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WHEN: Tuesday, May 10, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Executive Order 13571 of April 27, 2011

Streamlining Service Delivery and Improving Customer Service

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the quality of service to the public by the Federal Government, it is hereby ordered as follows:

Section 1. *Policy.* The public deserves competent, efficient, and responsive service from the Federal Government. Executive departments and agencies (agencies) must continuously evaluate their performance in meeting this standard and work to improve it. To this end, Executive Order 12862 (Setting Customer Service Standards), issued on September 11, 1993, requires agencies that provide significant services directly to the public to identify and survey their customers, establish service standards and track performance against those standards, and benchmark customer service performance against the best in business. This effort to "put people first" was an important step. It was reinforced by a Presidential Memorandum for the Heads of Executive Departments and Agencies issued on March 22, 1995 (Improving Customer Service), and a further Presidential Memorandum issued on March 3, 1998 (Conducting "Conversations with America" to Further Improve Customer Service).

However, with advances in technology and service delivery systems in other sectors, the public's expectations of the Government have continued to rise. The Government must keep pace with and even exceed those expectations. Government must also address the need to improve its services, not only to individuals, but also to private and Governmental entities to which the agency directly provides significant services. Government managers must learn from what is working in the private sector and apply these best practices to deliver services better, faster, and at lower cost. Such best practices include increasingly popular lower-cost, self-service options accessed by the Internet or mobile phone and improved processes that deliver services faster and more responsively, reducing the overall need for customer inquiries and complaints. The Federal Government has a responsibility to streamline and make more efficient its service delivery to better serve the public.

Sec. 2. *Agency Customer Service Plans and Activities.* Within 180 days of the date of this order, each agency shall develop, in consultation with the Office of Management and Budget (OMB), a Customer Service Plan (plan) to address how the agency will provide services in a manner that seeks to streamline service delivery and improve the experience of its customers. As used in this order, the term "customer" refers to any individual or to any entity, including a business, tribal, State or local government, or other agency, to which the agency directly provides significant services. The plan shall set forth the agency's approach, intended benefits, and an implementation timeline for the following actions:

(a) establishing one major initiative (signature initiative) that will use technology to improve the customer experience;

(b) establishing mechanisms to solicit customer feedback on Government services and using such feedback regularly to make service improvements;

(c) setting clear customer service standards and expectations, including, where appropriate, performance goals for customer service required by the

GPRA (Government Performance and Results) Modernization Act of 2010 (Public Law 111–352);

(d) improving the customer experience by adopting proven customer service best practices and coordinating across service channels (such as online, phone, in-person, and mail services);

(e) streamlining agency processes to reduce costs and accelerate delivery, while reducing the need for customer calls and inquiries; and

(f) identifying ways to use innovative technologies to accomplish the customer service activities above, thereby lowering costs, decreasing service delivery times, and improving the customer experience.

Sec. 3. *Publication of Agency Customer Service Plans.* Each agency shall publish its plan on its Open Government web page.

Sec. 4. *Assistance in Implementation.* In consultation with the heads of executive departments and agencies, the Chief Performance Officer, who also serves as the Deputy Director for Management of the OMB, shall develop guidance for implementing the activities outlined in this order. Such guidance shall include, among other things, the nature and scope of services to which the order's requirements will apply. The Office of Management and Budget, the General Services Administration, and the Office of Science and Technology Policy shall assist and support agencies in developing customer service standards and plans, online posting of customer service metrics and best practices, expediting review for customer feedback mechanisms under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), improving the design and management of agency websites providing services or information to the public in compliance with section 508 of the Rehabilitation Act (29 U.S.C. 794d), and using innovative technologies to improve customer service at lower costs.

Sec. 5. *Independent Agencies.* Independent agencies are requested to adhere to this order.

Sec. 6. *Privileged Information.* Nothing in this order shall compel or authorize the disclosure of privileged information, law enforcement information, information affecting national security, or information the disclosure of which is prohibited by law.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
April 27, 2011.

[FR Doc. 2011–10732
Filed 4–29–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
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Monday, May 2, 2011

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

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

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4288

RIN 0570–AA75

Advanced Biofuel Payment Program; Correction

AGENCY: Rural Business-Cooperative Service; Rural Utilities Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agency published a document in the **Federal Register** of February 11, 2011, establishing the Advanced Biofuel Payment Program authorized under the Food, Conservation, and Energy Act of 2008. This document also established an application deadline for applicants to submit their applications for Fiscal Year (FY) 2010 on April 12, 2011. The Agency is extending the application period to May 6, 2011. Applications received after May 6, 2011, will not be considered for FY 2010.

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Diane Berger, (202) 260–1508.

SUPPLEMENTARY INFORMATION: Under this Program, the Agency will enter into contracts with advanced biofuel producers to pay such producers for the production of eligible advanced biofuels.

As published, the interim rule stated that applications for FY 2010 must be submitted by April 12, 2011. This date is referenced in the preamble **SUPPLEMENTARY INFORMATION** on page 7936, column 2, lines 4 and 5 and on page 7966, column 2, in the last paragraph of the column. The Agency is extending the application period to May 6, 2011.

Need for Correction

Due to the delay in obtaining approval of the application and payment forms, the Agency needs to extend the application period. The extension will allow the public an adequate period of time to complete and submit applications.

List of Subjects in 7 CFR Part 4288

Administrative practice and procedure, Energy-advanced biofuel, Renewable biomass, Reporting and recordkeeping.

Accordingly, 7 CFR part 4288 is corrected by making the correcting amendment:

PART 4288—PAYMENT PROGRAMS

■ 1. The authority citation for part 4288 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 2. Section 4288.190(b)(1) is amended by removing "April 12, 2011" and adding in its place "May 6, 2011".

Dated: April 19, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2011–10495 Filed 4–29–11; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1157; Directorate Identifier 2010–NM–137–AD; Amendment 39–16674; AD 2011–09–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, –315, –401, and –402 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) originated 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:

> There have been several in-service reports of finding trapped water on the bottom of the cockpit windshield frames (or lower windshield frames) that resulted in either corrosion or water ingress into the cockpit. In one occurrence, the trapped water caused severe corrosion of numerous anchor nuts that secure the windshield to the lower windshield frame, such that the intended fastening function was seriously compromised.
>
> Corrosion of the lower windshield frames, including the anchor nuts that secure the windshield to the aircraft structure, can result in a serious structural degradation possibly leading to the loss of the windshield during flight. Also, water could leak into the cockpit and cause either a malfunction or failure of the electrical and electronics systems in the area of the cockpit instrument panels.
>
> * * * * *

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

DATES: This AD becomes effective June 6, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 6, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

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 November 23, 2010 (75 FR 71369). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been several in-service reports of finding trapped water on the bottom of the cockpit windshield frames (or lower windshield frames) that resulted in either corrosion or water ingress into the cockpit. In one occurrence, the trapped water caused severe corrosion of numerous anchor nuts that secure the windshield to the lower windshield frame, such that the intended fastening function was seriously compromised.

Corrosion of the lower windshield frames, including the anchor nuts that secure the windshield to the aircraft structure, can result in a serious structural degradation possibly leading to the loss of the windshield during flight. Also, water could leak into the cockpit and cause either a malfunction or failure of the electrical and electronics systems in the area of the cockpit instrument panels.

The lower windshield frames do not have drain provisions to prevent moisture or water run-off from the condensation of the windshields from being trapped. The consequences of trapped water in the lower windshield frames can result in unsafe conditions, as noted above. This Directive mandates the installation of a drain system for the lower windshield frames.

For Model DHC–8–401 and –402 airplanes, the installation also includes a related investigative action, and corrective actions if necessary. The related investigative action is an inspection for corrosion of the anchor nuts and window frame. Corrective actions include replacing any corroded anchor nut with a new or serviceable anchor nut, or contacting the manufacturer for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request to Reference Revision D of Bombardier Service Bulletin 8–53–78

Hawaii Island Air stated that Bombardier has issued new Revision D, dated July 6, 2010, for Service Bulletin 8–53–78.

We infer that Hawaii Island Air requested that we update our references to include Bombardier Service Bulletin 8–53–78, Revision D, dated July 6, 2010. We agree. This service bulletin was revised for minor changes such as a serial number change and deletion of certain modification kits. We have revised paragraph (g) of this AD to reference Bombardier Service Bulletin 8–53–78, Revision D, dated July 6, 2010. We have also added paragraph (h) of this AD to give credit for Bombardier Service Bulletin 8–53–78, Revision C, dated April 29, 2010.

Revision to Applicability

We have added Model DHC–8–101 airplanes to the applicability of this AD because these airplanes are affected by the identified unsafe condition. There are no Model DHC–8–101 airplanes registered in the United States.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 191 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,660 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 $641,760, or $3,360 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) 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:

2011–09–12 Bombardier, Inc.: Amendment 39–16674. Docket No. FAA–2010–1157; Directorate Identifier 2010–NM–137–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315, serial numbers 003 through 566 inclusive.

(2) Model DHC–8–401, and –402 airplanes, serial numbers 4001, 4003, 4004, 4006, and 4008 through 4274 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 56: Windows.

Reason

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

There have been several in-service reports of finding trapped water on the bottom of the cockpit windshield frames (or lower windshield frames) that resulted in either corrosion or water ingress into the cockpit. In one occurrence, the trapped water caused severe corrosion of numerous anchor nuts that secure the windshield to the lower windshield frame, such that the intended fastening function was seriously compromised.

Corrosion of the lower windshield frames, including the anchor nuts that secure the windshield to the aircraft structure, can result in a serious structural degradation possibly leading to the loss of the windshield during flight. Also, water could leak into the cockpit and cause either a malfunction or failure of the electrical and electronics systems in the area of the cockpit instrument panels.

* * * * *

Compliance

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

Actions

(g) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, install a drain system in the cockpit windshield lower frames, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–53–78, Revision D, dated July 6, 2010 (for Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes); or 84–53–43, dated April 27, 2010 (for Model DHC–8–401 and –402 airplanes); except where these service bulletins state to contact the manufacturer, contact the New York Aircraft Certification Office or Transport Canada Civil Aviation (TCCA) or its delegated agent. Do all applicable related investigative and corrective actions before further flight.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) For Models DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes: Modification of the drain system is also acceptable for compliance with the requirements of paragraph (g) of this AD, if done before the effective date of this AD, in accordance with Bombardier Service Bulletin 8–53–78, dated December 23, 1999; Revision A, dated June 7, 2001; Revision B, dated May 2, 2002; or Revision C, dated April 29, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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.

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–16, dated May 18, 2010; Bombardier Service Bulletin 8–53–78, Revision D, dated July 6, 2010; and Bombardier Service Bulletin 84–53–43, dated April 27, 2010; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Service Bulletin 8–53–78, Revision D, dated July 6, 2010; or Bombardier Service Bulletin 84–53–43, dated April 27, 2010; as applicable; 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 Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9673 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1205; Directorate Identifier 2010–NM–146–AD; Amendment 39–16677; AD 2011–09–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –200LR, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires, for certain airplanes, replacing certain boost pump relays with ground fault interrupter (GFI) relays. For certain other airplanes, this AD requires installing new panels in the main equipment center, making certain wiring changes, installing new GFI relays in the new panels, and installing

new electrical load management system (ELMS) software. For certain other airplanes, this AD requires doing certain bond resistance measurements, and corrective actions if necessary. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective June 6, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 6, 2011.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

For Smiths and GE Aviation service information identified in this AD, contact GE Aviation, Customer Support Center, 1 Neumann Way, Cincinnati, Ohio 45215; telephone 513–552–3272; e-mail *cs.techpubs@ge.com;* Internet *http://www.geaviation.com*.

You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (*phone:* 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6482; fax: 425–917–6590; e-mail: *georgios.roussos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on December 28, 2010 (75 FR 81508). That NPRM proposed to require, for certain airplanes, replacing certain boost pump relays with ground fault interrupter (GFI) relays. For certain other airplanes, that NPRM proposed to require installing new panels in the main equipment center, making certain wiring changes, installing new GFI relays in the new panels, and installing new electrical load management system (ELMS) software. For certain other airplanes, that NPRM proposed to require doing certain bond resistance measurements, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment. Boeing supported the NPRM.

Request to Extend Compliance Time

American Airlines (AAL) requested that we extend the compliance time in paragraphs (g) and (h) of the NPRM for the work done in accordance with Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010, from 36 months to 60 months. AAL stated that they have already accomplished Boeing Service Bulletin 777–28A0037, Revision 1, dated June 15, 2009, on 75 percent of their Model 777 fleet. The proposed 36-month compliance time would require special scheduling for those airplanes. AAL proposed that the compliance time for all actions in the NPRM be extended to 60 months to be consistent with the 60-month compliance time in paragraph (i) of the NPRM for the GFI relay replacement for the main tank boost pumps specified in Boeing Service Bulletin 737–28A0038, Revision 1, dated September 20, 2010.

We disagree with the request to extend the compliance time for the actions required by paragraphs (g) and (h) of the NPRM (bond resistance measurements and the installation of new panels, new fuel pump control GFI relays, software, and wiring changes). In developing appropriate compliance times for those actions, we considered the safety implications and practical aspects of accomplishing these actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In consideration of these items, we have determined that a 36-month compliance time will ensure an acceptable level of safety and allow those actions to be done during scheduled maintenance intervals for most affected operators. However, under the provisions of paragraph (k) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the request would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Delay Rule Pending Release of New Service Bulletins

Japan Airlines (JAL) requested that we delay the issuance of this AD until Boeing and GE Aviation publish new revisions to their service information (referenced in the NPRM) to include certain changes. JAL stated these changes are to correct or add numbers for wires, modules, connectors, and figures. JAL also stated that, in addition, certain GE Aviation service information also needed to be revised to add another procedure to install labels or separate the labels from the conversion kit. JAL explained that when it receives the labels as part of the conversion kit, the remaining shelf life of the labels is not adequate to allow the labels to be installed on the airplanes. JAL is concerned that, unless the service information is revised, these issues could delay incorporation of this AD or result in multiple AMOC requests. JAL stated that they are in communication with Boeing and GE Aviation in regard to these issues with the service information.

We agree with JAL's concerns about the shelf life of the labels possibly affecting operators' ability to comply with this AD within the required compliance times. This AD requires all actions, including labeling, in the Accomplishment Instructions of Boeing Service Bulletins 777–28A0038, Revision 1; and 777–28A0037, Revision 2; both dated September 20, 2010; to be accomplished. We have added paragraph (j) to this AD to provide an optional method of labeling panels. However, we disagree with the request to delay this AD until Boeing and GE Aviation issue revised service information to correct or add numbers for wires, modules, connectors, and figures. No data or information to justify that request was provided. However, under the provisions of paragraph (k) of this AD, we will consider requests for

an AMOC if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 130 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Replacements: Group 1 airplanes identified in Boeing Service Bulletin 777-28A0038.	3	$85	$25,577	$25,832	126	$3,254,832.
Replacements: Group 2 airplanes identified in Boeing Service Bulletin 777-28A0038.	3	85	52,545	52,800	0	No airplanes currently on U.S. Register.
Replacements: Group 3 airplanes identified in Boeing Service Bulletin 777-28A0038.	4	85	37,257	37,597	4	$150,388.
Replacements: Group 4 airplanes identified in Boeing Service Bulletin 777-28A0038.	4	85	17,816	18,156	0	No airplanes currently on U.S. Register.
Installations and Measurement: Boeing Service Bulletin 777-28A0037.	76	85	29,934	36,394	130	$4,731,220.

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

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–15 The Boeing Company: Amendment 39–16677; Docket No. FAA–2010–1205; Directorate Identifier 2010–NM–146–AD.

Effective Date

(a) This AD is effective June 6, 2011.

Affected ADs

(b) AD 2008–11–13, Amendment 39–15536, affects this AD.

Applicability

(c) This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category; as identified in the service information specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010.

(2) Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD was prompted by fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent potential ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Related Airworthiness Limitation

Note 1: AD 2008–11–13 requires a revision of the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to include limitations for the fuel tank systems. One of the limitations, AWL 28–AWL–18, requires a repetitive

inspection of the ground fault interrupter (GFI) functions.

Installations and Software Changes

(g) For Groups 1 and 2 airplanes identified as Configuration 2 in Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010: Within 36 months after the effective date of this AD, install new panels, P301 and P302, in the main equipment center; make certain wiring changes; install new GFI relays in the P301 and P302 panels; and install new electrical load management system (ELMS) software; as applicable. Do the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010, except as specified in paragraph (j) of this AD.

Note 2: Boeing Service Bulletin 777–28A0039, Revision 2, dated September 20, 2010, is an additional source of guidance for installing ELMS software.

Note 3: Smiths Service Bulletin 5000ELM–28–454, dated August 13, 2007; and GE Aviation Service Bulletin 6000ELM–28–455, Revision 1, dated February 1, 2010; are additional sources of guidance for making a wiring change in the P110 and P210 panels, respectively.

(h) For Groups 1 and 2 airplanes identified as Configuration 1 in Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010: Within 36 months after the effective date of this AD, do bonding resistance measurements to verify bonding requirements as specified in Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010, are met, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010.

Replacement of GFI Relays

(i) For airplanes identified in Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010: Within 60 months after the effective date of this AD, replace 4 main tank boost pump relays in electrical load management system panels P110, P210, and P320 with new GFI relays, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010, except as specified in paragraph (j) of this AD.

