine operators with fewer than 20 employees; $34.7 million for the 279 mine operators with 20–500 employees; and $2.4 million for the 10 mine operators with more than 500 employees. Most of the compliance cost occurs in the mine size category with 20–500 employees because 75 percent of the mines that use seals are in this category.

MSHA requests comments on the cost estimates developed above and in the REA, as well as on the assumptions and data sources that MSHA used.

VI. Feasibility

MSHA has concluded that the requirements of the ETS are technologically and economically feasible.

A. Technological Feasibility

MSHA concludes that the ETS is technologically feasible. MSHA based its conclusion on an analysis of the compliance requirements of the ETS provisions for training, sampling, and construction and repair. MSHA believes compliance with these requirements is technologically feasible because the materials, equipment, and methods for implementing these requirements currently exist. However, MSHA will be gathering information on seal designs at 120 psi overpressure and will make this information available to the mining community. MSHA solicits comments on this issue, and on seal designs that are greater than 120 psi overpressure.

B. Economic Feasibility

MSHA also believes that the ETS is economically feasible. The yearly compliance cost of the ETS is $39.7 million which is 0.30 percent of all revenues ($39.7 million/$13.1 billion) for all underground coal mines. MSHA concludes that the ETS is economically feasible for these mine operators because the total compliance costs are well below one percent of the estimated revenues for all underground coal mines.

VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the ETS on small businesses. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the ETS will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented

in full in Chapter V of the REA and in summary form below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the ETS on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this ETS on underground coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with MSHA's ETS and the impact of the ETS on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

MSHA concludes that it can certify that the ETS will not have a significant economic impact on a substantial number of small entities that are covered by this ETS. The Agency has determined that this is the case both for mines with fewer than 20 employees and for mines with 500 or fewer employees.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on ''small entities'' by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether a further analysis is required.

For underground coal mines, the estimated 2006 production was 7,813,073 tons for mines that had fewer than 20 employees and 277,500,019 tons for mines that had 500 or fewer employees. Using the 2005 price of underground coal of $36.42 per ton [2] and total 2006 coal production in tons, underground coal revenues are estimated to be approximately $285 million for mines employing fewer than 20 employees and $10.1 billion for mines employing 500 or fewer employees. Thus, the yearly cost of the ETS for mines that have fewer than 20 employees is 0.9 percent ($2.6 million/$285 million) of annual revenues, and the yearly cost of the ETS for mines that have 500 or fewer employees is 0.4 percent ($0.037 billion/$10.1 billion) of annual revenues. Using either MSHA's traditional definition of a small mine (one having fewer than 20 employees) or SBA's definition of a small mine (one having 500 or fewer employees), the yearly costs for underground coal mines to comply with the ETS will be less than 1 percent of their estimated revenues. Accordingly, MSHA has certified that the ETS will not have a significant impact on a substantial number of small entities that are covered by the ETS.

VIII. Paperwork Reduction Act of 1995

A. Summary

This ETS contains information collection requirements that MSHA estimates will result in 82,037 new burden hours and approximately $4.7 million related burden costs to mine operators and manufacturers in the first year that the ETS is in effect. In the second year that the ETS is in effect, and for every year thereafter, MSHA estimates that mine operators and manufacturers will incur 73,006 new burden hours and approximately $4.6 million related burden costs. The burden is different in the first year because some information collection requirements occur only in the first year that the ETS is in effect.

This ETS contains information collection requirements in the following sections: § 75.335 seal requirements; § 75.336 seal design applications and installation approval; and § 75.337 construction and repair.

For a detailed explanation of how the burden hours and related costs were determined, see Chapter VII of the Regulatory Economic Analysis (REA) associated with this ETS. The REA is located on MSHA's Web site at *http://www.msha.gov/REGSINFO.HTM.* A print copy of the REA can be obtained from the Office of Standards, Regulations, and Variances at MSHA.

[2] U.S. Department of Energy, Energy Information Administration, Annual Coal Report 2005, Table 28.

B. Details

The information collection package has been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. § 3504(h) of the Paperwork Reduction Act of 1995, as amended. A copy of the information collection package can be obtained from the Department of Labor by email request to king.darrin@dol.gov or by phone request at (202) 693–4129.

Comments on the provisions in the information collection requirements should be sent to both the Office of Information and Regulatory Affairs of OMB and to MSHA. Comments sent to OMB should be sent to the Attention of the Desk Officer for the Mine Safety and Health Administration. Comments sent to MSHA should be sent to the Office of Standards, Regulations, and Variances. Addresses for both offices can be found in the Addresses section of this preamble. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. MSHA will publish a notice in the **Federal Register** announcing when OMB has approved the new information collection requirements.

IX. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the ETS under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq*). MSHA has determined that this ETS does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. Executive Order 13132: Federalism

This ETS does not have ''federalism implications'' because 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.'' Accordingly, under E.O. 13132, no further Agency action or analysis is required.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this ETS will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This ETS impacts only the underground coal mine industry. Accordingly, MSHA certifies that this ETS would not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This ETS does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

This ETS was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this ETS will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This ETS will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This ETS does not have ''tribal implications'' because it will not ''have substantial direct effects 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.'' Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed this ETS for its energy effects because the ETS applies to the underground mining sector. Because this ETS will result in yearly costs of approximately $39.7 million to the underground coal mining industry, relative to annual revenues of $13.1 billion in 2006, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

X. References

ACI 318–05, ''Building Code Requirements for Structural Concrete and Commentary,'' American Concrete Institute.