Note 4: Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010, references the service bulletins identified in Table 1 of this AD as additional sources of guidance for replacing the main tank boost pump relays.

TABLE 1—ADDITIONAL SOURCES OF GUIDANCE FOR REPLACING THE MAIN TANK BOOST PUMP RELAYS

Group number of airplanes, as identified in Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010	Panel No.	Service bulletin	Revision level	Date
Group 1	P110	Smiths Service Bulletin 5000ELM–28–443.	Original	August 8, 2007.
Group 1	P210	Smiths Service Bulletin 6000ELM–28–444.	Original	August 8, 2007.
Group 1	P320	Smiths Service Bulletin 4000ELM–28–445.	Original	August 8, 2007.
Group 2	P110	GE Aviation Service Bulletin 5000ELM–28–446.	1	January 7, 2010.
Group 2	P210	Smiths Service Bulletin 6000ELM–28–447.	Original	August 8, 2007.
Group 2	P320	GE Aviation Service Bulletin 4000ELM–28–448.	1	January 7, 2010.
Group 3	P110	GE Aviation Service Bulletin 5000ELM–28–449.	1	January 7, 2010.
Group 3	P210	Smiths Service Bulletin 6000ELM–28–450.	Original	August 8, 2007.
Group 3	P320	GE Aviation Service Bulletin 4000ELM–28–451.	1	January 7, 2010.
Group 4	P110	Smiths Service Bulletin 5000ELM–28–463.	Original	August 8, 2007.
Group 4	P210	Smiths Service Bulletin 6000ELM–28–464.	Original	August 8, 2007.
Group 4	P320	Smiths Service Bulletin 4000ELM–28–465.	Original	August 8, 2007.

Optional Method To Install a Label

(j) Where Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010; and Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010: specify installing a label, an operator's equivalent procedure may be used as a method to indelibly mark the applicable service bulletin number on the panel.

Note 5: Additional guidance on indelibly marking the panel may also be found in Boeing Standard BAC5307.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(l) For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–917–6482; fax: 425–917–6590; e-mail: *georgios.roussos@faa.gov*.

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 777–28A0038, Revision 1, dated September 20, 2010; or Boeing Service Bulletin 777–28A0037, Revision 2, dated September 20, 2010; as applicable; 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 Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC

2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) For Smiths and GE Aviation service information identified in this AD, contact GE Aviation, Customer Support Center, 1 Neumann Way, Cincinnati, Ohio 45215; telephone 513–552–3272; e-mail *cs.techpubs@ge.com;* Internet *http://www.geaviation.com.*

(4) You may review copies of the service information at the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 8, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9917 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1111; Directorate Identifier 2010–NM–129–AD; Amendment 39–16676; AD 2011–09–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–200B, –300, –400, –400D, and –400F Series Airplanes Powered by Pratt and Whitney 4000 or General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires an inspection to determine the part number of the mid-pivot access door and to determine if the correct door is installed, and the installation of a marker on the mid-pivot access door, and if necessary, repetitive ultrasonic inspections for cracking of the mid-pivot bolt assembly and eventual replacement of the mid-pivot bolt assembly. This AD was prompted by a report that the left and right access doors of the spring beam mid-pivot bolt assembly for the No. 1 strut were inadvertently installed in the incorrect position during strut modification. We are issuing this AD to detect and correct incorrectly installed mid-pivot bolt assemblies on the spring beam on the outboard struts. Incorrectly installed bolt assemblies could lead to fatigue cracking and consequent fracturing of the mid-pivot bolt assembly, which could lead to loss of the spring beam load path and the possible separation of a strut and engine from the airplane during flight.

DATES: This AD is effective June 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 6, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail me.boecom@boeing.com; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kenneth Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: (425) 917–6434; fax (425) 917–6590; e-mail: *Kenneth.Paoletti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on November 15, 2010 (75 FR 69612). That NPRM proposed to require an inspection to determine the part number of the mid-pivot access door and to determine if the correct door is installed, and the installation of a marker on the mid-pivot access door, and if necessary, repetitive ultrasonic inspections for cracking of the mid-pivot bolt assembly and eventual replacement of the mid-pivot bolt assembly.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Support for the NPRM

Boeing supported the contents of the NPRM.

Request To Include References to Airplane Maintenance Manual

United Airlines (UAL) stated that it is concerned about the actions in Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010, being undone and leading to the same condition. UAL suggested that we revise the NPRM to include airplane maintenance manual (AMM) references, including a check for marker BAC27EPP667 before installing the access door. As an alternative, UAL also suggested that the mid-pivot access door part number could be changed instead of keeping the same part number. UAL stated that if the NPRM is not changed to incorporate one of the two options, then the required actions could be undone if doors without the marker are installed.

We disagree with the request to revise this AD. Section 39.7 of the Federal Aviation Regulations (14 CFR 39.7) states the following: "Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section." Therefore, operators are prohibited from installing a door that does not meet the requirements of this AD. However, operators are permitted to add a check to applicable AMM to prevent installing the incorrect access door. We have not changed the final rule in regard to this issue.

Request To Clarify Figures in Service Information

UPS requested that we clarify the figures C–C and D–D on sheets 7 and 8 of Appendix B of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010. UPS stated that the transducer

positions 'A' and 'B' on sheet 7 of Appendix B do not coincide with the transducer positions 'A' and 'B' on the cross-sections C and D on sheet 8 of Appendix B.

We agree to clarify. Both sheets show the transducer in position 'A' over the grease channel, and the transducer in position 'B' adjacent to the grease channel. Sheet 7 provides a top-down view on the mid-pivot pin, and sheet 8 is a side view with the grease channel in a single location for both views. The side view on sheet 8 is only intended to show which end of the pin is correct. No change to the service bulletin or rule is needed. We have not changed the final rule in regard to this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 95 airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $24,225, or $255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–14 The Boeing Company: Amendment 39–16676; Docket No. FAA–2010–1111; Directorate Identifier 2010–NM–129–AD.

Effective Date

(a) This AD is effective June 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–200B, –300, –400, –400D, and –400F series airplanes; certificated in any category; equipped with Pratt and Whitney 4000 or General Electric CF6–80C2 series engines, as identified in Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/pylons.

Unsafe Condition

(e) This AD was prompted by a report that the left and right access doors of the spring beam mid-pivot bolt assembly for the No. 1 strut were inadvertently installed in the incorrect position during strut modification. The Federal Aviation Administration is issuing this AD to detect and correct incorrectly installed mid-pivot bolt assemblies on the spring beam on the outboard struts. Incorrectly installed bolt assemblies could lead to fatigue cracking and consequent fracturing of the mid-pivot bolt assembly, which could lead to loss of the spring beam load path and the possible separation of a strut and engine from the airplane during flight.

Compliance

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

Inspection To Determine if Correct Door Is Installed

(g) Within 24 months after the effective date of this AD, do an inspection to determine if the correct mid-pivot access door is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

(h) If, during the inspection required by paragraph (g) of this AD, the correct mid-pivot door is found to be installed, before further flight, install a marker on the mid-pivot access door, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

(i) If, during the inspection required by paragraph (g) of this AD, the correct mid-pivot door is not found to be installed, before further flight, do the actions required by paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010.

(1) Rotate the mid-pivot bolt assembly to the correct orientation and replace the mid-pivot access door with a new or serviceable mid-pivot access door.

(2) Install a marker on the mid-pivot access door.

(3) Do the actions required by paragraph (i)(3)(i) or (i)(3)(ii) of this AD.

(i) (Option 1) Do an ultrasonic inspection for cracking of the mid-pivot bolt assembly.

(A) If no cracking is found, do the actions required by paragraphs (i)(3)(i)(A)(*1*) and (i)(3)(i)(A)(*2*) of this AD.

(*1*) Repeat the ultrasonic inspection for cracking of the mid-pivot bolt assembly thereafter at intervals not to exceed 24 months until the action required by paragraph (i)(3)(i)(A)(*2*) of this AD is done.

(*2*) Within 60 months after the effective date of this AD, replace the mid-pivot bolt assembly with a new mid-pivot bolt assembly. Replacement terminates the repetitive inspections required by paragraph (i)(3)(i)(A)(*1*) of this AD.

(B) If any cracking is found, replace the mid-pivot bolt assembly with a new mid-pivot bolt assembly, before further flight.

(ii) (Option 2) Replace the mid-pivot bolt assembly with a new mid-pivot bolt assembly.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the

authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Related Information

(k) For more information about this AD, contact Kenneth Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590; *kenneth.paoletti@faa.gov*.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010, 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 Boeing Alert Service Bulletin 747–54A2232, dated April 15, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 15, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9919 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0383; Directorate Identifier 2010–NM–093–AD; Amendment 39–16675; AD 2011–09–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200 and –300 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated 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:

Further to accomplishment of A340 ALI tasks 545104, which require a rototest inspection as per Non Destructive Testing Manual (NTM) 54–51–04 of engine pylon pyramid attachment areas at aft end of lower arms between Rib 1 and Rib 2 (2 fastener locations/pylon), four findings have been reported and repaired.

* * * * *

The unsafe condition is cracking, which might impact the structural integrity of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 17, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 17, 2011.

We must receive comments on this AD by June 16, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0140, dated July 28, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Further to accomplishment of A340 ALI tasks 545104, which require a rototest inspection as per Non Destructive Testing Manual (NTM) 54–51–04 of engine pylon pyramid attachment areas at aft end of lower arms between Rib 1 and Rib 2 (2 fastener locations/pylon), four findings have been reported and repaired.

Further investigations made on performances of High Frequency Eddy Current (HFEC) inspection techniques in steel led to the conclusion that existing NTM procedure 54–51–04 by rototest is not reliable because this method is not adapted to the ferromagnetic materials and therefore findings reported up to now using this procedure can be considered as uncertain.

Therefore, a new inspection procedure using Ultra Sonic (US) testing without fastener removal has been developed.

In order to comply with certification requirements, this Airworthiness Directive (AD) requires performing the new [repetitive] US inspection [for cracking] on all A340–200/–300 pre-modification 49203 (reinforcements of pylon primary structure for enhanced A340).

The unsafe condition is cracking, which might impact the structural integrity of the airplane. The required actions include repairing any cracks found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–54–4010, including Appendices 1, 2, and 3, dated July 21, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0383; Directorate Identifier 2010–NM–093–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 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.

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:

2011–09–13 Airbus: Amendment 39–16675. Docket No. FAA–2011–0383; Directorate Identifier 2010–NM–093–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 17, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all serial numbers except those on which Airbus Modification 49203 has been incorporated in production.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Reason

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

Further to accomplishment of A340 ALI tasks 545104, which require a rototest inspection as per Non Destructive Testing Manual (NTM) 54–51–04 of engine pylon pyramid attachment areas at aft end of lower arms between Rib 1 and Rib 2 (2 fastener locations/pylon), four findings have been reported and repaired.

* * * * *

The unsafe condition is cracking, which might impact the structural integrity of the airplane.

Compliance

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

Ultrasonic Inspection

(g) At the later of the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD, except as provided by paragraph (h) of this AD: Perform an ultrasonic inspection of pylon pyramid attachment areas at the aft end of the lower arms between Rib 1 and Rib 2 without fastener removal (2 fastener locations per pylon), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–54–4010, dated July 21, 2008.

(1) Before the accumulation of the applicable total flight cycles or total flight hours, whichever occurs first, specified in table 1 of this AD.

(2) Within 90 days after the effective date of this AD.

TABLE 1—INITIAL INSPECTION COMPLIANCE TIMES

Weight variant	Total flight cycles	Total flight hours
000 through 004	13,000	60,000
020, 021, 023 through 026, 028 through 030, Pre 49203	11,470	77,400
027	11,000	30,000

(h) For airplanes belonging to weight variant 000 through 004 inspected before the effective date of this AD in accordance with Airworthiness Limitations Items (ALI) Task 545104–01–01, as described in Airbus A340 Airworthiness Limitations Items Document Ref: AI/SE–M4/95A.0051/97, Issue 10, dated February 1, 2007: Perform the inspection required in paragraph (g) of this AD at the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, whichever occurs later.

(1) Within 90 days after the effective date of this AD.

(2) Within 2,680 flight cycles or 19,200 flight hours, whichever occurs first, after the most recent rototest inspection done in accordance with ALI task 545104–01–01, but not to exceed the accumulation of 15,280 total flight cycles or 76,400 total flight hours, whichever occurs first.

(i) If no cracking is detected during any inspection required by paragraph (g) of this AD: Repeat the inspection required in paragraph (g) of this AD thereafter at intervals not to exceed the earlier of the applicable flight cycles or flight hours interval specified in table 2 of this AD.

TABLE 2—REPETITIVE INSPECTION INTERVAL

Weight variant	Flight cycles	Flight hours
000 through 004	1,900	9,500
020, 021, 023 through 026, 028 through 030, Pre 49203	1,700	8,500
027	1,700	8,500

(j) If any crack is detected during any inspection required by this AD: Before further flight, repair the cracking using a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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) *Special Flight Permits:* Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed if any crack is detected during any inspection required by this AD.

Related Information

(l) Refer to MCAI EASA Airworthiness Directive 2008–0140, dated July 28, 2008; and Airbus Mandatory Service Bulletin A340–54–4010, dated July 21, 2008; for related information.

Material Incorporated by Reference

(m) You must use Airbus Mandatory Service Bulletin A340–54–4010, including Appendices 1, 2, and 3, dated July 21, 2008, 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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; e-mail: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 15, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9921 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0026; Directorate Identifier 2010–NM–104–AD; Amendment 39–16673; AD 2011–09–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 and –300 Series Airplanes Equipped With Pratt and Whitney Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive inspections for hydraulic fluid contamination of the interior of the strut disconnect assembly; repetitive inspections for discrepancies of the interior of the strut disconnect assembly, if necessary; repetitive inspections of the exterior of the strut disconnect assembly for cracks, if necessary; and corrective action if necessary. This AD also provides an optional terminating action for the inspections. This AD was prompted by reports of system disconnect boxes that have been contaminated with hydraulic fluid and, in one incident, led to subsequent cracking of titanium parts in the system disconnect assembly. We are issuing this AD to detect and correct hydraulic fluid contamination, which can cause cracking of titanium parts in the system disconnect assembly, resulting in compromise of the engine firewall. A cracked firewall can allow fire in the engine area to enter the strut and can lead to an uncontained engine strut fire if flammable fluid is present. Cracking of the disconnect box may also reduce the effectiveness of the fire extinguishing system in the engine compartment and could contribute to an uncontained engine fire. In addition, a cracked disconnect box can leak flammable fluids into the engine core, which can initiate an engine fire, and lead to one or both fire conditions discussed above.

DATES: This AD is effective June 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 6, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6501; *fax:* 425–917–6590; *e-mail: kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on January 20, 2011 (76 FR 3566). That NPRM proposed to require repetitive inspections for hydraulic fluid contamination of the interior of the strut disconnect assembly; repetitive inspections for discrepancies of the interior of the strut disconnect assembly, if necessary; repetitive inspections of the exterior of the strut disconnect assembly for cracks, if necessary; and corrective action if necessary. That NPRM also provided an optional terminating action for the inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing concurs with the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 53 airplanes of U.S. registry. We also estimate that it takes about 48 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts cost about $122,617 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,714,941, or $122,697 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–11 The Boeing Company: Amendment 39–16673; Docket No. FAA–2011–0026; Directorate Identifier 2010–NM–104–AD.

Effective Date

(a) This AD is effective June 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category; equipped with Pratt and Whitney engines; as identified in Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD was prompted by reports of system disconnect boxes that have been contaminated with hydraulic fluid, in which one case a crack was found. We are issuing this AD to detect and correct hydraulic fluid contamination, which can cause cracking of titanium parts in the system disconnect assembly, resulting in compromise of the engine firewall. A cracked firewall can allow fire in the engine area to enter the strut and can lead to an uncontained engine strut fire if flammable fluid is present. Cracking of the disconnect box may also reduce the effectiveness of the fire extinguishing system in the engine compartment and could contribute to an uncontained engine fire. In addition, a cracked disconnect box can leak flammable fluids into the engine core, which can initiate an engine fire and lead to one or both fire conditions discussed above.

Compliance

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

Inspections and Corrective Actions

(g) Within 12 months after the effective date of this AD: Do a general visual inspection for hydraulic fluid contamination of the interior of the strut disconnect assembly, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(1) For airplanes on which no hydraulic fluid contamination is found (Condition 1): Repeat the general visual inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 750 days, whichever occurs first.

(2) For airplanes on which hydraulic fluid contamination is found (Condition 2): Before further flight, do a detailed inspection for discrepancies (e.g., hydraulic fluid coking, heat discoloration, cracks, and etching or pitting) of the interior of the strut disconnect assembly, in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(i) For airplanes on which no discrepancy is found during the inspection required by paragraph (g)(2) of this AD (Condition 2A): Repeat the detailed inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 750 days, whichever occurs first.

(ii) For airplanes on which hydraulic fluid coking or heat discoloration is found but no cracking, etching, or pitting is found during the inspection required by paragraph (g)(2) of this AD (Condition 2B): Do the actions required by paragraph (g)(2)(ii)(A) and (g)(2)(ii)(B) of this AD.