ACI 440.2R–02, ''Design and Construction of Externally Bonded FRP Systems for Strengthening Concrete Structures,'' American Concrete Institute.

Army TM 5–1300, Navy NAVFAC P0397, Air Force AFR 88–22, Departments of the Army, the Navy, and the Air Force, ''Structures to Resist the Effects of Accidental Explosions,'' November 1990.

ASTM E119–07, ''Standard Test Methods for Fire Tests of Building Construction and Materials,'' ASTM International.

ASTM E162–06, ''Surface Flammability of Materials Using a Radiant Heat Energy Source,'' ASTM International.

Department of Labor, Mine Safety and Health Administration, Final Rule, Underground Coal Mine Ventilation Standards, May 15, 1992.

Kissell, Fred N., ''Handbook for Methane Control in Mining,'' Information Circular 9486. National Institute of Occupational Safety and Health, U.S. Dept. of Health and Human Services, 2006.

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MSHA. Report of Investigation/Mine Explosion, Sago Mine, January 2, 2006.

MSHA. Report of Investigation/Mine Explosion, Darby Mine No. 1, May 20, 2006.

MSHA. Program Information Bulletin No. P06–11, ''Moratorium on Future Use of Alternative Seal Methods and Materials Pursuant to 30 CFR 75.335 and Assessment of Existing Sealed Areas in Underground Bituminous Coal Mines,'' June 1, 2006.

MSHA. Program Information Bulletin No. P06–12, ''Reissued Moratorium on Future Use of Alternative Seal Methods and Materials Pursuant to 30 CFR 75.335 and Assessment of Existing Sealed Areas in Underground Bituminous Coal Mines,'' June 12, 2006.

MSHA. Program Information Bulletin No. P06–16, ''Use of Alternative Seal Methods and Materials Pursuant to 30 CFR 75.335(a)(2),'' July 19, 2006.

MSHA. Procedure Instruction Letter No. I06–V–9, ''Procedures for Approval of Alternative Seals,'' August 21, 2006.

MSHA. Program Policy Manual, Volume V–Coal Mines, Release V–33, February 2003.

MSHA, Approval and Certification Center, Application Cancellation Policy, CDS No. APOL1009, Revised February 27, 2004.

Zipf, R. K., Sapko, M. J., Brune, J. F., ''Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines, Draft Report,'' National Institute of Occupational Safety and Health, U.S. Dept. of Health and Human Services, February 8, 2007.

XI. Emergency Temporary Standard—Regulatory Text

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Reporting and recordkeeping, Ventilation.

Dated: May 17, 2007.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

■ Chapter I of Title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—SAFETY STANDARDS FOR UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 863.

■ 2. Revise § 75.335 to read as follows:

§ 75.335 Seal requirements.

Seals shall be designed, constructed, and maintained to protect miners from hazards related to sealed areas. Seal designs and the installation of each seal shall be approved in accordance with § 75.336.

(a) *Seal strength requirements.* Seals constructed on or after May 22, 2007 shall be designed, constructed, and maintained to withstand—

(1) 50 psi overpressure when the atmosphere in the sealed area is monitored and maintained inert in accordance with paragraph (b) of this section;

(2) 120 psi overpressure if the atmosphere is not monitored, and is not

maintained inert, and the conditions in paragraphs (a)(3)(i) through (iii) of this section are not present; or

(3) An overpressure greater than 120 psi if the atmosphere is not monitored and is not maintained inert and;

(i) The atmosphere in the area to be sealed is likely to contain homogeneous mixtures of methane between 4.5 percent and 17.0 percent and oxygen exceeding 17.0 percent throughout the entire area;

(ii) Pressure piling is likely due to opening restrictions near the proposed seal area; or

(iii) Other conditions are encountered, such as the likelihood of a detonation in the proposed seal area.

(iv) Where the conditions in paragraphs (a)(3)(i), (ii), or (iii) of this section are encountered, the operator must revise the ventilation plan to be submitted to the District Manager to address the potential hazards. The plan shall include seal strength sufficient to address the conditions.

(b) *Sampling and monitoring requirements.* Effective May 22, 2007, a certified person as defined in § 75.100 shall monitor atmospheres of sealed areas. For seals constructed prior to May 22, 2007 and for seals designed for 50 psi overpressure, mine operators shall develop and follow a protocol to monitor methane and oxygen concentrations, and to maintain an inert atmosphere in the sealed area. The protocol shall be approved in the ventilation plan.

(1) A certified person shall sample atmospheres of sealed areas weekly when the barometric pressure is decreasing or the seal is outgassing. At least one sample shall be taken at each set of seals. If a seal is ingassing during the weekly examination, a sample shall be collected during the next weekly examination. If the seal is ingassing during the second consecutive weekly examination, the operator shall examine that seal daily until the seal is outgassing, unless the seal does not outgas. In this case, an alternative plan needs to be developed and submitted to the District Manager. The District Manager may approve different sampling frequencies and locations in the ventilation plan, or approve the use of atmospheric monitoring systems in lieu of weekly sampling. The mine operator shall revise the protocol, if repeated sampling indicates that a seal is not likely to outgas.

(2) Certified persons conducting sampling shall be trained in the sampling procedures included in the protocol, as provided by paragraph (b)(5) of this section, before they conduct sampling, and annually thereafter. The mine operator must certify the date and content of training provided certified persons and retain each certification for one year.

(3) The atmosphere shall be considered inert when—

(i) The oxygen concentration is less than 10.0 percent;

(ii) The methane concentration is less than 3.0 percent; or

(iii) The methane concentration is greater than 20.0 percent.

(4) When oxygen concentrations are 10.0 percent or greater and methane concentrations are from 3.0 percent to 20.0 percent in a sealed area, the mine operator shall take two additional gas samples at one-hour intervals. If the two additional gas samples are from 3.0 percent to 20.0 percent and oxygen is 10.0 percent or greater—

(i) The mine operator shall implement the action plan in the protocol; or

(ii) Persons shall be withdrawn from the affected area, except those persons referred to in section 104(c) of the Act.

(5) The protocol shall address—

(i) Sampling procedures, including equipment and methods to be used;

(ii) Location of sampling points;

(iii) Procedures to establish a baseline analysis of oxygen and methane concentrations at each sampling point over a 14-day sampling period. The baseline shall be established after the atmosphere in the sealed area becomes inert or the trend reaches equilibrium;

(iv) Frequency of sampling;

(v) Size and conditions of the sealed area; and

(vi) Use of atmospheric monitoring systems, where applicable;

(vii) The protocol shall include an action plan that addresses the hazards presented and actions taken when gas samples indicate oxygen concentrations of 10.0 percent or greater for each of the following ranges of methane concentrations—

(A) 3.0 percent or greater but less than 4.5 percent; and

(B) 4.5 percent or greater but less than 17.0 percent; and

(C) 17.0 percent to 20 percent.

(6) The certified person shall promptly record each sampling result, including the location of the sampling points, and oxygen and methane concentrations. The results of oxygen and methane samples shall be recorded as the percentage of oxygen and methane measured by the certified person and any hazardous condition found, in accordance with § 75.363.

(7) The mine operator shall retain sampling records at the mine for at least one year from the date of sampling.

(c) Welding, cutting, and soldering with an arc or flame are prohibited within 150 feet of a seal.

(d) For seals constructed after May 22, 2007, at least two sampling pipes shall be installed in each seal. One pipe shall extend approximately 15 feet into the sealed area and another shall extend into the center of the first connecting crosscut inby the seal. Each sampling pipe shall be equipped with a shut-off valve and appropriate fittings for taking gas samples.

(e) For each set of seals constructed after May 22, 2007, the seal at the lowest elevation shall have a corrosion-resistant water drainage system. Seals shall not impound water.

■ 3. Add § 75.336 to read as follows:

§ 75.336 Seal design applications and installation approval.

(a) Seal design applications from seal manufacturers or mine operators shall be in accordance with paragraphs (a)(1) or (a)(2) of this section and submitted for approval to MSHA's Office of Technical Support, Pittsburgh Safety and Health Technology Center, P.O. Box 18233, Cochrans Mill Road, Pittsburgh, PA 15236.

(1) An engineering design application shall:

(i) Address gas sampling pipes, water drainage systems, air leakage, fire resistance, flame spread index, pressure-time curve, entry size, engineering design and analysis, material properties, construction specifications, quality control, design references, and other information related to seal construction;

(ii) Be certified by a professional engineer that the design of the seal is in accordance with current, prudent engineering practices; and

(iii) Include a Seal Design Table that discusses characteristics related to mine-specific seal construction.

(2) Each application based on full-scale explosion tests shall address the following requirements to ensure that a seal can reliably withstand the overpressures provided by § 75.335:

(i) Certification by a professional engineer knowledgeable in structural engineering that the testing was done in accordance with current, prudent engineering practices and its applicability in a coal mine;

(ii) Technical information related to the methods and materials;

(iii) Proper documentation;

(iv) An engineering analysis to address differences between the seal support during test conditions and the range of conditions in a coal mine; and

(v) The application shall include a Seal Design Table that discusses characteristics related to mine specific seal construction.

(3) MSHA will notify the applicant if additional information or testing is

required. The applicant must provide this information, arrange any additional or repeat tests, and notify MSHA of the location, date, and time of the test(s).

(4) MSHA will notify the applicant, in writing, whether the design is approved or denied. If the design is not approved, MSHA will specify, in writing, the deficiencies of the application, or necessary revisions.

(5) Once the seal design is approved, the approval holder must promptly notify MSHA, in writing, of all deficiencies of which they become aware.

(b) The mine operator shall use an approved seal design provided its installation is approved in the ventilation plan. The mine operator shall—

(1) Retain the seal design approval information for as long as the seal is needed to serve the purpose for which it was built.

(2) Designate a professional engineer to conduct or have oversight of seal installation and certify that the provisions in the approved seal design specified in paragraph (a) of this section have been addressed. A copy of the certification shall be submitted to the District Manager with the information provided in § 75.336(b)(3) and a copy of the certification shall be retained for as long as the seal is needed to serve the purpose for which it was built.

(3) Provide information for approval in the ventilation plan—

(i) The MSHA Technical Support Approval Number;

(ii) The mine map of the area to be sealed and proposed seal locations. This portion of the mine map shall be certified by a professional engineer;

(iii) Specific mine site information, including'

(A) Type of seal;

(B) Safety precautions taken prior to seal achieving full design strength;

(C) Methods to address site specific conditions that may affect the strength and applicability of the seal;

(D) The construction techniques;

(E) Site preparation;

(F) Sequence of seal installations;

(G) Projected date of completion of each set of seals;

(H) Supplemental roof support inby and outby each seal;

(I) Water flow estimation and dimensions of the water drainage system through the seals;

(J) Methods to ventilate the outby face of seals once completed;

(K) Methods and materials used to maintain each type of seal;

(L) Methods to address shafts and boreholes in the sealed area; and

(M) Additional information required by the District Manager.