(A) Within 300 flight cycles after doing the inspection required by paragraph (g)(2) of this AD: Do a detailed inspection of the exterior of the strut disconnect assembly for cracks, in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; and repeat the detailed inspection thereafter at intervals not to exceed 300 flight cycles.

(B) Within 6,000 flight cycles or 750 days after hydraulic fluid coking and/or heat discoloration was found during the inspection required by paragraph (g)(2) of this AD, whichever occurs first: Replace the titanium system disconnect assembly with an Inconel system, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(h) For airplanes on which any crack, etching, or pitting is found during any inspection required by paragraph (g)(2) or (g)(2)(ii)(A) of this AD (Condition 3): Before further flight, replace the titanium system disconnect assembly with an Inconel system, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

Optional Terminating Action

(i) Replacing the titanium system disconnect assembly with an Inconel system disconnect assembly in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010, terminates the actions required by this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 777–54A0024, dated April 1, 2010, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(l) For more information about this AD, contact Kevin Nguyen, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6501; fax: 425–917–6590; *e-mail: kevin.nguyen@faa.gov.*

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010, 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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9674 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0035; Directorate Identifier 2010–NM–110–AD; Amendment 39–16672; AD 2011–09–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–601, B4–603, B4–605R, C4–605R Variant F, and F4–605R Airplanes, and A310–204 and –304 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) originated 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:

> Airbus, in the frame of the Extended Service Goal (ESG) exercise, has demonstrated by post-certification analysis that, among the types of yokes in service, one component on the CF6–80C2 forward engine mounts (skinny cast yoke) does not meet the Design Service Goal (DSG) requirements. This condition, if not corrected, could result in a deterioration of the structural integrity of the forward engine mount.

* * * * *

The unsafe condition is possible separation of the engine from the engine mount during flight. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 6, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 6, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 February 1, 2011 (76 FR 5507). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Airbus, in the frame of the Extended Service Goal (ESG) exercise, has demonstrated by post-certification analysis that, among the types of yokes in service, one component on the CF6–80C2 forward engine mounts (skinny cast yoke) does not meet the Design Service Goal (DSG) requirements.
> This condition, if not corrected, could result in a deterioration of the structural integrity of the forward engine mount.
> For the reasons described above, this AD requires operators to [perform an inspection to determine the part number of the forward engine mount skinny cast yokes,] perform a one time [detailed] inspection [for rupture] of the forward engine mount skinny cast yokes Part Number (P/N) 9383M43G08, 9383M43G09, 9383M43G10 and 9383M43G11 of GE CF6–80C2 powered aeroplanes and to replace the affected skinny cast yokes with forged yokes.
> Upon replacement of the skinny cast yoke, the General Electric CF6–80C2 Service Bulletin (SB) 72–0222 [installation of a redesigned forward engine mount system] must be completed as a prerequisite.

The unsafe condition is possible separation of the engine from the engine mount during flight. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. FedEx supports the NPRM.

Conclusion

We reviewed the available data, including the comment received, 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 our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 53 products of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $45,050, or $850 per product.

In addition, we estimate that any necessary follow-on actions would take about 608 work-hours and require parts costing $322,000, for a cost of $373,680 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

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

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

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

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

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

We prepared a 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://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) 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:

2011–09–10 Airbus: Amendment 39–16672. Docket No. FAA–2011–0035; Directorate Identifier 2010–NM–110–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–605R, C4–605R Variant F, and F4–605R airplanes, and A310–204 and –304 airplanes; certificated in any category; powered by General Electric Model CF6–80C2 engines.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

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

Airbus, in the frame of the Extended Service Goal (ESG) exercise, has demonstrated by post-certification analysis that, among the types of yokes in service, one component on the CF6–80C2 forward engine mounts (skinny cast yoke) does not meet the Design Service Goal (DSG) requirements.

This condition, if not corrected, could result in a deterioration of the structural integrity of the forward engine mount.

* * * * *

The unsafe condition is possible separation of the engine from the engine mount during flight.

Compliance

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

Inspection and Corrective Actions

(g) Within 400 flight cycles after the effective date of this AD, for each engine, inspect to determine the part number of the forward engine mounting yoke, in accordance with Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the yoke can be conclusively determined from that review.

(1) If the inspection required in paragraph (g) of this AD finds any mounting yoke is a skinny cast yoke having part number (P/N) 9383M43G08, 9383M43G09, 9383M43G10, or 9383M43G11, do a detailed inspection of the yoke to determine if it is ruptured, in accordance with Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable.

(i) If the mounting yoke is ruptured, before further flight, repair in accordance with a method approved by the FAA or the European Aviation Safety Agency (EASA) or its delegated agent.

(ii) If the mounting yoke is not ruptured, within 7,000 flight cycles after the effective date of this AD replace the skinny cast yoke with a forged yoke, in accordance with Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable.

(2) At the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, report to Airbus the findings of the inspection required by paragraph (g)(1) using Appendix 02 and Appendix 03, as applicable, of Airbus All Operators Telex A300–71A6029 or A310–71A2036, both dated March 30, 2010, as applicable. Send the report to Laure Dupland, SEEE3; Customer Services; telephone +33 (0)5 61 18 20 24; fax +33 (0)5 61 93 36 14; e-mail *laure.dupland@airbus.com*.

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

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

(h) Prior to or concurrent with the actions required by paragraph (g)(1)(ii) of this AD, install a redesigned forward engine mount system in accordance with the Accomplishment Instructions of GE CF6–80C2 Service Bulletin 72–0222, Revision 4, dated February 29, 2000.

(i) As of the effective date of this AD, do not install any forward engine mount skinny cast yoke having P/N 9383M43G08, 9383M43G09, 9383M43G10, or 9383M43G11, on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments

concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0066, dated April 21, 2010; and the service information identified in table 1 of this AD; for related information.

TABLE 1—SERVICE INFORMATION

Service information	Revision	Date
Airbus All Operators Telex A300–71A6029	Original	March 30, 2010.
Airbus All Operators Telex A310–71A2036	Original	March 30, 2010.
GE CF6–80C2 Service Bulletin 72–0222	4	February 29, 2000.

Material Incorporated by Reference

(l) You must use the service information contained in table 2 of this AD, as applicable, 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 Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision	Date
Airbus All Operators Telex A300–71A6029, including Appendices 01, 02, 03, and 04	Original	March 30, 2010.
Airbus All Operators Telex A310–71A2036, including Appendices 01, 02, 03, and 04	Original	March 30, 2010.
GE CF6–80C2 Service Bulletin 72–0222	4	February 29, 2000.

Issued in Renton, Washington, on April 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–9678 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1207; Directorate Identifier 2010–NM–140–AD; Amendment 39–16680; AD 2011–09–18]

RIN 2120–AA64

Airworthiness Directives; Dassault-Aviation Model FALCON 7X 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) originated 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:

Following investigation of an in service event, it has been determined that in case a short circuit occurs on a weight-on-wheels (WOW) proximity sensor wiring, both circuit breakers that supply power to that wiring will trip, causing simultaneous de-power of all WOW proximity sensors of that part of the system. The loss of the corresponding WOW information would lead to untimely inhibition of warnings that could compromise the pilot capacity to react to abnormal or failure landing conditions.

* * * * *

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

DATES: This AD becomes effective June 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 6, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

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 December 30, 2010 (75 FR 82327). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Following investigation of an in service event, it has been determined that in case a short circuit occurs on a weight-on-wheels (WOW) proximity sensor wiring, both circuit breakers that supply power to that wiring will trip, causing simultaneous de-power of all WOW proximity sensors of that part of the system. The loss of the corresponding WOW information would lead to untimely inhibition of warnings that could compromise the pilot capacity to react to abnormal or failure landing conditions.

This AD requires the modification of the WOW System to improve its robustness against short circuit of the proximity sensors wiring by adding dedicated fuses to each

WOW proximity sensor, in accordance with Dassault Aviation Service Bulletin (SB) F7X–065.

You may obtain further information by examining the MCAI in the AD docket.

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 our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 21 products of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 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 $16,065, or $765 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a 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://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) 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:

2011–09–18 Dassault-Aviation: Amendment 39–16680. Docket No. FAA–2010–1207; Directorate Identifier 2010–NM–140–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault-Aviation Model FALCON 7X airplanes, certificated in any category; except those having incorporated modification M1031.

Subject

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

Reason

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

Following investigation of an in service event, it has been determined that in case a short circuit occurs on a weight-on-wheels (WOW) proximity sensor wiring, both circuit breakers that supply power to that wiring will trip, causing simultaneous de-power of all WOW proximity sensors of that part of the system. The loss of the corresponding WOW information would lead to untimely inhibition of warnings that could compromise the pilot capacity to react to abnormal or failure landing conditions.

* * * * *

Compliance

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

Installation

(g) Within 27 months after the effective date of this AD, or within 1,800 flight hours after the effective date of this AD, whichever occurs first, install dedicated fuses on WOW proximity sensors, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–065, dated July 24, 2009.

FAA AD Differences

Note 1: 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, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be e-mailed to: 9–ANM–116–AMOC–REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0031, dated March 3, 2010; and Dassault Mandatory Service Bulletin 7X–065, dated July 24, 2009; for related information.

Material Incorporated by Reference

(j) You must use Dassault Mandatory Service Bulletin 7X–065, dated July 24, 2009, 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10138 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0386; Directorate Identifier 2010–NM–115–AD; Amendment 39–16679; AD 2011–09–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–200, –300, –500, and –600 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that supersedes an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) originated 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:

* * * * *

The revision 01 of Airbus A340 ALS [Airworthiness Limitations section] Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is a safety-significant latent failure that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 17, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 17, 2011.

On January 27, 2010 (75 FR 1538, January 12, 2010), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD.

We must receive comments on this AD by June 16, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On December 23, 2009, we issued AD 2010–01–07, Amendment 39–16165 (75 FR 1538, January 12, 2010). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2010–01–07, we have determined that more restrictive limitations are necessary. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0047, dated March 19, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The airworthiness limitations are currently distributed in the Airbus A340 Airworthiness Limitations Section (ALS).

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A340 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 01 of Airbus A340 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

This new AD retains the requirements of EASA AD 2009–0098 [which corresponds to FAA AD 2010–01–07], which is superseded, and requires the implementation of the new or more restrictive maintenance requirements

and/or airworthiness limitations as specified in Airbus A340 ALS Part 3 revision 01.

The unsafe condition is a safety-significant latent failure that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. This AD requires revising the maintenance program by incorporating new and revised CMRs. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, including Appendices 1 and 2, dated December 15, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0386; Directorate Identifier 2010–NM–115–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16165 (75 FR 1538, January 12, 2010) and adding the following new AD:

2011–09–17 Airbus: Amendment 39–16679. Docket No. FAA–2011–0386; Directorate Identifier 2010–NM–115–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 17, 2011.

Affected ADs

(b) This AD supersedes AD 2010–01–07, Amendment 39–16165.

Applicability

(c) This AD applies to Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes; certificated in any category; all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected

structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Subject

(d) Air Transport Association (ATA) of America Code 05: Periodic Inspections.

Reason

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

* * * * *

The revision 01 of Airbus A340 ALS [Airworthiness Limitations section] Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is a safety-significant latent failure that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

Compliance

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

Restatement of Requirements of AD 2010–01–07, With No Changes

Revise the ALS of the Instructions for Continued Airworthiness (ICA)

(g) Unless already done, within 3 months after January 27, 2010 (the effective date of AD 2010–01–07), revise the ALS of the Instructions for Continued Airworthiness by incorporating Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008. Accomplish the actions specified in the Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008, at the times specified in the Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008; and in accordance with the Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008; except as provided by paragraphs (g)(1) and (g)(2) of this AD, and except as required by paragraph (h) of this AD.

(1) Count the associated interval for any new task from January 27, 2010, except that Airbus A340 CMR Task 212100–00001–1–C must be performed at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Before the accumulation of 2,600 total flight hours since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness.

(ii) Within 800 flight hours or 3 months, whichever comes first, after the approval date of the Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008.

(2) Count the associated interval for any revised task from the previous performance of the task.

(3) Doing the revision required by paragraph (g) of this AD terminates the requirements of paragraph (f) of AD 2007–05–08, Amendment 39–14969, for that airplane only.

New Requirements of This AD

Revise the Maintenance Program

(h) Within 3 months after the effective date of this AD, revise the maintenance program by incorporating Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated December 15, 2009. The initial compliance times for the actions specified in Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated December 15, 2009, are at the later of the times specified in the Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated December 15, 2009, or within 3 months after the effective date of this AD. Doing the revision required by this paragraph terminates the requirements of paragraph (g) of this AD for that airplane only.

No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used, other than those specified in Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated December 15, 2009, unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0047, dated March 19, 2010, specifies both revising the maintenance program to include airworthiness limitations, and doing certain repetitive actions (e.g., inspections) and/or maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(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.

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0047, dated March 19, 2010; Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, dated July 31, 2008; and Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated December 15, 2009; for related information.

Material Incorporated by Reference

(l) You must use Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, including Appendices 1 and 2, dated July 31, 2008; and Airbus A340 ALS, Part 3—CMR, Revision 01, including Appendices 1 and 2, dated December 15, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (The title page of Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, including Appendices 1 and 2, dated December 15, 2009, does not specify a revision date; the revision date is specified on all other pages of this document. Only the title page and Record of Revisions specify the revision level of this document.)

(1) The Director of the Federal Register approved the incorporation by reference of Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, including Appendices 1 and 2, dated December 15, 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus A340 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 00, including Appendices 1 and 2, dated July 31, 2008, on January 27, 2010 (75 FR 1538, January 12, 2010).

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; e-mail: *airworthiness.A330–A340@airbus.com;* Internet: *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by

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

Issued in Renton, Washington, on April 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10137 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Adjudication and Enforcement

AGENCY: U.S. International Trade Commission.

ACTION: Final rule.

SUMMARY: The U.S. International Trade Commission is adopting a rule amendment revising a certain provision of the agency's rule for investigations and related proceedings under section 337 of the Tariff Act of 1930. The Supplement to the Strategic Human Capital Plan 2009–2013 issued by the Commission on January 18, 2011, provides that the Office of Unfair Import Investigations ("OUII") will not participate in a subset of Section 337 cases and will participate selectively in another subset of cases. In order to better allocate its resources, OUII may have to assign attorneys to investigations on an issue by issue basis. The rule amendment will allow OUII the flexibility to reassign attorneys to cases as necessary without having to publish notices announcing the change in the **Federal Register**. The new rule will have no substantive effect on Commission practice in conducting Section 337 investigations.

DATES: *Effective date:* May 2, 2011.

Applicability Date: The Commission will adopt procedures to implement the rule change on May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., telephone 202–708–2301, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons is advised that information on the final rulemaking can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission is adopting the following rule amendment as a final rule.

Regulatory Analysis

The Commission has determined that the final rule does not meet the criteria described in Section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus does not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of final rulemaking, the regulation is an "agency rule of procedure and practice," and thus is exempt from the notice requirement imposed by 5 U.S.C. 553(b).

This final rule does not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, it is exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because it concerns a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

The amendment is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since it does not contain any new information collection requirements.

List of Subjects in 19 CFR Part 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

The United States International Trade Commission amends 19 CFR part 210 as follows:

PART 210—ADJUDICATION AND ENFORCEMENT

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

■ 2. In § 210.3 revise the definition of "Party" to read as follows:

210.3 Definitions.

* * * * *

Party means each complainant, respondent, intervenor, or the Office of Unfair Import Investigations.

* * * * *

By Order of the Commission.

Issued: April 27, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–10552 Filed 4–29–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 207

[Docket No. FR–5393–F–02]

RIN 2502–A195

HUD Multifamily Rental Projects: Regulatory Revisions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends certain Federal Housing Administration (FHA) regulations to update these regulations to reflect current HUD policy in the area of multifamily rental projects. On November 12, 2010, HUD published proposed regulations to remove outdated regulatory language and policies and to reflect proposed changes in FHA's multifamily rental project closing documents, issued for comment in January 2010, and again in December 2010. The issuance of revised multifamily rental project closing documents for public comment and corresponding regulatory changes first commenced in 2004, but was not completed.

This final rule follows the November 12, 2010 proposed rule, and takes into consideration public comments received on the November 2010 proposed rule, as well as certain comments received on HUD's issuance of further revised multifamily rental project closing documents made available for public comment by notice published on December 22, 2010. Neither the closing documents issued for comment in

January 2010 and December 2010, nor this final rule include changes affecting closing documents or regulations for healthcare facilities, nursing homes, intermediate care facilities, board and care homes, and assisted living facilities.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: John Daly, Associate General Counsel for Insured Housing, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500; telephone 202–708–1274 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

By notice published in the **Federal Register** on January 21, 2010 (75 FR 3544), HUD started anew the process for updating the multifamily rental project closing documents (closing documents), a process that first commenced with issuance of a notice published on August 2, 2004 (69 FR 46214).[1] The majority of these documents, as explained in both the 2004 and 2010 notices, had not been revised in years and needed updating to ensure that the documents are consistent with modern real estate and lending laws.