■ 4. Add § 75.337 to read as follows:

§ 75.337 Construction and repair of seals.

(a) Prior to sealing, the mine operator shall—

(1) Remove insulated cables from the area to be sealed when constructing seals; and

(2) Remove metallic objects through or across seals, except water pipes, gas sampling pipes, and form ties approved in the seal design.

(b) A certified person designated by the mine operator shall directly supervise seal construction and repair and—

(1) Examine each seal site immediately prior to construction or repair to ensure that the site is in accordance with the approved ventilation plan;

(2) Examine each seal under construction or repair during each shift to ensure that the seal is being constructed or repaired in accordance with the approved ventilation plan;

(3) Examine each seal upon completion of construction or repair to ensure that construction or repair is in accordance with the approved ventilation plan;

(4) Certify by initials, date, and time that the examinations were made; and

(5) Make a record of the examination at the completion of any shift during which an examination was conducted. The record shall include each deficiency and the corrective action taken. The record shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be kept at the mine for one year.

(c) Upon completion of construction of each seal, a senior mine management official, such as a mine manager or superintendent, shall certify that the construction, installation, and materials used were in accordance with the approved ventilation plan. The mine operator shall retain the certification for as long as the seal is needed to serve the purpose for which it was built.

(d) The mine operator shall—

(1) Notify the local MSHA field office between two and fourteen days prior to commencement of seal construction;

(2) Notify the District Manager, in writing, within five days of completion of a set of seals; and

(3) Submit a copy of quality control results to the District Manager for seal material properties specified by § 75.336.

(e) Miners constructing or repairing seals, certified persons under paragraph (b) of this section, and senior mine management officials under paragraph (c) of this section shall be trained prior to constructing or repairing a seal. The training shall address materials and procedures in the approved seal design and ventilation plan. The mine operator must certify the date of training provided each miner, certified person, and senior mine management official and retain each certification for one year.

■ 5. Add § 75.338 to read as follows:

§ 75.338 Seals records.

(a) The table entitled ''Seal Recordkeeping Requirements'' lists the records the operator must maintain pursuant to §§ 75.335, 75.336, and 75.337, and the duration for which particular records need to be retained.

TABLE TO § 75.338(a).—SEAL RECORDKEEPING REQUIREMENTS

Record	Section reference	Retention time
(1) Protocol to monitor methane and oxygen and maintain an inert atmosphere..	75.335(b)	Same as ventilation plan requirements.
(2) Training of certified persons	75.335(b)(2)	1 year.
(3) Gas sampling records	75.335(b)(6)	1 year.
(4) Approved seal design	75.336(b)(1)	As long as the seal is needed to serve the purpose for which it is built.
(5) Certification of provisions of approved seal design is addressed.	75.336(b)(2)	As long as the seal is needed to serve the purpose for which it is built.
(6) Record of examinations	75.337(b)(5)	1 year.
(7) Seal construction certification	75.337(c)	As long as the seal is needed to serve the purpose for which it is built.

TABLE TO § 75.338(a).—SEAL RECORDKEEPING REQUIREMENTS—Continued

Record	Section reference	Retention time
(8) Certification of training	75.337(e)	1 year.

(b) Records required by §§ 75.335, 75.336, and 75.337 shall be retained at a surface location at the mine in a secure book that is not susceptible to alteration. The records may be retained electronically in a computer system that is secure and not susceptible to alterations, if the mine operator can immediately access the record from the mine site.

(c) Upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from the authorized representative of miners, mine operators must promptly provide access to any record listed in the table in this section.

(d) Whenever an operator ceases to do business, that operator must transfer all records required to be maintained by this part, or a copy thereof, to any successor operator who must maintain them for the required period.

■ 6. Amend § 75.371 by revising paragraph (ff) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(ff) The sampling protocol as provided by § 75.335(b) and seal installation requirements provided by § 75.336(b)(3).

* * * * *

[FR Doc. 07–2535 Filed 5–17–07; 3:11 pm]

BILLING CODE 4510–43–P

Federal Register

Tuesday,
May 22, 2007

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 105

Parachute Equipment and Packing; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 105

[Docket No. FAA–2005–21829; Notice No. 07–12]

RIN 2120–AI85

Parachute Equipment and Packing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is considering rulemaking to change the packing interval for certain types of parachutes. Currently, the FAA requires that most parachutes may not be used or carried aboard an aircraft and available for emergency use unless they have been packed within the previous 120 days. New reliability data from the parachute industry and other sources indicate it is time to review the packing interval, and the FAA is asking for public comment on a proposal to lengthen the interval from 120 to 180 days. The effect of the proposal is to ensure the rules reflect the safest parachute packing interval.

In this rulemaking, we are also proposing several correcting amendments to the rules related to parachute operations.

DATES: Send your comments on or before August 20, 2007.

ADDRESSES: You may send comments [identified by Docket Number FAA–2005–21829] using any of the following methods:

- *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, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, AFS–350, Aircraft Maintenance Division, General Aviation and Avionics Branch, AFS–350, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4922; facsimile (202) 267–5115, e-mail *kim.a.barnette@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

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 docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart iii, Section 44701. Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances. This rule is within the scope of that authority because it affects the airworthiness of parachutes used for airborne emergencies and sport applications.

Background

The majority of nonmilitary parachutes used in the United States are either sport parachutes or parachutes used for emergency purposes. Nearly all sport parachutes are used for skydiving and use a ''dual parachute system.'' Dual parachute systems contain a ''main'' parachute and a second parachute called a ''reserve'' parachute, to be used if the main parachute fails. The other commonly used parachute is a single-unit emergency parachute, often worn in case of emergency when operating special aircraft like gliders or aerobatic airplanes.

The FAA issued a rule in 1978 requiring that main and most reserve parachutes be packed every 120 days. Before 1978, the FAA required that all parachutes be packed every 60 days. The FAA extended the packing interval to 120 days because new synthetic parachute materials like nylon and Dacron were becoming commonplace. Parachutists had found the synthetic material was just as reliable after being packed for 120 days as it was after 60 days.

The rule still requires a 60-day packing interval for reserve parachutes that were composed of any amount of silk, pongee, or other natural fiber, or a material that was not nylon, rayon, or similar synthetic fiber. A similar requirement exists for emergency-use parachutes.

Recently acquired data from the U.S. military, foreign aviation authorities, and parachute industry representatives suggest the current 120-day packing interval may be too short. Experts assert modern parachute materials last longer when the packing interval is longer than 120 days, and that too-frequent packing may shorten the life of the materials. Those experts found the parachute's porosity was affected by handling and manipulation of the parachute while being packed. The FAA is proposing 180 days as a more suitable packing interval for modern parachute systems.

The FAA has granted several exemptions to foreign individuals who participate in parachute events in the United States. Those exemptions allowed the foreign parachutists to use their parachutes even if they had not been packed within the previous 120 days. We relied on the parachutist's compliance with the packing interval requirements of the aviation authority in the parachutist's own country.

In this NPRM we are also proposing several minor corrections to 14 CFR parts 91 and 105. We propose to remove the reference to ''chair type'' parachutes in § 91.307 because all parachutes, regardless of type, will have the same packing interval. We are also making two typographical corrections to errors we found in § 105.43.

We are not proposing any changes to the packing interval for parachutes made from natural fibers such as silk or pongee.

Statement of the Problem

The FAA has concluded it is time to reconsider our parachute packing interval requirements. The FAA has systems to collect data about incidents related to parachutes and the activity of FAA-certificated parachute riggers. We have not, however, been able to gather our own data about the effect of the packing interval on modern parachute materials. On July 8, 2005, the Parachute Industry Association petitioned the FAA (docket no. FAA–2005–21829–1) for an exemption from the 120-day packing interval, and provided some data that suggests a longer interval may be warranted. The petition indicated many foreign countries and military organizations were using longer packing intervals that did not adversely affect safety or parachute performance.

We are issuing this notice to invite data from the public that will support or challenge our proposal to change the current parachute packing interval.

Section-by-Section Discussion of the Proposals

Section 91.307 Parachutes and Parachuting

One amendment to § 91.307 would remove an unnecessary reference to ''chair type'' parachutes. Another would change § 91.307 to increase the packing interval for emergency-use parachutes composed exclusively of nylon, rayon, or other similar synthetic fiber or materials from 120 days to 180 days.

Section 105.43 Use of Single-Harness, Dual-Parachute Systems

The amendment to § 105.43 would increase the packing interval for all main and most (those composed exclusively of nylon, rayon, or other similar synthetic fiber or materials) reserve parachutes from 120 days to 180 days. We also propose to correct two minor typographical errors in § 105.43.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current or new information collection requirements associated with this proposed 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 proposed regulations.

Parachute Equipment and Packing: Economic Assessment, Initial 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). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed 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, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This proposed rule will result in no quantifiable costs, although the proposal may result in some minor loss of revenue to parachute riggers. Also, we believe that extending the packing requirement from 120 days to 180 days would not degrade the current level of safety afforded to parachutists, and the level of safety in an emergency situation may increase because the parachutes would not be handled as often. Repacking parachutes may cause some degradation in the strength of the parachute material. The FAA requests comments regarding the estimated population size and typical cost of packing a reserve parachute used in this analysis. We are also requesting that all comments be accompanied by clear documentation.

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.

This rulemaking would result in some minor cost savings to parachutists. We consider parachutists to be individuals who are not subject to RFA. This proposed rule does not impose costs on any small entities; it may however, result in some minor loss of revenue to parachute riggers. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

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. The FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no affect on international trade.

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 proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

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

Environmental Analysis

FAA Order 1050.1E 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 proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312 and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM 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 a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 91

General operating and flight rules, Special flight operations, Parachutes and Parachuting.

14 CFR Part 105

Parachute operations, Parachute equipment and packing.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and

29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend § 91.307 to revise paragraph (a) to read as follows:

§ 91.307 Parachutes and parachuting.

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency use to be carried in that aircraft unless it is an approved type and has been packed by a certificated and appropriately rated parachute rigger—

(1) Within the preceding 180 days, if its canopy, shrouds, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or materials that are substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment; or

(2) Within the preceding 60 days, if any part of the parachute is composed of silk, pongee, or other natural fiber or materials not specified in paragraph (a)(1) of this section.

* * * * *

PART 105—PARACHUTE OPERATIONS

3. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113–40114, 44701–44702, 44721

4. Amend § 105.43 to revise paragraph (a) and (b)(1) to read as follows:

§ 105.43 Use of single-harness, dual-parachute systems.

* * * * *

(a) The main parachute must have been packed within 180 days before the date of its use by a certificated parachute rigger, the person making the next jump with that parachute, or a non-certificated person under the direct supervision of a certificated parachute rigger.