HUD recognized that in updating its closing documents corresponding changes would need to be made to certain HUD regulations. Therefore, the update effort that commenced in 2004 included an August 2, 2004 proposed rule (69 FR 46210) to update certain FHA regulations. The August 2004 proposed rule served as the basis for HUD's 2010 proposed update of regulations published on November 12, 2010 (75 FR 69363), and took into consideration public comments received in response to the 2004 proposed rule. The November 2010 proposed rule also took into consideration public comments that affected HUD's regulations. Those comments were received in response to the January 21, 2010 solicitation of public comment on HUD's proposed closing documents.[2]

In addition to the amendments proposed in 2004, the amendments offered in the November 12, 2010 proposed rule contained a change to the definition of "eligible mortgagor". The November 2010 rule proposed that an eligible mortgagor must be a single asset owner. The amendments to this definition also included removing provisions allowing natural persons and tenants in common to serve as eligible mortgagors.

In response to comments on the 2004 proposed rule, HUD also proposed a shift in the imposition of the charge imposed on late payments from 15 to 10 days. Commenters on the 2004 proposed rule had suggested that standardizing the time when the late fee applies would facilitate compliance by Government National Mortgage Association (Ginnie Mae) issuers with their obligation to make payments to investors.

Further, HUD proposed a revision to the security instrument (HUD 94000M) in the update of the closing documents. As in the 2004 proposed regulatory revisions, the changes proposed in the November 2010 proposed rule included a two-tiered default structure, a "Monetary Event of Default," for financial defaults, which would give the Lender an immediate right to an insurance fund claim, and a second class of defaults, a "Covenant Event of Default" for all other bases for default. In the "Covenant Event of Default," HUD's prior written approval would be required for the lender to make a claim on the insurance fund. Once a monetary default exists under the security instrument and continues for a minimum period of 30 days, the Lender would become eligible to receive mortgage insurance benefits.

HUD further proposed amending insurance claim requirements to provide, consistent with existing HUD practice and policy, that the mortgagee request a three-month extension of the 45-day deadline prescribed by the regulations in § 207.258 for a mortgage funded with the proceeds of state or local bonds, Ginnie Mae securities, or other bond obligations specified by HUD, any of which contains a lock-out or penalty provision.

HUD also proposed adding a new provision that would effectively allow the Commissioner to incentivize the mortgagee to accelerate payment of the outstanding principal balance due under an insured mortgage when the mortgagee does not comply promptly with the Commissioner's request to accelerate. In such cases, mortgage insurance benefits, if requested, would be reduced by an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value on the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

II. This Final Rule—Overview of Significant Changes

This section presents a brief overview of key changes made at this final rule stage based on consideration of issues raised by the commenters in response to the November 2010 proposed rule, and HUD's own further consideration of issues related to regulations corresponding to changes made in the closing documents. In this final rule:

- HUD modified the definition of "eligible mortgagor" to allow a non-single asset entity to be an eligible mortgagor under certain terms and conditions determined acceptable to the Commissioner. However, no regulatory exception is provided for natural persons and tenants in common.
- HUD modified its proposal to allow cash flow generated during a workout to be used once a default has been cured.
- HUD modified its insurance claim requirements to allow the mortgagee to file its application for insurance benefits based on HUD's acknowledgement of the mortgagee's election to assign.
- HUD provides that application of the regulations promulgated by this final rule and use of the corresponding updated closing documents will not be mandatory until September 1, 2011; that is, the new regulations and updated closing documents will apply to a firm commitment for mortgage insurance issued by HUD on or after September 1, 2011. The updated closing documents have completed review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and the announcement of OMB approval and the assignment of an OMB control number is published elsewhere in today's **Federal Register**. With a September 1, 2011, effective date, HUD is providing a four-month transition period before the new regulations and updated closing documents become applicable. The regulations allow for application of the regulations and use of corresponding updated closing

[1] The update of the closing documents that commenced in 2004 and which was restarted in 2010 does not include an update of HUD's healthcare closing documents.

[2] In soliciting public comment on closing documents, HUD not only sought input from industry and interested members of the public on HUD's proposed changes to closing documents, but commenced the process for approval of documents required by the Paperwork Reduction Act of 1995. In accordance with this act, HUD issued two notices for public comment: One published on January 21, 2010 (75 FR 3544), and the second on December 22, 2010 (75 FR 80517). With each notice, HUD made the closing documents available for review, in clean form, and redline/strikeout form on HUD's Web site.

documents in effect prior to September 1, 2011, to be used after September 1, 2011, in the case of a borrower that demonstrates to the satisfaction of the Commissioner that financial hardship would result to the borrower from application of the regulations and use of the closing documents that become effective September 1, 2011.

In addition to the foregoing changes, commenters and other interested members of the public will see that many of the commenters' requests for changes are addressed in the final versions of the closing documents posted on HUD's Web site.

For example, in commenting on HUD's proposed changes to the closing documents and the regulations, parties expressed concern about the applicability of new requirements that HUD would impose after the multifamily rental project transaction had closed. Commenters expressed concern that such requirements would be applied to existing borrowers, and, without appropriate notice or time to transition to new requirements, such new requirements might have an adverse economic effect on the operation of a project. In response to this concern, HUD, in appropriate places in several of the closing documents, included the term "program obligations" to clarify the process by which HUD issues new requirements that program participants will be required to meet. The definition clarifies that notice and comment rulemaking is followed for any requirements that would be subject to such procedures. In essence, HUD makes explicit that it will follow the applicable procedures, as directed by statute or regulation, which govern issuance of a document that would announce new binding requirements, policies, processes, forms, or standards to which parties to the closing documents must comply. The definition further clarifies that changes to HUD handbooks, guides, notices and mortgagee letters shall be applicable to a project only to the extent that these changes interpret, clarify and implement terms in the relevant loan document.

Because this rule is not making changes related to HUD's healthcare programs, for the following regulations, the wording of the regulatory change is presented in a manner that clarifies that the regulatory change is not applicable to FHA's healthcare programs: §§ 200.5,[3] 200.255, 207.256b, and 207.259.

III. Discussion of Public Comments

The public comment period on the November 12, 2010, proposed rule closed on December 13, 2010. HUD received 13 comments. This section presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's response to these issues, questions and suggestions.

Eligible Mortgagor (24 CFR 200.5)

Comment: Two commenters stated that incorporating requirements into regulations, which can be handled administratively, was not necessary. For example, they stated that incorporation of the term single asset entity, which is in the closing documents, into regulatory language was unnecessary. They further suggested that HUD allow waiver from the single asset requirement for natural persons, tenants in common, and trusts. The commenters also suggested that, like the single asset requirement itself, a waiver process should be established at the administrative level, rather than the regulatory level, as it would be a more efficient use of agency resources.

HUD Response: The definition of "eligible mortgagor" has long been in regulations. The entity requirement is part of that definition and therefore needs to be part of the regulation. HUD further notes that the single asset entity form of ownership has become the standard form of ownership for commercial real estate transactions, and it is therefore an important change for HUD to convey in regulations.

However, HUD agrees with commenters that there should be some flexibility. HUD recognizes that in certain instances, perhaps in the situation of trusts, the Commissioner may choose to allow other entities to qualify as mortgagors. Thus, the regulations provide that except under circumstances, terms and conditions, approved by the Commissioner, mortgagors shall be a single asset mortgagor entity acceptable to the Commissioner, as limited by the applicable section of the Act,[4] and shall possess the powers necessary and incidental to operating the project. Single asset entities shall not be natural persons and tenancies in common. The regulation does not contemplate any circumstances in which an exception to the prohibition on natural persons and tenancies in common would be made and consequently does not include exception language.

As noted in the proposed rule, ownership by an individual has been largely abandoned by the commercial lending industry, and is used in extremely limited circumstances in the Fannie Mae and Freddie Mac multifamily insurance programs. In their discussion of natural persons as eligible borrowers, commenters expressed concern that natural persons would be dissuaded from seeking refinancing of projects because certain states would impose transfer taxes if project ownership was converted from a natural person into a single asset structure. HUD finds that state tax avoidance is not an acceptable rationale to adopt this change at the final rule stage, and that natural persons can create a single asset ownership structure to participate in the program.

HUD is further concerned that ownership by natural persons would allow creditors to reach the assets of the insured project. That could occur for example, if the natural person were to declare bankruptcy. HUD therefore declines to adopt the recommendation.

In addition, several commenters suggested that HUD allow properties to be held by tenants-in-common (TIC), a fractional form of ownership. One commenter noted that it was customary for properties financed with commercial mortgage backed securities in the late 1990s and early 2000s to be established as special purpose entities in the operating agreements for tenants in common borrowers. The commenter stated that if the ownership entity was structured as a single member limited liability company, where the operating agreement for each tenant in common can provide that its sole purpose is to own an undivided tenant in common interest in the specific project, both the concerns of the Internal Revenue Service (IRS) and HUD could be satisfied.

HUD notes, as mentioned previously, that commenters stated that Fannie Mae and Freddie Mac had established criteria for TIC properties. Their comment suggests that alternative financing is available from those sources, and Fannie Mae and Freddie Mac will be able to meet those market needs. Consequently, HUD believes financing is available for those borrowers who choose the TIC structure. While Fannie Mae and Freddie Mac may accommodate these types of borrowers to facilitate, for example, like kind exchanges, HUD notes that FHA's financing requirements (non-recourse, single-asset mortgagor entity) and asset management capabilities are different

[3] The revision to § 200.88 made by this final rule does not address late charges for hospital insurance payments as those fees are separately addressed in § 242.38, which is not being revised by this rule.

[4] A mortgagor is defined in section 201(b) of the National Housing Act (12 U.S.C. 1707(b)).

from Fannie Mae and Freddie Mac. Although FHA does adopt some requirements comparable to those of Fannie Mae and Freddie Mac, FHA also includes additional measures essential to support FHA's different program requirements. Tailoring FHA's standardized documents for individual transactions, for example, which would be required for TIC borrowers, is inconsistent with HUD's goal of developing uniform documents and streamlining the underwriting process.

Commenters further stated that foreclosing availability of FHA insurance as an option under this regulation for tenants in common borrowers will have an adverse economic impact on the borrower and result in restructuring that will have unfavorable tax implications for the borrowers. As previously noted for borrowers who are natural persons, HUD does not consider tax avoidance a strong reason for HUD to accommodate a regulatory change.

HUD further notes that the structure contemplated by the IRS is insufficient in any case to meet HUD's enforcement needs. From HUD's perspective, it is difficult to identify the particular responsible party among the many fractional owners in a tenants in common structure which could serve as a contact for HUD. This ownership issue arises in attempts to identify the responsible party who would be furnishing financial statements. Moreover, identification of the responsible party would be exacerbated when enforcement issues arise, such as failure to comply with HUD Program Obligations regarding property maintenance, and a party must be designated to implement remedies.

Defaults for Purposes of Insurance Claim (Two-Tiered Default) (24 CFR 207.255)

Comment: Two commenters suggested removing the references to "Covenant Event of Default" and "Monetary Event of Default" in the regulation. Commenters on the November 12, 2010, proposed rule suggested that the terms "Monetary Event of Default" and "Covenant Event of Default" were not accurate descriptions of the processes that were set forth in the closing documents

HUD Response: HUD declines to adopt the commenters' recommendations. HUD's regulation, prior to amendment by this rule, addressed only monetary defaults. In the August 2, 2004, proposed rule and accompanying documents, HUD first proposed the two tiered default system. That 2004 two tiered system proposed a category of defaults for financial, or monetary, defaults, and a category of defaults for all other bases for default.

Commenters on the regulatory and document changes which were proposed in 2004, specifically suggested labeling these categories of defaults "Monetary Events of Default" and "Covenant Events of Default." HUD agreed with this suggestion and adopted this terminology in its January 21, 2010, notice describing these categories of default, but did not use the terminology in the closing documents proposed on January 21, 2010.

HUD's position is that it is important to distinguish between these two categories of defaults, and that the regulatory changes proposed on November 12, 2010, and the document changes proposed on December 22, 2010, make such distinction. The terms are accurate descriptions of the categories of default under the revised Security Instrument posted on HUD's Web site in connection with the publication of the December 22, 2010, notice. In that revision, a "Monetary Event of Default" occurs when a borrower fails to make a payment required by the Note or Security Instrument. The "Covenant Event of Default" includes material failures by the borrower to perform any obligations under the Security Instrument. In addition, the Security Instrument provides additional detail specifying the circumstances and specific actions which will constitute a Covenant Event of Default.

Monetary Event of Default

Comment: Commenters suggested clarifying the date of default for monetary defaults and coordinating it with the Security Instrument. A commenter stated in particular that the regulatory language provides that if a default continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage. The commenter suggested that the regulatory language be revised to make the period of default in the regulation consistent with the language in the Security Instrument. The language would thus provide that the 30 day time period in the regulations is coterminous with the 30 day grace period that exists under the Security Instrument and the Note, and is not sequential to that grace period.

HUD Response: HUD agrees with the commenters' suggestion and the final versions of the Security Instrument and Note have been revised accordingly. Both the regulation and the Security Instrument provide that if the default is not cured within 30 days, then the lender will be able to accelerate. HUD believes that the change clarifies the date of default for monetary default.

Covenant Event of Default

Comment: Commenters suggested that the regulation include language in the date of default for covenant events of default to refer to grace periods established in the Security Instrument.

HUD Response: The Security Instrument specifies several bases for default, e.g. fraud, material misrepresentation, or the commencement of a forfeiture action, which cannot be cured retroactively. Therefore, providing a grace period for a cure is impractical. For example, one "covenant event of default" provides that a fraudulent or material misrepresentation in the loan application constitutes a "covenant event of default" under which the lender can exercise its right to declare a default under the Security Instrument. Since such a past misrepresentation cannot be cured, providing a 30 day cure period is infeasible. Consequently, the recommended regulatory language change cannot, as a practical matter, be implemented.

Comment: Commenters proposed additional clarifying language to specifically refer to the Regulatory Agreement as a basis for default, which they submitted would effectively implement HUD's right to direct the lender to accelerate the default upon a Declaration of Default by HUD under the Regulatory Agreement.

HUD Response: The commenters should find that their concerns are addressed in the version of the Security Instrument and Regulatory Agreement posted on HUD's Web site (at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments*) in connection with publication of the December 22, 2010, notice. HUD's rights have been modified in those documents. As noted in an earlier response, several specific bases for default related to the Regulatory Agreement are included in the Security Instrument. Moreover, Section 9 of the revised Security Instrument specifically states that the Regulatory Agreement is incorporated and made a part of the Security Instrument. Further, Section 9 specifically states that upon Default of the Regulatory Agreement and upon the request of HUD, the lender, at its option may declare the whole of the Indebtedness to be due and payable. Further, under the revised Regulatory Agreement, HUD notifies the holder of the Note of a default under the

Regulatory Agreement and the holder of the Note has discretion as to whether the note is to be declared due and payable and thereafter proceed with either (1) foreclosure of the Security Instrument, or (2) assignment of the Note and Security Instrument to HUD as provided in Program Obligations. Therefore, under this scenario, HUD is not declaring the default, but is notifying the lender, who will make the determination of default.

Comment: Commenters suggested revising the default process to eliminate the 30 day period for eligibility of the Lender to receive mortgage insurance benefits in the case of a default. Through this proposal, the commenters appear to seek to abbreviate the time period for an assignment in the event HUD directs the lender to accelerate due to a violation of the Regulatory Agreement, which is consistent with HUD directing the lender to accelerate the debt.

HUD Response: HUD declines to adopt this recommendation. Under the revised Regulatory Agreement, and as noted in an earlier response, the lender will not be subject to HUD's direction, but will have the authority to accelerate the debt on its own behalf.

Comment: A commenter suggested adding a materiality standard for the covenant event of default in the Regulatory Agreement, because "waste" is not defined in the regulations.

HUD Response: HUD believes that commenters were concerned that HUD would be exercising its authority to direct the lender to accelerate based on small infractions or minor, de minimis technicalities. HUD has addressed the commenter's concerns in the contractual documents that implement the program. Under the revised documents, HUD has included a definition of waste.[5] Also, HUD is not retaining the right to exercise the option of foreclosing based on such de minimis issues. The lender now has the authority to commence the acceleration process. HUD therefore believes that the flexibility provided to Lenders to determine when to commence the acceleration process is sufficient to address commenters' concerns. Because the responsibility now lies with the lender, which has flexibility and is more knowledgeable about the situation, the dynamic has changed. The lender is, in fact less likely to accelerate since they are likely to have more substantial information than HUD.

Modification of Mortgage Terms (24 CFR 207.256b)

Comment: A commenter suggested including language which would make it clear that the requirement that the cash flow generated during a work-out be held "in trust for disposition, as directed by the Commissioner" no longer apply when the default has been cured. Commenters stated that the language would delay modification, and suggested addition of a clarifying phrase specifying that the Commissioner's approval for disposition of the cash would not be required when the default has been cured.

HUD Response: HUD has included the clarifying language suggested by the commenter.

Commissioner's Right to Require Acceleration (24 CFR 207.257)

Comment: One commenter stated that there should be no mandatory acceleration.

HUD response: The regulation does not require mandatory acceleration, but reserves to HUD the right to require the mortgagee to accelerate.

Comment: A commenter recommended replacing the term "amortization charges" with the term "payments," on the grounds that the term "amortization charges" is not defined in the regulation and does not have a commonly understood meaning. For example, the term could mean principal and interest payments or principal amortization payments or something else, and, in any event, would not include payments into escrows for taxes, insurance, etc. as required under the mortgage.