(b) * * *

(1) Within 180 days before the date of its use, if its canopy, shroud, and harness are composed exclusively of nylon, rayon, or similar synthetic fiber or material that is substantially resistant to damage from mold, mildew, and other fungi, and other rotting agents propagated in a moist environment; or

* * * * *

Issued in Washington, DC, on May 11, 2007.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. E7–9875 Filed 5–21–07; 8:45 am]

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Federal Register

Vol. 72, No. 98

Tuesday, May 22, 2007

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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MAY

23761–24176 1
24177–24522 2
24523–25188 3
25189–25676 4
25677–25944 7
25945–26280 8
26281–26532 9
26533–26708 10
26709–27052 11
27053–27240 14
27241–27406 15
27407–27720 16
27721–27948 17
27949–28448 18
28449–28582 21
28583–28824 22

CFR PARTS AFFECTED DURING MAY

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:
8133 24173
8134 24175
8135 24177
8136 25181
8137 25183
8138 25185
8139 25187
8140 26705
8141 27240
8142 27401
8143 27403
8144 27405
8145 28445

Executive Orders:
12866 (See 13432) 27717
13303 (See Notice of May 18, 2007 28581
13047 (See Notice of May 17, 2007) 28447
13310 (See Notice of May 17, 2007) 28447
13315 (See Notice of May 18, 2007 28581
13338 (See Notice of May 8, 2007) 26707
13350 (See Notice of May 18, 2007 28581
13364 (See Notice of May 18, 2007 28581
13339 (See Notice of May 18, 2007 28581
13364 (See Notice of May 18, 2007 28581
13399 (See Notice of May 8, 2007) 26707
13423 (See 13432) 27717
13431 26709
13432 27717
13433 28441
13434 28583

Administrative Orders:
Notices:
Notice of May 8, 2007 26707
Notice of May 17, 2007 28447
Notice of May 18, 2007 28581
Presidential Determinations:
No. 2007–17 of April 25, 2007 26281

5 CFR

Ch. LXIV 26533

Proposed Rules:
315 23772
752 23772

7 CFR

210 24179
220 24179
225 24179
226 24179
246 24179
247 24179
251 24179
301 27949
319 26711
457 24523
800 27407
801 27407
916 25945
917 25945
959 25677
966 24530
982 23761
4279 27241

Proposed Rules:
205 27252
400 27981
810 23775
925 24551
929 23777
930 24553
955 25207
1000 25986
1001 25986
1005 25986
1006 25986
1007 25986
1030 25986
1032 25986
1033 25986
1124 25986
1126 25986
1131 25986
1210 26005
1738 26742
1924 27470
1944 27988
3551 27988

9 CFR

205 25947

Proposed Rules:
149 27656
160 27656
161 27656
381 26567

10 CFR

1 28449
11 27408
25 27408
72 26535

Proposed Rules:
1 28455
26 27766
51 27068
60 27766
63 27766
72 26568
73 27766

74 27766
609 27471

11 CFR

Proposed Rules:
106 26569

12 CFR

229 27951
509 25948
585 25948

13 CFR

120 25189

14 CFR

39 ....23765, 25957, 25960, 26283, 26285, 26538, 26711, 26714, 26716, 27721, 27723, 27725, 27730, 27953, 28587, 28589, 28591, 28593, 28594, 28597
71 ....23767, 23768, 25962, 25963, 26287, 27053, 27054, 27412, 27413, 27415, 27416, 27417, 27418, 27420, 27421
97 ....23769, 27241, 27422
121 26540
135 26540
401 27732
415 27732
431 27732
435 27732
440 27732
460 27732
Proposed Rules:
1 25207
33 25207
39 ....26008, 27489, 27491, 27493, 27497, 27766, 27768, 28003, 28005, 28456, 28458, 28459
71 ....25712, 28622, 28623, 28624, 28626, 28627, 28629, 28630
91 28820
105 28820
217 27770
234 27771
241 27770
248 27770
250 27770
291 27770
298 27770
374a 27770

15 CFR

705 25194
730 25194
736 25194
744 25194
747 25194
754 25194
756 25194
760 25194
766 25194
768 25194
770 25194
772 ....25194, 25680
774 25680

16 CFR

Proposed Rules:
259 26328

18 CFR

Proposed Rules:
35 23778

19 CFR

123 25965

20 CFR

404 27424
416 27424
498 27425
656 27904

21 CFR

510 ....24184, 26288, 27955
520 ....24185, 27733, 27955
522 ....27733, 27734, 27956
529 26289
866 26290
1313 28601
1308 24532
Proposed Rules:
878 26011

22 CFR

126 28602
303 27055

24 CFR

3280 27222
3282 27222
3288 27222
Proposed Rules:
203 27048
320 25926
350 25926
983 24080

26 CFR

1 ....23771, 26542, 28604
602 24678
Proposed Rules:
1 ....24192, 26011, 26012, 26576, 26689

28 CFR

Proposed Rules:
16 26037

29 CFR

4022 27243
4044 27243
Proposed Rules:
1910 27771
1915 27771
1917 27771
1918 27771

30 CFR

75 28796
202 24448
203 25197
206 24448
210 24448
217 24448
218 24448
250 25197
251 25197
260 25197
914 28451
935 26291
Proposed Rules
203 28396
260 28396
Ch. VII 27069
946 26329
948 27782

32 CFR

Proposed Rules:
216 25713
571 26576

33 CFR

100 ....25202, 25685, 25966, 27735, 28607
117 ....24534, 25203, 28609
151 27738
165 ....23771, 24185, 24534, 25686, 25966, 26296, 26298, 27244, 27740
Proposed Rules:
100 ....25214, 27499, 28631, 28634
117 ....26038, 27264
165 ....23779, 23781, 24196, 25217, 25219, 25226, 25720, 27070

34 CFR

Proposed Rules:
200 25228
303 ....26456, 28007

36 CFR

242 25688
Proposed Rules:
7 27499
261 26578
1193 26580
1194 26580

37 CFR

6 28610
380 24084

38 CFR

2 27246
Proposed Rules:
1 25930
5 28770
14 25930
19 25930
20 25930

39 CFR

111 26543

40 CFR

9 ....24496, 26544
35 24496
49 25698
50 28612
51 24060
52 ....24060, 25203, 25967, 25969, 25971, 25973, 25975, 26718, 27056, 27060, 27247, 27425, 27640, 27644, 27648, 27652, 27957
60 27437
61 27437
62 25978
63 ....25138, 25980, 27437
70 24060
71 24060
80 23900
81 ....25967, 26718, 27060, 27247, 27425, 27640, 27644, 27648, 27652
112 27443
174 26300
180 ....24188, 26304, 26310, 26317, 26322, 27448, 27452, 27456, 27460, 27463
372 26544
Proposed Rules:
51 ....24472, 26202
52 ....23783, 25241, 26040, 26045, 26046, 26057, 26202, 26581, 26759, 27265, 27787
60 ....27178, 28098
62 26069
63 ....26069, 28098
81 ....23783, 26046, 26057, 26581, 26759, 27265
85 28098
89 28098
90 28098
91 28098
93 24472
122 26582
131 27789
141 24016
180 24198
412 26582
1027 28098
1045 28098
1048 28098
1051 28098
1054 28098
1060 28098
1065 28098
1068 28098
1074 28098

41 CFR

Proposed Rules:
101-42 25723
101-45 25723
102-40 25723

42 CFR

412 26870
413 26870
Proposed Rules:
411 24680
412 ....24680, 26230
413 ....24680, 25526
418 24116
484 ....25356, 26887
489 24680

43 CFR

3000 24358
3200 24358
3280 24358
Proposed Rules:
3130 28636

44 CFR

65 ....27741, 28613
67 ....27752, 28617

45 CFR

98 27972

46 CFR

Proposed Rules:
2 28650
8 28650
189 28650

47 CFR

1 27688

15 26554
20 27688
27 27688
73 ....24190, 24191
90 27688
Proposed Rules:
1 ....24213, 27519
20 27519
27 24238
43 27519
73 ....26331, 26332

48 CFR

Ch. 1 (2 documents) 27364, 27397
1 27364
2 27364
4 27364
7 27364
14 27364
15 27364
16 27364
17 27364
18 27364
19 27364
22 27364
28 27364
31 27364
32 27364
35 27364
37 27364
41 27364
42 27364
43 27364
44 27364
45 27364
46 27364
49 27364
51 27364
52 27364
53 27364
1804 26560
1852 26560
3001 24536
3002 24536
3033 24536
Proposed Rules:
12 24554
23 24554
42 24554
52 24554
Ch. 2 28654
207 28662
215 28663
232 28663

49 CFR

107 24536
171 25162
172 25162
173 25162
175 25162
176 25162
531 28619
571 25484
585 25484
Proposed Rules:
195 28008
571 27535

50 CFR

100 25688
223 26722
622 27251
635 26735
648 ....25709, 26325, 26563
660 ....24539, 27064, 27759
665 27065
679 ....27067, 27980, 28620
Proposed Rules:
17 ....24253, 28016, 28664
648 ....25735, 26770
660 27276
665 26771
679 27798

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 MAY 22, 2007

COMMERCE DEPARTMENT

Patent and Trademark Office

Trademarks:

International trademark classification changes; published 5-22-07

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national—

Exceptional events; data treatment; correction; published 5-22-07

Air quality implementation plans; approval and promulgation; various States:

Illinois; published 3-23-07

JUSTICE DEPARTMENT

Drug Enforcement Administration

List I and List II chemicals; importation and exportation:

Combat Methamphetamine Epidemic Act of 2005; temporary stay of provisions; published 5-22-07

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground mines—

Abandoned areas; sealing; published 5-22-07

STATE DEPARTMENT

International Traffic in Arms regulations:

Somalia; defense articles and defense exports; licenses or approvals policy; published 5-22-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney Canada

Correction; published 5-22-07

Turbomeca S.A.; published 4-17-07

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Pension plan distributions under phased retirement program upon attainment of normal retirement age; published 5-22-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cranberries grown in Massachusetts, et al.; comments due by 5-31-07; published 5-1-07 [FR E7-08233]

Grade standards:

Sweet cherries; comments due by 5-29-07; published 3-30-07 [FR 07-01537]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Emerald ash borer; comments due by 6-1-07; published 4-2-07 [FR E7-06007]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning:

National Fire Plan; starting and negligently failing to maintain control of prescribed fires; prohibition; comments due by 6-1-07; published 4-2-07 [FR E7-05872]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:

Guaranteed farm loans—

Interest paid on loss claims; number of days; clarification and simplification; comments due by 5-29-07; published 3-27-07 [FR E7-05511]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Mid-Atlantic Fishery Management Council; hearings; correction; comments due by 5-27-07; published 5-7-07 [FR E7-08575]