HUD Response: HUD made a change in punctuation to the language that caused the commenter's confusion. The change adopted in the final rule clarifies that "amortization charges" is not an umbrella term in the regulatory provision.

Mortgagee Notice of Election To Assign for Insurance Benefits (24 CFR 207.258)

Comment: The regulations now codified, which can be found at 24 CFR 207.258(a), establish the timing for a mortgagee to either file an insurance claim or elect to assign the mortgage to the Commissioner (referred to as a Notice of Election). The regulatory language proposed in the November 2010 rule provides that the lender must, within 45 days after the date of eligibility, notify the Commissioner of its intention to (1) File a claim, (2) elect to assign, or (3) acquire and convey title. If the mortgagee elects to assign the mortgage, under 24 CFR 207.258(b), the mortgagee must, within 30 days of its election, file its application for insurance benefits and assign the mortgage. The Commissioner may extend the 30 days in which the mortgagee must file its application for insurance benefits and assign the mortgage if the Commissioner is considering a partial payment of claim. Section 207.258 also provides special treatment for certain projects, *e.g.,* those funded with proceeds of state and local bonds and Ginnie Mae securities.

Commenters contend that the language in § 207.258(a) detailing the "Notice of Election" to file an insurance claim or assign under the authority provided in § 207.258(b) could mean that HUD could actually extend the mortgagees filing of an insurance claim indefinitely,

HUD Response: In response to this concern, HUD added language to § 207.258(a) which provides that the Commissioner may extend the 45 day notice period at the request of the mortgagee. The extension gives mortgagees additional time to develop alternatives. The approval of an extension shall in no way prejudice the mortgagee's right to file a notice of its intention to file an insurance claim and of its election to either assign the mortgage to the Commissioner, or to acquire and convey title to the Commissioner.

Comment: A commenter suggested clarifying that for mortgages funded with the proceeds of state or local bonds, GNMA securities, participation certificates, or other bond obligations which specify a prepayment penalty or lock out, mortgagees should request a three month extension of the deadline for filing notice of the mortgagees' intention to file an insurance claim and the mortgagees' election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate. Commenters suggested that the proposed language does not specify

[5] Section 1 of the Security Instrument, for example, includes the following definition. Waste means a failure to keep the Mortgaged Property in decent safe and sanitary condition and in good repair. During any period in which HUD insures this Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender's and HUD's express written consent, Borrower: (1) Physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value; (2) fails to maintain and repair the Mortgaged Property in accordance with Program Obligations; (3) fails to pay before delinquency any Taxes secured by a lien having priority over this Security Instrument; (4) materially fails to comply with covenants in the Note, this Security Instrument or the Regulatory Agreement respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents.

the length of the required extension of the deadline to assign the mortgage or acquire and convey title. Commenters suggest that such language be included and that this period be three months, as lenders must use their own resources and lines of credit to make monthly payments on outstanding Ginnie Mae securities during the pendency of a default.

HUD Response: HUD revised § 207.258(a) at this final rule stage in part to address the commenters concerns. For "special treatment projects" HUD understands the commenter's concerns and provided the mortgagee with the ability to request a 90 day extension of the deadline for filing the notice of the mortgagee's intention to file an insurance claim or elect to assign or acquire and convey title, which HUD may further extend at the written request of the mortgagee. This revision will allow mortgagees to develop alternative funding sources and potentially refinance, thus avoiding a claim on the FHA insurance fund.

Comment: A commenter suggested HUD delete language suggesting that Lenders "assist" borrowers to arrange refinancing to cure a default and substitute "cooperate" with borrowers to obtain refinancing.

HUD Response: HUD declines to adopt this suggestion. It is HUD's position that the lender should actively engage in assisting the borrower with refinancing in order to meet HUD's expectation that lenders will be an active participant in seeking and obtaining refinancing.

Comment: A commenter suggested that HUD revise the language on prepayment penalties, to be consistent with Mortgagee Letter 87–9,[6] and that HUD also revise the language to reflect a "prepayment penalty of one percent or less." The commenter also suggested that HUD modify the Lenders Certificate to delete the term penalty.

HUD Response: HUD has decided to revise the regulatory language to reflect the terminology "prepayment premium" instead of "prepayment penalty." This language change is consistent with the Lender's Certificate posted on HUD's Web site in connection with the December 22, 2010, notice seeking comment on further revised closing documents. However, HUD declines to adopt the recommendation to limit the mortgagees' alternative election requirements to those situations where the "premium" is one percent or less. Mortgagee Letter 87–9 allows prepayment penalties that initially exceed three percent when certain conditions which relate to HUD determinations on the financial viability of the project are met. HUD intends to retain the authority set forth in Mortgagee letter 87–9 and therefore declines the recommendation as such a limitation would unduly restrict the circumstances in which the alternative election process would be used.

Comment: A commenter suggested deleting the requirement that successors and assigns certify that they be bound by the prepayment provisions.

HUD Response: HUD has determined to retain this provision. The notice provided by the certification and the regulation improves the probability that potentially affected parties are aware of this requirement.

Comment: A commenter suggested that HUD delete regulatory language that provides the mortgagee authority to assign the mortgage to HUD within 30 days of the mortgagee's election to assign. HUD has, in practice, provided the mortgagee with a deadline measured from the date of HUD's acknowledgement of the mortgagee's election.

HUD Response: HUD has addressed the commenter's recommendation by revising the proposed rule language to comply with HUD's corresponding process of linking the deadline to the date of HUD's acknowledgement of the request.

Comment: HUD received comments that the industry would not be able to make the changes necessary to adapt their practices to the new loan documents by the May 1, 2011 published transition date:

HUD Response: In acknowledgment of the industry's concerns and the recognition that there are projects already in the pipeline, as noted earlier in this preamble, HUD has established an effective date of September 1, 2011. Application of the regulations promulgated by this final rule and use of the corresponding updated closing documents will be mandatory for all project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011.

IV. Multifamily Rental Projects—Updating of Regulations and Closing Documents

The updating of HUD's multifamily rental project closing documents and corresponding regulations has been an undertaking for many years. Although formal solicitation of public comment on updated closing documents and regulatory revisions commenced with HUD's August 2, 2004, proposed rule (69 FR 46210) and accompanying August 2, 2004, notice (69 FR 46214) providing revised and updated closing documents, the effort to update the closing documents actually began in calendar year 2000. The August 2, 2004, notice providing for revised closing documents noted that updated closing documents were first presented on HUD's Web site in March 2000 (see 69 FR 46214). Through all of these requests for comment over the past 11 years, industry and other interested members of the public have responded to HUD's solicitation for feedback and input and have provided valued information. All of the comments were appreciated by HUD and carefully considered. The many times that HUD has posted updated documents on its Web site for review and comment, not only in clean form but in redline/strikeout form, reflects HUD's desire to be open and transparent with industry about all changes being made, even small editorial changes.

It has taken many years to bring these documents and corresponding regulations up-to-date with current practices in the industry. HUD intends to keep these documents and the corresponding regulations current with industry practices and applicable law. The every-3-year review and solicitation of public comment required by the Paperwork Reduction Act will help keep the closing documents current, and allow for industry and other interested members of the public to once again provide comment and input on changes they believe are important to maintaining the documents up-to-date with current practices.

The updating of the closing documents and corresponding regulations does not only benefit HUD and industry, but meets an important goal of the Administration. On January 18, 2011, President Obama signed Executive Order 13563, entitled "Improving Regulation and Regulatory Review," which was published in the **Federal Register** on January 21, 2011 (76 FR 3822). In this executive order, the President reaffirmed the principles governing regulatory review established by Executive Order 12866, entitled "Regulatory Planning and Review," issued September 30, 1993, and published in the **Federal Register** on October 4, 1993, at 58 FR 51735. The President also, in this executive order, among other things, directed Federal agencies to review existing regulations and to determine if existing regulations are outmoded, ineffective, insufficient or excessively burdensome, and to modify, streamline, expand, or repeal the regulations as may be appropriate.

[6] Mortgagee Letter 87–9 can be found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/87-9ml.txt.*

The updating of outmoded closing documents and corresponding regulations are consistent with the President's executive order.

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule is limited to making certain conforming amendments to FHA regulations that address multifamily rental projects to ensure their consistency with the recent update and revision of the documents used for multifamily rental project closings. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD is amending 24 CFR parts 200 and 207 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. Revise § 200.5 to read as follows:

§ 200.5 Eligible mortgagor.

(a) Except as provided in paragraph (b) of this section, the mortgagor:

(1) Shall be a single asset mortgagor entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project, except that the Commissioner may approve a non-single asset mortgagor entity under such circumstances, terms and conditions determined and specified as acceptable to the Commissioner; and

(2) Shall not be a natural person or tenant in common.

(b)(1) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), the mortgagor shall be a natural person or entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project.

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(1) shall apply.

■ 3. Revise § 200.88 to read as follows:

§ 200.88 Late charge.

(a) The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions, and standards of the Commissioner for each dollar of each payment to interest or principal:

(1) More than 10 days in arrears to cover the expense involved in handling delinquent payments;

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), more than 15 days in arrears to cover the expense involved in handling delinquent payments.

(b) Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

■ 4. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

■ 5. Revise § 207.255 to read as follows:

§ 207.255 Defaults for purposes of insurance claim.

(a)(1) Except as provided in paragraph (b) of this section, the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage (also referred to as a "Monetary Event of Default" in certain mortgage security instruments); or

(ii) A material violation of any other covenant under the provisions of the mortgage, if because of such violation, the mortgagee has accelerated the debt, subject to any necessary HUD approval (also referred to as a "Covenant Event of Default" in certain mortgage security instruments).

(2) For purposes of a mortgagee filing an insurance claim with the Commissioner, the failure of the mortgagor to make any payment due under an operating loss loan or under the original mortgage shall be considered a default under both the operating loss loan and original mortgage.

(3) If a default as defined in paragraphs (a)(1) and (a)(2) of this section continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage, subject to the procedures in this subpart.

(4) For the purposes of paragraph (b) of this section, the date of default shall be:

(i) The date of the first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when those subsequent payments are applied by the mortgagee to the overdue monthly payments in the order in which they became due; or

(ii) The date of the first uncorrected violation of a covenant or obligation for which the mortgagee has accelerated the debt.

(5) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b) shall apply.

(b)(1) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 of the Act (12 USC 1715z–7), the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage; or

(ii) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(2) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(3) If such defaults, as defined in paragraph (b) of this section, continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(4) For the purposes of this section, the date of default shall be considered as:

(i) The date of the first uncorrected failure to perform a covenant or obligation; or

(ii) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

■ 6. Revise § 207.256 to read as follows:

§ 207.256 Notice to the Commissioner of default.

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(a)(3) or (b)(3), the mortgagee must, within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

■ 7. Revise § 207.256a to read as follows:

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

■ 8. Revise § 207.256b to read as follows:

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b)(1) Except as provided in paragraph (b)(2), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as the mortgage continues to be in default, and payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor or mortgagee, as may be appropriate in the particular situation, will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 (12 USC 1715z–7), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(1) of this section shall apply, unless the mortgagor demonstrates to the

satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(1) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(2) shall apply.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

■ 9. Revise § 207.257 to read as follows:

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being apprised of the violation of a covenant, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

■ 10. Amend § 207.258, as follows:

■ a. Revise paragraph (a);

■ b. Redesignate paragraphs (b)(1) through (b)(5) as (b)(2) through (b)(6) respectively;

■ c. Redesignate the introductory text of paragraph (b) as paragraph (b)(1); and

■ d. Revise newly designated paragraph (b)(1), to read as follows:

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* (1) When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(a)(3) or (b)(3), the mortgagee must, within 45 days after the date of eligibility, give the Commissioner notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. Notice of this election must be provided to the Commissioner in the manner prescribed in 24 CFR part 200, subpart B. HUD may extend the notice period at the request of the mortgagee under the following conditions:

(i) The request must be made to and approved by HUD prior to the 45th day after the date of eligibility; and

(ii) The approval of an extension shall in no way prejudice the mortgagee's right to file its notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner or to acquire and convey title to the Commissioner within the 45 day period or any extension prescribed by the Commissioner.

(2) For mortgages funded with the proceeds of state or local bonds, GNMA mortgage-backed securities, participation certificates, or other bond obligations specified by the Commissioner (such as an agreement under which the insured mortgagee has obtained the mortgage funds from third party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule), any of which contains a lock-out or prepayment premium, the mortgagee must, in the event of a default during the term of the prepayment lock-out or prepayment premium (i.e., prior to the date on which prepayments may be made with a premium):

(i) Request a 90-day extension of the deadline for filing the notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate, which HUD may further extend at the written request of the mortgagee;

(ii) Assist the mortgagor in arranging refinancing to cure the default and avert an insurance claim, if the Commissioner grants the requested (or a shorter) extension of notice filing deadline;

(iii) Report to the Commissioner at least monthly on any progress in arranging refinancing;

(iv) Cooperate with the Commissioner in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(v) Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or prepayment premium; and

(vi) After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a)(2) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a)(2) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (a)(2) shall not apply.

(b) *Assignment of mortgage to Commissioner.* (1) *Timeframe; request for extension.*

(i) Except for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 (12 U.S.C. 1715z–7), if the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 days after the date HUD acknowledges the notice of election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.

(ii) The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. A mortgagee may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.

(iii) The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.

(iv) The requirements of paragraphs (b)(2) through (b)(6) of this section shall also be met by the mortgagee.

* * * * *

■ 11. In § 207.259, revise paragraph (b)(2)(iii), and new paragraphs (b)(2)(vi) and (b)(2)(vii) to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(b) * * *

(2) * * *

(iii) The sum of the cash items retained by the mortgagee pursuant to § 207.258(b)(6), except the balance of the mortgage loan not advanced to the mortgagor.

* * *

(vi) Except for multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w) and under section 242 of the Act (12 U.S.C. 1715z–7), when there is a covenant default as defined in

§ 207.255(a)(1)(ii) and a mortgagee refuses to comply promptly with the Commissioner's request to accelerate payment pursuant to § 207.257, an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value as of the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

(vii) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(2)(vi) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(2)(vi) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(2)(vi) shall not apply.

* * * * *

Dated: April 26, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2011–10450 Filed 4–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0287]

Drawbridge Operation Regulation; Mispillion River, Milford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, District Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 1/Rehoboth Blvd Bascule Bridge across the Mispillion River, mile 11.0, at Milford, DE. This deviation allows the bridge to remain in the closed position for two months to accommodate the necessary bridge cleaning and painting of the bridge.

DATES: This deviation is effective from 12 a.m. on May 13, 2011 through 11:59 p.m. on July 17, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0287 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0287 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Management Specialist, Coast Guard; telephone 757–398–6629, e-mail *Linsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Marinis Bros. Inc., (Marinis) on behalf of Delaware Department of Transportation, has requested a temporary deviation from the current operating regulation of the Route 1/Rehoboth Blvd Bascule Bridge across the Mispillion River, mile 11.0, at Milford, DE. The vertical clearance of this bridge is five feet at mean high water (MHW) in the closed position and unlimited in the open position. During this deviation period, the vertical clearance will be limited to four feet at MHW due to the scaffolding that will be used for the maintenance of the bridge. Vessels that are able to pass through the bridge may do so at anytime. The bridge is able to open for emergencies if at least five business days are given. There are no alternate routes available to vessels.

The current operating schedule for the bridge is set out in 33 CFR 117.241. The regulation requires the bridge to open on signal if at least 24 hours notice is given. The requested deviation is to accommodate painting and cleaning of the bridge. To carry out the bridge maintenance safely and successfully, the draw of the bridge will be maintained in the closed-to-navigation position from 12 a.m. on May 13, 2011 through 11:59 p.m. on July 17, 2011.

Logs from the past two years have shown that there are minimal openings during the period of time this deviation will be enforced. The majority of vessel traffic is recreational boaters. Most, if not all, of the past openings have been requested by one specific resident of the area. The Coast Guard and Marinis have been in contact with this resident and have worked together to accommodate any necessary bridge openings during the temporary deviation. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners so that mariners can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 18, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–10514 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE104–1102; FRL–9298–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by Delaware that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: *Effective Date:* This action is effective May 2, 2011.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room Number 3334, EPA

West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998, (63 FR 67407) EPA published a document in the **Federal Register** beginning the new IBR procedure for Delaware. On June 21, 2004 (69 FR 34285), April 3, 2007 (72 FR 15839), and April 17, 2009 (73 FR 17771), EPA published updates to the IBR material for Delaware.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to all sections of the following Delaware regulations, except as specifically noted:

1. Regulation 1101 "Definitions and Administrative Principles" (SIP definitions only).
2. Regulation 1102 "Permits" (except Appendix A, paragraphs 32.0 and 33.0).
3. Regulation 1103 "Ambient Air Quality Standards."
4. Regulation 1104 "Particulate Emissions From Fuel Burning Equipment."
5. Regulation 1105 "Particulate Emissions From Industrial Process Operations."
6. Regulation 1106 "Particulate Emissions From Construction and Materials Handling."
7. Regulation 1107 "Particulate Emissions From Incineration" (section 1.0).
8. Regulation 1108 "Sulfur Dioxide Emissions From Fuel Burning Equipment."
9. Regulation 1109 "Emissions of Sulfur Compounds From Industrial Operations" (except section 2.2).
10. Regulation 1110 "Control of Sulfur Dioxide Emissions—Kent and Sussex Counties."
11. Regulation 1111 "Carbon Monoxide Emissions From Industrial Process Operations New Castle County."
12. Regulation 1112 "Control of Nitrogen Oxide Emissions."
13. Regulation 1113 "Open Burning" (except sections 1.0, 2.0, and 7.0).
14. Regulation 1114 "Visible Emissions."
15. Regulation 1115 "Air Pollution Alert and Emergency Plan."
16. Regulation 1116 "Sources Having an Interstate Air Pollution Potential."
17. Regulation 1117 "Source Monitoring, Recordkeeping and Reporting."
18. Regulation 1123 "Standards of Performance for Steel Plants: Electric Arc Furnaces."
19. Regulation 1124 "Control of Volatile Organic Compound Emissions."
20. Regulation 1125 "Requirements for Preconstruction Review" (sections 1.0, 2.0, and 3.0).
21. Regulation 1126 "Motor Vehicle Emissions Inspection Program."
22. Regulation 1127 "Stack Heights."
23. Regulation 1132 "Transportation Conformity" (except section 1.0).
24. Regulation 1135 "Conformity of General Federal Actions to the State Implementation Plans."
25. Regulation 1139 "Nitrogen Oxides (NO_X) Budget Trading Program."
26. Regulation 1140 "Delaware's National Low Emission Vehicle (NLEV) Regulation."
27. Regulation 1141 "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products" (sections 1.0, 2.0, and 3.0).
28. Regulation 1142 "Specific Emission Control Requirements" (section 1.0).
29. Regulation 1144 "Control of Stationary Generator Emissions" (except sections 4.0, 5.0, 6.0, and 9.0).
30. Regulation 1145 "Excessive Idling of Heavy Duty Vehicles."
31. Regulation 1146 "Electric Generating Unit (EGU) Multi-Pollutant Regulation" (except section 6.0, Table 6–1, and portions of sections 1.0, 2.0, 3.0, 7.0, 8.0, and 9.0 pertaining to control of mercury emissions).
32. Regulation 1148 "Control of Stationary Combustion Turbine Electric Generating Unit Emissions" (except sections 1.0 and 6.0).

EPA's approval of the definitions in Regulation 1101 consists of only those terms which EPA has previously approved and IBR into the Delaware SIP.

EPA's approval action includes the removal of two former SIP requirements codified in Delaware Regulation 1124: Section 39 (Control of Perchlorethylene from Dry Cleaning Operations) and Appendices J1, J1, J2, and J3 (Test Methods for Stage II Vapor Recovery).

II. EPA Action

In this action, EPA is doing the following:

1. Announcing the update to the IBR material as of March 1, 2011.
2. In paragraph 40 CFR 52.420(c),

a. Removing the entries, currently marked "[Reserved]," for Regulation 1124, Section 39 and Regulation 1124, Appendices J, J1, J2, and J3.

b. Correcting the title heading of Regulation 1107.

c. Correcting the following entries in the "Title/subject" column: Regulation 1102, Section 3.0; Regulation 1105, Section 6.0; Regulation 1124, Appendix I, Regulation 1127, Section 2.0; Regulation 37, Appendix "A"; and Regulation 1141, Section 2.0.

d. Removing the state effective date from the "Additional explanation" column for Regulation 1142, Section 2.0.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP

submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Delaware SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for Delaware.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 7, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart I—Delaware

■ 2. Section 52.420 is amended by:

■ a. Revising paragraph (b).

■ b. In paragraph (c),

■ i. Revising the entries for State Regulation 1102, Section 3.0; State Regulation 1105, Section 6.0; the State Regulation 1107 heading; State Regulation 1124, Appendix I, State Regulation 1127, Section 2.0; State Regulation 1141, Section 2.0, and State Regulation 1142, Section 2.0.

■ ii. Removing the entry for State Regulation No. 37, Appendix "AA" and adding an entry for State Regulation No. 37, Appendix "A" in its place.

■ iii. Removing the entries for State Regulation 1124, Section 39.0 and Appendices J, J1, J2 and J3.

The amendments read as follows:

§ 52.420 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after March 1, 2011 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations and source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of March 1, 2011.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA-approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* *	* * *	*	*	*
1102	**Permits**			
* *	* * *	*	*	*
Section 3.0	Application/Registration Prepared by Interested Party	9/11/08	8/11/10 75 FR 48566	
* *	* * *	*	*	*
1105	**Particulate Emissions from Industrial Process Operations**			
* *	* * *	*	*	*
Section 6.0	Restrictions on Prill Tower Operation	9/11/08	8/11/10 75 FR 48566	
* *	* * *	*	*	*
1107	**Particulate Emissions from Incineration of Noninfectious Waste**			
* *	* * *	*	*	*
1124	**Control of Volatile Organic Compound Emissions**			
* *	* * *	*	*	*
Appendix I	Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance.	9/11/08	8/11/10 75 FR 48566	
* *	* * *	*	*	*
1127	**Stack Heights**			
* *	* * *	*	*	*
Section 2.0	Definitions Specific to this Regulation	9/11/08	8/11/10 75 FR 48566	
* *	* * *	*	*	*
Regulation No. 37	**NO_X Budget Program**			
* *	* * *	*	*	*
Appendix "A"	NO_X Budget Program	12/11/99	3/9/00 65 FR 12481	
* *	* * *	*	*	*
1141	**Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**			
* *	* * *	*	*	*
Section 2.0	Consumer Products	4/11/09	10/20/10 75 FR 64673	
* *	* * *	*	*	*
1142	**Specific Emission Control Requirements**			

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Section 2.0	Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries.	11/11/09	6/4/10 75 FR 31711	New regulation.
*	*	*	*	*

* * * * *

[FR Doc. 2011–10428 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 10–43; FCC 11–11]

Commission's Ex Parte Rules and Other Procedural Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission revises certain *ex parte* and organizational rules. This document amends and reforms the Commission's rules on *ex parte* presentations made in the course of Commission rulemakings and other permit-but-disclose proceedings. It also adopts a new rule requiring all oral *ex parte* communications to be documented, and their contents described. This reform should enable those participating in our proceedings as well as those observing them to better identify and understand the issues being debated before the Commission. New electronic filing rules will empower anyone using the Internet to access this information, and stronger enforcement provisions will bolster these new requirements. Given the complexity of the issues we must decide and the far-reaching impact our decisions often have, we believe these initiatives to increase transparency serve the best interests of the Commission, the entities we regulate, and the public we serve.

DATES: Effective June 1, 2011, except for the amendments to §§ 1.1206(b) and 1.1208, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those rules.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW, Washington, DC 20554, or send an e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Joel Kaufman, Chief, Administrative Law Division, Office of General Counsel, 202–418–1758 or *joel.kaufman@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie F. Smith, (202) 418–0217, or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: In this Report and Order adopted on February 1, 2011, and released on February 2, 2011, the Commission amends certain *ex parte* rules and other procedural rules, 47 CFR parts 1 and 0. Part 1 outlines a number of rules regarding "presentations" by outside parties to the Commission. Section 1.1202(a) of the Commission's rules defines a "presentation" as a communication directed to the merits or outcome of a proceeding. 47 CFR 1.1202(a). An oral presentation is *ex parte* when it is made without advance notice to other parties to a proceeding and without the opportunity for them to be present. *See* 47 CFR 1.1202(b). For purposes of the *ex parte* rules, Commission proceedings are divided into three categories: those in which there is no restriction on *ex parte* presentations ("exempt" proceedings); those in which *ex parte* presentations are prohibited ("restricted" proceedings); and those in which *ex parte* presentations are permitted subject to disclosure ("permit-but-disclose" proceedings). *See* 47 CFR 1.1204, 1.1206, 1.1208. The various categories of "permit-but-disclose" proceedings are enumerated in sections 1.1206(a)(1) through (14) of the rules, and include informal rulemaking and declaratory ruling proceedings.

On March 25, 2010, the Commission released a notice of proposed rulemaking seeking comment on a number of proposed changes to the Commission's *ex parte* rules. *See Amendment of the Commission's* Ex Parte *Rules and Other Procedural Rules,* 25 FCC Rcd 2403 (2010) (*NPRM*). By this Report and Order, we adopt final rules effecting a number of proposals described in the *Notice.* By a Further Notice of Proposed Rulemaking, published elsewhere in the **Federal Register**, we seek comment on the adoption of real party-in-interest disclosure rules. The following paragraphs describe the final rules adopted by the Commission.

Filing and Content Requirements

1. **Ex Parte** *Presentations for Which* **Ex Parte** *Notices Must Be Filed*

Section 1.1206(b)(2) of our rules requires that a notice of an oral *ex parte* presentation must be filed only if new data or arguments not already reflected in the party's written comments, memoranda or other filings in that proceeding are discussed. 47 CFR 1.1206(b)(2). In the *NPRM,* we suggested that this reduces the adequacy of the record on which Commission decisions are based and deprives parties and the public of a fair opportunity to respond. *See* 25 FCC Rcd at 2406. We therefore proposed to require the filing of *ex parte* notices for every oral *ex parte* presentation, whether or not it contains new data or arguments. To the extent that the presentation merely reiterates data and arguments already contained in the written comments filed by the presenter, the filing would either include a summary of this information or provide specific references, including paragraph or page numbers, to the presenter's prior filings containing the data and arguments presented.

As an initial matter, we determine that *ex parte* presentations can give the Commissioners and staff valuable new information on the often highly complex and technical legal, economic, and engineering issues that we must consider in reaching our decisions. Prohibiting *ex parte* contacts outright, or

limiting them in time and scope, could adversely affect our ability to respond to new issues as they arise in the course of a proceeding. Limiting oral *ex parte* presentations to material already in the record would result in mere redundancy, prevent the Commission from obtaining information it needs as efficiently as possible, and provide inadequate assurance that an undisclosed *ex parte* presentation had not been made. We also find that recording all oral *ex parte* contacts and making them available online would be impractical compared with posting more complete and comprehensive written summaries online. For these reasons, we determine that oral *ex parte* presentations on the issues raised in permit-but-disclose proceedings should continue to be allowed and should not be limited by the alternatives commenters in the proceeding suggested.

In the Report and Order, we adopt the proposal set forth in the *NPRM* and require the filing of notices for all oral *ex parte* presentations made in permit-but-disclose proceedings, regardless of whether they involve new data or arguments or simply reiterate what the party has already submitted in the written record of the proceeding. Transparency requires that interested parties, and the public, know that *ex parte* meetings are taking place, no matter whether old or new information is being discussed. This proposal will better assure procedural fairness to parties participating in a proceeding, especially those with limited resources. Just as important, this rule change will increase the public's ability to follow the course of Commission proceedings, thereby facilitating the public's ability to express opinions on pending matters either by submitting written comments or by joining the informal discussion of issues on the Commission's new electronic media platforms. This, in turn, should increase public confidence in the integrity of Commission decisions. (We note that this proposal will not prove burdensome insofar as most parties already file at least a pro forma notice after making an oral *ex parte* presentation.)

2. Content of Notices

Summary or Citation Required. The Report and Order next describes what information *ex parte* notices should contain. First, we find that it would not impose a significant burden on any party, or cause undue delays in filing, to require that a party reiterating data or arguments in its written submissions either summarize the information presented *ex parte* or include a citation to the pages or paragraphs of its own prior filings where the information can be found. Any incremental effort a party expends in providing brief summaries or citations to what it has itself written is minimal, and more than outweighed by the degree to which this requirement will facilitate the ability of everyone else involved—the Commission, staff, other parties, and the public—to understand how the issues in permit-but-disclose proceedings are being developed and refined. We therefore require parties making *ex parte* presentations that reiterate arguments previously made on the record to provide either a brief summary of the argument or a citation to either the page or the paragraph in the written material where the argument can be found. As our rules currently provide, when an *ex parte* presentation involves a discussion of new information or arguments, the notice must summarize the new arguments and data. Summaries must be sufficiently detailed that they would inform a person who did not attend the presentation of the facts that were discussed, the arguments made, and the support offered for those arguments.

List of Participating Parties Required. Currently, section 1.1206(b)(2) of the Commission's rules does not require that notices of *ex parte* presentations include a list of everyone attending or otherwise participating in an *ex parte* meeting. Many parties already include a list of attendees in their *ex parte* notices, and we find that requiring all parties to include such a list would not materially increase the burden of preparing *ex parte* notices. We determine that listing the names of all persons attending an *ex parte* presentation would significantly improve the transparency of the Commission's decision-making processes, and that other parties and the public are entitled to know who is attending or otherwise participating in meetings with decision-makers when an issue is being presented *ex parte.* We therefore amend our rules to incorporate a requirement that notices of *ex parte* presentations include a complete list of every person participating in the meeting.

We do not impose further requirements concerning the content of *ex parte* notices at this time. In particular, we do not find it necessary to require that parties list of all their prior *ex parte* filings in a given proceeding. The Electronic Comment Filing System (ECFS) now makes it simple to find which parties have made oral *ex parte* presentations in a given proceeding and how often they have made them, rendering this proposal an unnecessary burden that would not materially increase the transparency of our proceedings.

Exemptions

1. Sunshine Exemption

Section 1.1203(a) prohibits all presentations to decision-makers, whether *ex parte* or not, during the Sunshine period on matters listed on a Sunshine Agenda unless an exemption applies. (A Sunshine Agenda or Sunshine notice is typically released seven days before a Commission meeting and lists the items that will be presented to the Commission. The period between the release of the Sunshine Agenda and the Commission meeting is intended to provide decision-makers a "period of repose" during which they can consider the upcoming items free from outside interruptions. *See Amendment of Part H, Part 1 of the Commission's Rules and Regulations Concerning* Ex Parte *Communications and Presentations in Commission Proceedings,* 2 FCC Rcd 3011, 3020 (1987).) This prohibition currently applies from the time a Sunshine notice is issued until the Commission releases a text of the decision or order relating to the matter, issues a public notice stating that the matter has been deleted from the Sunshine Agenda, or issues a public notice stating that the matter has been returned to the staff for further consideration. *See* 47 CFR 1.1203(b)(1)–(3). This prohibition is subject to an exemption for *ex parte* presentations requested by, or made with the advance approval of, the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible settlement pursuant to section 1.1204(a)(10). *See* 47 CFR 1.1203(a)(1), 1.1204(a)(10). (A party making an oral *ex parte* communication during the Sunshine period pursuant to this exemption is required to file an *ex parte* notice pursuant to section 1.1204(a)(10)(iv), 47 CFR 1.1204(a)(10)(iv).)

In the *NPRM,* we asked whether permitting *ex parte* presentations under any circumstances during the Sunshine period is compatible with the "period of repose" for internal deliberation the Sunshine period is intended to provide and, if so, whether the current exemption should be narrowed. In the event some type of exemption were found to serve the public interest, we also asked whether the Sunshine period prohibition should begin at midnight following the release of the Sunshine notice.

In the Report and Order, we determine that the current rules

allowing the solicitation of *ex parte* presentations during the Sunshine period (either by the Commission or staff or with the advance approval of the Commission or staff) serves the public interest. As a practical matter, important issues can arise late in the deliberative process, and efficient decision-making requires that staff and Commissioners be permitted to gather the information needed to resolve them. As the issues the Commission considers become more numerous and complex, it is essential that the Commission have the ability to test its assumptions and conclusions, and that the information and arguments the Commission relies on in reaching its decisions are clear, compelling, and timely. Allowing the solicitation of *ex parte* presentations during the Sunshine period serves those needs, and we therefore retain the exemption in sections 1.1203(a)(1) and 1.1204(a)(10).

We find in the Report and Order that fairness and transparency in these situations are protected by the requirement that all *ex parte* presentations solicited during the Sunshine period are subject to the same disclosure rules that apply whenever an *ex parte* presentation is made. We also believe that fairness and the interest in a complete and accurate record suggest that other parties should have an opportunity to reply to *ex parte* presentations made during the Sunshine period, just as they would if the *ex parte* presentation were made at any other time. However, in the interests of administrative efficiency, we believe that *ex parte* contacts during the Sunshine period should be minimized and limited to information that is necessary to the impending decision. Similarly, any reply filed in response to a solicited *ex parte* presentation that occurs during the Sunshine period should be limited to the specific issues raised in the *ex parte* notice, including any new facts or data submitted. We thus determine that the Sunshine period will commence on the day (including business days, weekends, and holidays) following the release of the Sunshine notice. This approach will afford parties a sufficient opportunity to make submissions before the Sunshine period begins.

2. Status Inquiries

The NPRM also raised the issue of the exemption provided for inquiries on the status of permit-but-disclose proceedings. Section 1.1202(a) and the note to that section generally provide that inquiries related solely to the approximate time that action in a proceeding may be taken, without expressing a view on the merits or outcome of the proceeding or the date by which it should be resolved, are not "presentations," and are therefore exempt from the rules on *ex parte* presentations. *See* 47 CFR 1.1202(a). We requested comment on changes to this rule. In the Report and Order, we do not amend the rule, but we restate that if a staff member believes that an *ex parte* presentation has actually been made, and the presenter appears to believe the communication was only a status inquiry, the staff member should inform the party making the contact of the party's obligation to file an *ex parte* notice.