Monkfish; comments due by 5-29-07; published 4-27-07 [FR E7-08117]

Yellowtail flounder; comments due by 5-29-07; published 5-11-07 [FR E7-09092]

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 5-29-07; published 5-14-07 [FR E7-09223]

COMMERCE DEPARTMENT

Patent and Trademark Office

Practice and procedure:

Representation of others before United States Patent and Trademark Office; changes; comments due by 5-29-07; published 2-28-07 [FR 07-00800]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Intermediaries registration; online annual review requirement; comments due by 5-29-07; published 4-26-07 [FR E7-08025]

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:

Contract files; closeout; comments due by 5-29-07; published 3-27-07 [FR E7-05473]

Free trade agreements—

Dominican Republic, Bulgaria and Romania; comments due by 5-29-07; published 3-27-07 [FR E7-05475]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Tax delinquency; representations and certifications; comments due by 5-29-07; published 3-30-07 [FR 07-01558]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Risk and technology review (Phase II, Group 2); comments due by 5-29-07; published 3-29-07 [FR E7-05805]

Air pollution control; new motor vehicles and engines:

Compression-ignition marine engines at or above 30 liters per cylinder; emissions control; deadline change; comments due by 5-29-07; published 4-27-07 [FR E7-08103]

Air pollution control; recreational engines and vehicles:

All terrain vehicles; exhaust emission test procedures; comments due by 5-29-07; published 4-26-07 [FR 07-02068]

All terrain vehicles; temporary exhaust emission test procedure option; extension; comments due by 5-29-07; published 4-26-07 [FR 07-02069]

Air programs:

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users—

Transportation conformity; State and local requirements; comments due by 6-1-07; published 5-2-07 [FR E7-07770]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Kentucky; comments due by 5-29-07; published 4-27-07 [FR E7-08114]

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 5-30-07; published 4-30-07 [FR E7-08102]

Ohio; comments due by 5-29-07; published 4-27-07 [FR E7-07895]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Ohio; comments due by 5-31-07; published 5-1-07 [FR E7-08295]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Fluopicolide; comments due by 5-29-07; published 3-28-07 [FR E7-05628]

Toxic substances:

Polychlorinated biphenyls; manufacturing (import) exemption; comments due by 5-30-07; published 4-30-07 [FR E7-08182]
Preliminary assessment information reporting and health and safety data reporting—
Voluntary High Production Challenge Program orphan chemicals, list; chemical substances withdrawn; comments due by 5-30-07; published 4-30-07 [FR 07-02104]

FEDERAL DEPOSIT INSURANCE CORPORATION
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

FEDERAL RESERVE SYSTEM
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

FEDERAL TRADE COMMISSION
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Tax delinquency; representations and certifications; comments due by 5-29-07; published 3-30-07 [FR 07-01558]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Anesthesiology devices—
Oxygen pressure regulators and oxygen conserving devices; comments due by 5-29-07; published 2-27-07 [FR E7-03253]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Lower Colorado River, Laughlin, NV; comments due by 5-31-07; published 5-1-07 [FR E7-08317]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and indian housing:
Indian Housing Block Grant Program; annual performance report due date extension; comments due by 5-29-07; published 3-29-07 [FR E7-05738]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Pecos sunflower; comments due by 5-29-07; published 3-27-07 [FR 07-01396]
Findings on petitions, etc.—
Siskiyou Mountains salamander and Scott Bar salamander; comments due by 5-29-07; published 3-29-07 [FR E7-05774]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 5-30-07; published 4-30-07 [FR E7-08171]
Texas; comments due by 5-30-07; published 4-30-07 [FR E7-08156]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Tax delinquency; representations and certifications; comments due by 5-29-07; published 3-30-07 [FR 07-01558]

NATIONAL CREDIT UNION ADMINISTRATION
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

SECURITIES AND EXCHANGE COMMISSION
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AEROTECHNIC Vertriebs-u. Service GmbH; comments due by 5-29-07; published 4-26-07 [FR E7-07993]
Airbus; comments due by 5-29-07; published 4-26-07 [FR E7-07998]
Rolls-Royce Corp.; comments due by 5-29-07; published 3-29-07 [FR E7-05775]
Superior Air Parts, Inc.; comments due by 6-1-07; published 4-2-07 [FR E7-05915]
Airworthiness standards:
Special conditions—
Boeing Model 787-8 airplane; comments due by 5-29-07; published 4-12-07 [FR E7-06887]
Boeing Model 787-8 airplane; comments due by 5-29-07; published 4-13-07 [FR E7-07065]
Boeing Model 787-8 airplane; comments due by 5-31-07; published 4-16-07 [FR 07-01838]
Class E airspace; comments due by 5-31-07; published 5-16-07 [FR 07-02373]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Passenger cars, 2007-2017 model years, and light trucks, 2010-2017 model years; CAFE product plan information request; comments due by 5-29-07; published 2-27-07 [FR 07-00878]

TREASURY DEPARTMENT
Comptroller of the Currency
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Corporate reorganizations; additional distributions guidance; cross-reference; comments due by 5-30-07; published 3-1-07 [FR E7-03533]

TREASURY DEPARTMENT
Thrift Supervision Office
Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]
Privacy of consumer financial information; model privacy form
Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

LIST OF PUBLIC LAWS

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H.R. 1681 / P.L. 110-26
The American National Red Cross Governance Modernization Act of 2007 (May 11, 2007; 121 Stat. 103; 8 pages)

Last List May 10, 2007

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