3. Interagency Discussions

Section 1.1204(a)(5) exempts any presentation "to or from an agency or branch of the Federal Government or its staff and involves a matter over which that agency or branch and the Commission share jurisdiction." 47 CFR 1.1204(a)(5). Section 1.1204(a)(5) also requires the Commission to disclose factual information on issues of shared jurisdiction that is obtained *ex parte* from another Federal agency or agency staff member if the Commission relies on it in its decision-making process. Section 1.1204(a)(6) contains a similar provision regarding contacts between the Commission and the Department of Justice or Federal Trade Commission on telecommunications competition matters not designated for hearing. *See* 47 CFR 1.1204(a)(6). A note to these paragraphs specifies that such information will be relied on by the Commission and disclosure made only after advance coordination with the agency involved. If the other agency does not wish the information disclosed, the Commission will not disclose it and cannot rely on it in its decision-making process.

Several commenters suggested that we delete this exemption to the extent that it permits the National Telecommunications and Information Administration (NTIA) to discuss with the Commission issues concerning their shared responsibility over spectrum management. We do not adopt this proposal in the Report and Order. To require disclosure of all interagency *ex parte* contacts may not only affect another agency's jurisdictional responsibilities, as the Note states, but could also adversely affect the Commission's ability to render timely decisions based on the best information possible. We therefore believe that the current rules strike an appropriate balance between transparency and due process on the one hand and reasoned decision-making and administrative dispatch on the other.

Method of Filing

In the *NPRM,* we called attention to the fact that many *ex parte* notices now are filed electronically on ECFS. This allows Commission staff, parties, and the general public easy and timely access to these filings online. By contrast, when *ex parte* notices are filed in paper format, they can take several days to appear in ECFS. This delays the staff's ability to analyze the contents of the presentation and limits outside parties' ability to respond to it, particularly during the Sunshine period. We therefore proposed to require that *ex parte* notices be filed electronically in any proceeding in which electronic filing is available. We sought comment on whether these electronic filings should be required in a machine-readable format, such as Microsoft Word ".doc" format or non-copy protected text-searchable ".pdf" format for text filing, and "native formats" for non-text filings such as spreadsheets in Microsoft ".xml" format. We also recognized that electronic filing could be problematic where the party making the *ex parte* presentation does not have access to a computer or the Internet or the filing contains confidential business or financial information. We proposed specific language to codify the general requirement and exceptions, and sought comment on these issues. See 25 FCC Rcd at 2409–10.

1. *Electronic Filing Requirement.* In the Report and Order, we adopt the proposed rule requiring electronic filing. Consistent with the intent of section 1.1206(b)(2) and to assist Commissioners and decision-making staff, we modify section 1.1206(b)(2) to ensure that parties filing *ex parte* notices electronically also send copies to those Commissioners and staff who attended the meeting. We also adopt the requirement that electronic filings be made in a machine-readable format where feasible. This requirement parallels DC Circuit Court of Appeals Rule ECF–5, which requires electronically filed documents to be in machine-readable and text-searchable format. *See* Rule ECF–5(B), *May 15 Administrative Order.* We are not persuaded that the possibility of altering electronically filed documents is of sufficient concern to warrant departing from the same filing procedure that Federal courts use. As the court rules also provide, we will grant exceptions to the electronic filing requirement for parties unable to comply by reason of hardship. A party claiming a hardship exemption must state the basis for its claim in the notice.

2. *Confidential Information.* In recognition of concerns expressed by commenters about requiring the electronic filing of confidential information in *ex parte* notices, we permit parties to remove metadata containing confidential or privileged information, and we will not require parties to file electronically *ex parte* notices that contain confidential information. We will, however, require that a redacted version be filed electronically at the same time the paper filing is submitted, and that the redacted version be machine-readable whenever technically possible.

3. *Appendices and Attachments.* With particular regard to appendices and attachments, we require that as a general matter appendices and attachments to an electronically filed notice should also be filed in a machine-readable format, and that PDF images created by scanning a paper document may not be submitted, except in cases where a word-processing version of a document is not available. This approach tracks the rule for the U.S. Court of Appeals for the DC Circuit. We find that any incremental burden on the parties to prepare and submit redacted or scanned versions of certain material is outweighed by the efficiency of having these materials electronically accessible to the Commission, to other parties, and to the public.

At the same time, however, we are mindful of the fact that there will be instances in which appended material is voluminous or otherwise not practically filed in machine-readable format, and we believe carefully considered exceptions should be made in those cases. In considering such exceptions, we note that U.S. District Court for the District of Columbia Local Rule LCvR 5.4(e)(1)(A)–(C) provides that attachments exceeding 500 pages, or not in a format that readily permits electronic filing such as large maps, charts, videotapes, and similar material, or that are filed under seal, may be filed in paper form. We will consider waivers of the electronic filing requirement for appendices and attachments on a case-by-case basis, and will require parties seeking a waiver to claim it when the filing is made.

Filing Deadlines

In light of the added filing requirements proposed in the *NPRM,* we proposed to extend the deadline for filing notices of *ex parte* presentations from one to two business days for any presentation not made during the Sunshine period. However, in recognition of the need to assure procedural fairness for all parties during the compressed seven-day Sunshine period, we also proposed a filing deadline of four hours for any *ex parte* presentation made during the Sunshine period.

In the Report and Order, we extend the filing deadline from one to two business days for *ex parte* presentations occurring outside the Sunshine period. We find that this extension is reasonably calibrated to the expanded filing requirements adopted elsewhere in the Report and Order. In addition, because we require the submission of most *ex parte* notices electronically, which should speed their public availability, the added day for filing should not materially affect the ability of the Commission and its staff, other parties, and the public to identify the issues raised by various parties. In the interests of clarity and uniformity, we use "business day" to denote the entire calendar day (*i.e.,* from 12 a.m. until 11:59:59 p.m.) for any day other than a weekend or holiday, and further specify that the governing time zone will be Eastern Time. Thus, for example, if an *ex parte* presentation occurs on a Tuesday, the *ex parte* notice must be filed no later than 11:59:59 p.m. on the following Thursday, assuming no intervening holidays. But if an *ex parte* presentation is made on the day the Sunshine notice is released, an *ex parte* notice must be submitted by the next business day—a shorter deadline that is necessary to afford all parties a sufficient opportunity to present their arguments within the compressed timeframe of the Sunshine period. Under these circumstances, any reply must be filed by the next business day following filing of the *ex parte* notice, and must be submitted in writing and limited to only the particular issues raised in the *ex parte* notice. Thus, if an *ex parte* presentation is made on a Tuesday and the Sunshine notice is also issued on that day, the *ex parte* notice must be filed no later than 11:59:59 p.m. on Wednesday, and any reply would need to be filed by 11:59:59 p.m. on Thursday, assuming no intervening holidays. Copies of any reply must be provided to each staff member or Commissioner who received the original presentation from the submitting party. Neither oral replies nor oral or written sur-replies are permitted in the absence of an express request by a Commissioner or staff.

When *ex parte* presentations are made during the limited Sunshine period, it is particularly important that the required notices be filed quickly and in an accessible electronic format. However, we find valid the concern about the difficulty of complying with a four-hour filing deadline, especially in those not-infrequent cases in which a party makes several oral *ex parte* presentations in one day. We find that imposing a four-hour deadline on filings made after a series of meetings at different times during the same day could result in rushed, insufficient filings and unintentional noncompliance with the deadline. For this reason, we amend our rule to provide that permissible *ex parte* presentations made in permit-but-disclose proceedings during the Sunshine period (under an exception to the Sunshine period prohibition) must be summarized and placed in the record by the end of the same day (*i.e.,* by 11:59:59 p.m.) on which the presentation was made. This revised deadline is more easily applied than our four-hour proposal and should not materially affect the interests of due process and transparency. Consistent with this revised rule, we will allow parties to file written replies to *ex parte* presentations during the Sunshine period no later than the next business day following the presentation. These replies shall be limited to addressing the specific issues and information in the *ex parte* notice to which they are replying. Copies of any reply must be provided to each staff member or Commissioner who received the original presentation from the submitting party. Finally, as in the case of filings for presentations made on the day the Sunshine Notice is issued, neither oral replies nor oral or written sur-replies shall be permitted in the absence of an express request by staff.

Sanctions and Enforcement

In the *NPRM,* we stated our intent to place increased emphasis on enforcement addressing impermissible *ex parte* contacts, regardless of any rule amendments we might adopt in this Report and Order. We asked specifically what sanctions would be appropriate to address the filing of insufficient *ex parte* notices, and whether prejudice to other parties should be a principal factor in determining an appropriate sanction. We also sought comment on whether all sanctions for *ex parte* rule violations should be publicly announced. See 25 FCC Rcd at 2415.

In the Report and Order, we affirm the tentative conclusion in the *NPRM* that stricter enforcement of our *ex parte* rules complements the improvements to the rules described elsewhere in this summary and reinforces their purpose in making our proceedings more open and transparent to the public and fairer to interested parties. We further find that the revised enforcement program will be best implemented by close

coordination between the Office of General Counsel and the Enforcement Bureau. Accordingly, the Office of General Counsel will retain the authority it currently has under section 0.251(g), 47 CFR 0.251(g), to issue rulings on whether violations of the *ex parte* rules have occurred and to impose appropriate sanctions. We do, however, amend our rules to require that the General Counsel refer any case in which a forfeiture or a citation may be warranted to the Enforcement Bureau for disposition, and we delegate authority to the Enforcement Bureau to levy fines for violations of the *ex parte* rules. In the event the Enforcement Bureau ultimately determines that a forfeiture or a citation is not warranted, the General Counsel will take appropriate action on the matter. The Commission will also give public notice via the Internet of the filing and disposition of *ex parte* complaints.

We decline at this time to provide for the harsher sanction of routine disqualification. Although it would certainly deter parties from violating the rules, routinely barring parties from further participation in Commission proceedings diminishes their ability to influence action from the Commission that would serve the public interest, and it would lessen the pool of knowledge and information on which to base our decisions. However, we will monitor this new enforcement program to assure that it is effective in deterring future violations.

Other Issues

1. Other Agencies' Procedures

In the *NPRM,* we observed that other Federal agencies have *ex parte* rules and procedures that differ from our own, including the requirement that Commissioners and staff summarize and file oral *ex parte* communications rather than the parties making them. *See* 25 FCC Rcd at 2408–09. We asked whether any of these distinct approaches would be instructive in considering amendments to our own *ex parte* rules.

We see no clear advantage to the suggestion by one commenter that Commission staff prepare and file *ex parte* notices. Even if the Commission is unique in relying on outside parties to submit such notices, other agencies may be differently situated to the extent their docket is primarily adjudicatory rather than rulemaking (*e.g.,* the Federal Trade Commission). Also, staff summaries raise an issue of fairness. The complex legal and technical nature of the issues sometimes presented *ex parte* make it preferable for the parties arguing those issues to summarize them. We also question what procedures would be used in cases where the presenter believes a staff summary is incorrect or incomplete. Finally, the time staff would spend in writing summaries of *ex parte* presentations would take away from the time available to analyze the issues and assist the Commission in reaching its decisions. For these reasons, we focus primarily in the Report and Order on improving our own rules rather than on adopting the rules of other agencies.

As we stated previously, we amend our rules to clarify that copies of all electronically filed *ex parte* notices be sent electronically to staff and Commissioners who participated in the presentation. This will enhance the ability of decision-makers to review these notices expeditiously, detect any outstanding errors or omissions, and request that they be cured. Filers may be asked to submit any corrections or further information as necessary to comply with the *ex parte* rules. Where staff believes there are instances of substantial or repeated violations of the *ex parte* rules, staff should report such violations to the General Counsel.

2. New Media

Although we did not propose any rule amendments in the *NPRM* regarding the treatment of comments on various Commission new media sites, including the Commission's blogs, its Facebook page, its MySpace page, its IdeaScale pages, its Flickr page, its Twitter page, its RSS feeds, and its YouTube page, several commenters addressed this issue. As a general matter, the commenters addressing this issue acknowledged the value of new media as part of the Commission's public outreach efforts, but they expressed reservations about the use of this material in Commission proceedings.

In the Report and Order, we find that these comments illustrate the complications associated with increasing the accessibility of Commission decision-making via new media in proceedings governed by the Administrative Procedure Act. The Commission has incorporated some of this material into the record of some inquiries and other proceedings, and will continue to develop ways that will make its inclusion in more proceedings technically and practically possible. However, at this time, we agree that incorporating blog posts and other presentations via new media into the record of all rulemaking proceedings would be impractical. Therefore, as stated in the *NPRM,* we will continue to associate new media contacts in the records of specific proceedings, on the terms announced for those particular proceedings. In addition, users of new media may file comments electronically in any permit-but-disclose proceeding consistent with the *ex parte* rules by clicking on the link to ECFSExpress on the Commission's homepage: *http://www.fcc.gov.*

Minor and Conforming Amendments

The *NPRM* proposed a series of minor changes to the *ex parte* rules designed to update or clarify them. *See* 25 FCC Rcd at 2416–18. For the reasons stated in the *NPRM,* we adopt in the Report and Order the following minor amendments: (1) Section 1.1202(d)(6), 47 CFR 1.1202(d)(6), duplicates section 1.1202(d)(5) and is deleted; (2) section 1.1204(a)(6), 47 CFR 1.1204(a)(6), is amended to change the word "telecommunications" to "communications" and to delete the word "competition"; (3) section 1.1204(a)(12), 47 CFR 1.1204(a)(12), is amended to add the Pooling Administrator and the TRS Numbering Administrator to the list of entities with whom communications are exempt from the *ex parte* rules; (4) section 1.1206(a), 47 CFR 1.1206(a), is amended to delete from the list of permit-but-disclose proceedings Bell Operating Company applications under section 271 of the Act, because all Bell Operating Companies have applied for and received authority under section 271 in all their respective states; (5) section 1.1208, 47 CFR 1.1208, is amended to require the filing of a disclosure notice when parties in restricted proceedings make a permissible presentation on a non-*ex parte* basis (*i.e.,* when other parties have been given advance notice and an opportunity to participate); (6) section 1.1206(b)(2), 47 CFR 1.1206(b)(2), is clarified to state expressly that documents shown or given to Commission staff during *ex parte* meetings are themselves written *ex parte* presentations and must be filed; (7) section 1.1206(b)(2), 47 CFR 1.1206(b)(2), is further amended by adding a sentence to note one to codify the practice whereby the staff at its discretion may file an *ex parte* summary of a multiparty meeting as an alternative to having each participant do so; (8) section 1.1203(a)(4), 47 CFR 1.1203(a)(4), is clarified to state that the requirement to disclose presentations made during the Sunshine period only applies to presentations made in permit-but-disclose proceedings; (9) section 1.1203, 47 CFR 1.1203, is clarified to state that the Sunshine period prohibition does not affect parties' obligation to file a written *ex parte* presentation or memorandum

summarizing an oral *ex parte* presentation made on the day before the Sunshine period begins, even though new *ex parte* presentations are not permitted during the Sunshine period unless they are made pursuant to an exception to the prohibition on *ex parte* contacts; and (10) section 1.1206, 47 CFR 1.1206, is non-substantively reorganized to make it clearer and easier to understand and to make various conforming edits.

Regulatory Flexibility Act. Our actions do not require notice and comment, and therefore fall outside the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 605(b), and require no initial or final regulatory flexibility analysis under Section 604 of that Act, 5 U.S.C. 604. We nevertheless note that we anticipate that the rules changes adopted in the Report and Order will not have a significant economic impact on a substantial number of small entities or impose significant costs on parties to Commission proceedings.

Paperwork Reduction Act of 1995 Analysis. This document contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we have assessed the effects of the modified *ex parte* rules on small business concerns, and find that they will impose no significant added burden on businesses with fewer than 25 employees.

Congressional Review Act. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, claims, Investigations, Lawyers, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.111 is amended by redesignating paragraphs (a)(15) through (23) as paragraphs (a)(16) through (24) and by adding new paragraph (a)(15) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(15) Upon referral from the General Counsel pursuant to § 0.251(g), impose sanctions for violations of the Commission's *ex parte* rules including, but not limited to, the imposition of monetary forfeitures, consistent with § 0.311.

* * * * *

■ 3. Section 0.251 is amended by revising paragraph (g) to read as follows:

§ 0.251 Authority delegated.

* * * * *

(g) The General Counsel is delegated authority to issue rulings on whether violations of the *ex parte* rules have occurred and to impose appropriate sanctions. The General Counsel shall refer to the Enforcement Bureau for disposition pursuant to § 0.311(b) any matter in which a forfeiture or a citation under 47 U.S.C. 503(b)(5) may be warranted. If the Enforcement Bureau determines that forfeiture or a citation is not warranted, the matter shall be referred back to the General Counsel for appropriate action.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

§ 1.1202 [Amended]

■ 5. In § 1.1202, remove paragraph (d)(6).

■ 6. Section 1.1203 is amended by revising paragraphs (a)(4) and (b) introductory text, and adding paragraph (c), to read as follows:

§ 1.1203 Sunshine period prohibition.

(a) * * *

(4) The presentation is made by a member of Congress or his or her staff, or by other agencies or branches of the Federal government or their staffs in a proceeding exempt under § 1.1204 or subject to permit-but-disclose requirements under § 1.1206. Except as otherwise provided in § 1.1204(a)(6), if the presentation is of substantial significance and clearly intended to affect the ultimate decision, and is made in a permit-but-disclose proceeding, the presentation (or, if oral, a summary of the presentation) must be placed in the record of the proceeding by Commission staff or by the presenter in accordance with the procedures set forth in § 1.1206(b).

(b) The prohibition set forth in paragraph (a) of this section begins on the day (including business days and holidays) after the release of a public notice that a matter has been placed on the Sunshine Agenda until the Commission:

* * * * *

(c) The prohibition set forth in paragraph (a) of this section shall not apply to the filing of a written *ex parte* presentation or a memorandum summarizing an oral *ex parte* presentation made on the day before the Sunshine period begins, or a permitted reply thereto.

■ 7. Section 1.1204 is amended by revising paragraphs (a)(6) and (a)(12)(iv), and adding paragraphs (a)(12)(v) and (vi) to read as follows:

§ 1.1204 Exempt ex parte presentations and proceedings.

(a) * * *

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a communications matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding) *provided that,* any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

* * * * *

(12) * * *

(iv) The Number Portability Administrator relating to the administration of local number portability pursuant to 47 U.S.C.

251(b)(2) and (e), provided that the relevant administrator has not filed comments or otherwise participated as a party in the proceeding;

(v) The TRS Numbering Administrator relating to the administration of the TRS numbering directory pursuant to 47 U.S.C. 225 and 47 U.S.C. 251(e); or

(vi) The Pooling Administrator relating to the administration of thousands-block number pooling pursuant to 47 U.S.C. 251(e).

* * * * *

■ 8. Section 1.1206 is amended by revising paragraph (a)(12), removing paragraph (a)(13), and redesignating paragraph (a)(14) as (a)(13), and revising paragraph (b) to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

(12) A modification request filed pursuant to § 64.1001 of this chapter; and

* * * * *

(b) The following disclosure requirements apply to *ex parte* presentations in permit but disclose proceedings:

(1) *Oral presentations.* A person who makes an oral *ex parte* presentation subject to this section shall submit to the Commission's Secretary a memorandum that lists all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarizes all data presented and arguments made during the oral *ex parte* presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the oral *ex parte* presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.

Note to Paragraph (b)(1): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or recording of the discussion as an alternative to a memorandum. Likewise, Commission staff in its discretion may file an *ex parte* summary of a multiparty meeting as an alternative to having each participant file a summary.

(2) *Written and oral presentations.* A written *ex parte* presentation and a memorandum summarizing an oral *ex parte* presentation (and cover letter, if any) shall clearly identify the proceeding to which it relates, including the docket number, if any, and must be labeled as an *ex parte* presentation. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and, accordingly, must be filed consistent with the provisions of this section. Consistent with the requirements of § 1.49 paragraphs (a) and (f), additional copies of all written *ex parte* presentations and notices of oral *ex parte* presentations, and any replies thereto, shall be mailed, e-mailed or transmitted by facsimile to the Commissioners or Commission employees who attended or otherwise participated in the presentation.

(i) In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, shall, when feasible, be filed through the electronic comment filing system available for that proceeding, and shall be filed in a native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). If electronic filing would present an undue hardship, the person filing must request an exemption from the electronic filing requirement, stating clearly the nature of the hardship, and submitting an original and one copy of the written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation to the Secretary, with a copy by mail or by electronic mail to the Commissioners or Commission employees who attended or otherwise participated in the presentation.

(ii) *Confidential Information.* In cases where a filer believes that one or more of the documents or portions thereof to be filed should be withheld from public inspection, the filer should file electronically a request that the information not be routinely made available for public inspection pursuant to § 0.459 of this chapter. Accompanying any such request, the filer shall include in paper form a copy of the document(s) containing the confidential information, and also shall file electronically a copy of the same document(s) with the confidential information redacted. The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(iii) *Filing dates outside the Sunshine period.* Except as otherwise provided in paragraphs (b)(2)(iv) and (v) of this section, all written *ex parte* presentations and all summaries of oral *ex parte* presentations must be filed no later than two business days after the presentation. As set forth in § 1.4(e)(2), a "business day" shall not include a holiday (as defined in § 1.4(e)(1)). In addition, for purposes of computing time limits under the rules governing *ex parte* presentations, a "business day" shall include the full calendar day (*i.e.,* from 12:00 a.m. Eastern Time until 11:59:59 p.m. Eastern Time).

Example: On Tuesday a party makes an *ex parte* presentation in a permit-but-disclose proceeding to a Commissioner. The second business day following the *ex parte* presentation is the following Thursday (absent an intervening holiday). The presenting party must file its *ex parte* notice before the end of the day (11:59:59 p.m.) on Thursday. Similarly, if an *ex parte* presentation is made on Friday, the second business day ordinarily would be the following Tuesday, and the *ex parte* notice must be filed no later than 11:59:59 p.m. on that Tuesday.

(iv) *Filing dates for presentations made on the day that the Sunshine notice is released.* For presentations made on the day the Sunshine notice is released, any written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation required pursuant to § 1.1206 or § 1.1208 must be submitted no later than the end of the next business day. Written replies, if any, shall be filed no later than two business days following the presentation, and shall be limited in scope to the specific issues and information presented in the *ex parte* filing to which they respond.

Example: On Tuesday, a party makes an *ex parte* presentation in a permit-but-disclose proceeding to a Commissioner. That same day, the Commission's Secretary releases the Sunshine Agenda for the next Commission meeting and that proceeding appears on the Agenda. The Sunshine period begins as of Wednesday, and therefore the presenting party must file its *ex parte* notice by the end of the day (11:59:59 p.m.) on Wednesday. A reply would be due by the end of the day (11:59:59 p.m.) on Thursday.

(v) *Filing dates during the Sunshine Period.* If an *ex parte* presentation is made pursuant to an exception to the Sunshine period prohibition, the written *ex parte* presentation or

memorandum summarizing an oral *ex parte* presentation required under this paragraph shall be submitted by the end of the same business day on which the *ex parte* presentation was made. The memorandum shall identify plainly on the first page the specific exemption in § 1.1203(a) on which the presenter relies, and shall also state the date and time at which any oral *ex parte* presentation was made. Written replies to permissible *ex parte* presentations made pursuant to an exception to the Sunshine period prohibition, if any, shall be filed no later than the next business day following the presentation, and shall be limited in scope to the specific issues and information presented in the *ex parte* filing to which they respond.

Example: On Tuesday, the Commission's Secretary releases the Sunshine Agenda for the next Commission meeting, which triggers the beginning of the Sunshine period on Wednesday. On Thursday, a party makes an *ex parte* presentation to a Commissioner on a proceeding that appears on the Sunshine Agenda. That party must file an *ex parte* notice by the end of the day (11:59:59 p.m.) on Thursday. A reply would be due by the end of the day (11:59:59 p.m.) on Friday.

(vi) If a notice of an oral *ex parte* presentation is incomplete or inaccurate, staff may request the filer to correct any inaccuracies or missing information. Failure by the filer to file a corrected memorandum in a timely fashion as set forth in paragraph (b) of this section, or any other evidence of substantial or repeated violations of the rules on *ex parte* contacts, should be reported to the General Counsel.

(3) Notwithstanding paragraphs (b)(1) and (2) of this section, permit-but-disclose proceedings involving presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as *ex parte* presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare written summaries of any such oral presentations and place them in the record in accordance with paragraph (b) of this section and also place any written presentations in the record in accordance with that paragraph.

(4) *Notice of ex parte presentations.* The Commission's Secretary shall issue a public notice listing any written *ex parte* presentations or written summaries of oral *ex parte* presentations received by his or her office relating to any permit-but-disclose proceeding. Such public notices generally should be released at least twice per week.

Note to Paragraph (b): Interested persons should be aware that some *ex parte* filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All *ex parte* presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

■ 9. Section 1.1208 is amended by revising the introductory text to read as follows:

§ 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a) *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204(a)) to or from Commission decision-making personnel are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which *ex parte* presentations are prohibited, referred to as "restricted" proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings). A party making a written or oral presentation in a restricted proceeding, on a non-*ex parte* basis, must file a copy of the presentation or, for an oral presentation, a summary of the presentation in the record of the proceeding using procedures consistent with those specified in § 1.1206.

* * * * *

■ 10. Section 1.1216 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 1.1216 Sanctions.

(a) *Parties.* Upon notice and hearing, any party to a proceeding who directly or indirectly violates or causes the violation of any provision of this subpart, or who fails to report the facts and circumstances concerning any such violation as required by this subpart, may be subject to sanctions as provided in paragraph (d) of this section, or disqualified from further participation in that proceeding. In proceedings other than a rulemaking, a party who has violated or caused the violation of any provision of this subpart may be required to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate may also be imposed.

* * * * *

(d) *Penalties.* A party who has violated or caused the violation of any provision of this subpart may be subject to admonishment, monetary forfeiture, or to having his or her claim or interest in the proceeding dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate also may be imposed. Upon referral from the General Counsel following a finding of an *ex parte* violation pursuant to § 0.251(g) of this chapter, the Enforcement Bureau shall have delegated authority to impose sanctions in such matters pursuant to § 0.111(a)(15) of this chapter.

[FR Doc. 2011–10353 Filed 4–29–11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 10–44; FCC 11–16]

Commission's Rules of Practice, Procedure, and Organization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises certain procedural and organizational rules. The rule revisions fall into three general categories. First, the Commission adopts several docket management measures, such as broadening the use of docketed proceedings; expanding the requirement for electronic filing (and reducing the scope of the obligation to file paper copies); and permitting staff in certain circumstances to notify parties electronically of docket filings and to close inactive dockets. Second, the Commission revises rules regarding the reconsideration of agency decisions, delegating authority to the staff to dismiss or deny defective or repetitive petitions for reconsideration of Commission decisions, and amending the rule that authorizes the Commission to reconsider a decision on its own motion within 30 days to make clear that the Commission may modify a decision (not merely set it aside or vacate it). Finally, the Commission implements changes to miscellaneous regulations. In order to make its

processes more uniform and understandable, the Commission sets a default effective date for FCC rules in the event the Commission does not specify an effective date in a rulemaking order and revises its computation of time rule to adopt the "next business day" approach when a Commission rule or order specifies that Commission action shall occur on a day when the agency is not open for business. To eliminate confusion, these rule amendments clarify when the Commission's Headquarters and other offices will be considered to be open for business; and corrects typographical errors in two debt collection rules. The Commission also makes a number of minor rules changes regarding requests under the Freedom of Information Act (FOIA) in order to correct errors or omissions that have been noted following the agency's last amendment of these rules in 2008. Overall, these revisions are intended to increase the efficiency of Commission decision-making, modernize Commission procedures for the digital age, and enhance the openness and transparency of Commission proceedings for practitioners and the public.

DATES: Effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joel Kaufman, Chief, Administrative Law Division, Office of General Counsel, 202–418–1758 or *joel.kaufman@fcc.gov.*

SUPPLEMENTARY INFORMATION: In this Report and Order, the Commission amends certain part 1 procedural rules and part 0 organizational rules, 47 CFR 1 and 0.

On February 22, 2010, the Commission released a notice of proposed rulemaking seeking comment on a number of proposed changes to the Commission's part 1 procedural rules and part 0 organizational rules. *See Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* 25 FCC Rcd 2430 (2010) (*Notice*). By this Report and Order, we adopt final rules effecting a number of proposals described in the *Notice.* The following paragraphs describe these rules changes.

Docket Management

In the *Notice,* the Commission proposed a number of steps to bring agency practice and procedure into the digital age and to improve the efficiency of Commission decision-making. Among these were increased use of docketed proceedings, electronic filing of pleadings with the Commission, and electronic notifications to the parties to a proceeding. Below is a summary of the actions taken on these docket management proposals.

1. Expanded Use of Docketed Proceedings

When we commenced this proceeding, we observed that many Commission proceedings are not docketed. *See* 25 FCC Rcd at 2433. In such circumstances, the individual bureau or office handling the matter may assign the proceeding a unique file number or other identifier instead of a formal docket number, or may not assign a numerical identifier at all. Often, the record in non-docketed proceedings is in paper format only, thus precluding electronic searches and rendering it difficult for interested persons to follow and participate in these proceedings. Given these limitations, we indicated our interest in expanding the use of docketed proceedings to foster greater openness, transparency, and public participation in our work. Specifically, we stated that we would seek to use the formal docketing process more often in Commission proceedings when technically feasible.

In the Report and Order, we adopt the proposal generally to expand the docketing process. Specifically, we direct Commission bureaus or offices (with the exception of the Enforcement Bureau, to the extent discussed below) to assign a docket number to proceedings within its jurisdiction in all but exceptional circumstances. For example, we anticipate prompt migration of the following illustrative categories of proceedings to numbered docketing: Newly filed formal complaints concerning common carriers under section 208 (*see* 47 U.S.C. 208; 47 CFR 1.720 *et seq.*) and newly filed pole attachment complaints under section 224 (*see* 47 U.S.C. 224; 47 CFR 1.1401 *et seq.*); customer proprietary network information (CPNI) proceedings (*see* 47 U.S.C. 222; 47 CFR 64.2001 *et seq.*); Cable Special Relief petitions (*see* 47 CFR 76.7 *et seq.*); proceedings involving Over-the-Air Reception Devices (*see* 47 CFR 1.4000 *et seq.*); and common carrier certifications (*see* 47 CFR 54.314.). We delegate authority to the Consumer and Governmental Affairs Bureau, in consultation with the relevant bureaus and offices, to issue a Public Notice (or Notices) announcing effective date(s) for numbered docketing of these and other particular categories of proceedings. During this transition to a comprehensive docketing regime, we will permit bureaus and offices not to assign a formal docket number to certain proceedings if, in the considered judgment of staff, docketing would raise special technical difficulties (for instance, because the docketing process is not easily extended to existing systems such as the Universal Licensing System) or would impose undue burdens upon the Commission and its staff; would be of limited utility; would not materially enhance public accessibility because, for instance, the filings in a proceeding could be accessed electronically in any event; or otherwise would not be in the public interest.

With respect to the Enforcement Bureau, we determine that both the Bureau and the parties under investigation have legitimate interests in keeping the investigative phase of a proceeding non-public. To the extent that formal docketing would impede these interests, we do not think the internal management benefits of assigning a docket number would outweigh the costs. For these reasons, we do not require the Enforcement Bureau to assign a docket number to investigative proceedings prior to the issuance of a notice of apparent liability.

If such a notice has been issued, however, we believe that the public interest in being able to access information about the proceeding is greater and outweighs the (diminished) interests that support protecting the investigation from public view. Thus, we determine that a docket number should be assigned to an enforcement proceeding in which the Enforcement Bureau has issued a notice of apparent liability, even if the notice has not been publicly released. Mindful that docketing should not frustrate the agency's and parties' interests in conducting a thorough, fair investigation, we note that parties may seek confidential treatment of submissions made in response to a notice of apparent liability to the extent that such treatment is consistent with section 0.459 of our rules, 47 CFR 0.459. We also observe that enforcement proceedings are restricted for purposes of our *ex parte* rules after the issuance of a notice of apparent liability, and that non-parties must abide by the requirements applicable to such proceedings. *See generally* 47 CFR 1.1208 (rules applicable to restricted proceedings), 1.1212 (procedures for handling prohibited *ex parte* presentations).

Finally, in response to one commenter's suggestion in this context for improving our rules on declaratory rulings, we determine that petitions for declaratory ruling should be handled in a similar manner to petitions for rulemaking under section 1.106, rather than in accordance with section 1.45(b).

Thus, each petition should be docketed (either within an existing active docket, if the issues raised within the petition are substantially related to that docket, or within a new docket if the issues raised do not substantially relate to a current proceeding); the particular bureau or office to which the petition has been submitted should seek comment on the petition via public notice; the default filing deadline for responsive pleadings to a docketed petition will be 30 days from the release date of the public notice, unless the bureau or office specifies otherwise; and the default filing deadline for any replies will be 15 days thereafter, unless the bureau or office specifies otherwise. We amend the existing rule involving declaratory rulings, section 1.2, to reflect these requirements. *See* 47 CFR 1.2.

2. Greater Use of Electronic Filing

In the *Notice,* we sought comment on whether and to what extent we ought to augment even further the use of electronic filing of pleadings through the Electronic Comment Filing System (ECFS) in Commission proceedings. *See* 25 FCC Rcd at 2434. In the Report and Order, we find it in the public interest to require the use of electronic filing whenever technically feasible, and amend section 1.49 accordingly. *See* 47 CFR 1.49. To begin the implementation of this policy, and in conjunction with our decision to expand the use of numbered docketing, we require migration of the following categories of proceedings to a fully electronic filing format via ECFS: Newly filed formal complaints concerning common carriers under section 208 (*see* 47 U.S.C. 208; 47 CFR 1.720 *et seq.*) and newly filed pole attachment complaints under section 224 (*see* 47 U.S.C. 224; 47 CFR 1.1401 *et seq.*); customer proprietary network information (CPNI) proceedings (*see* 47 U.S.C. 222; 47 CFR 64.2001 *et seq.*); Cable Special Relief petitions (*see* 47 CFR 76.7 *et seq.*); proceedings involving Over-the-Air Reception Devices (*see* 47 CFR 1.4000 *et seq.*); and common carrier certifications (*see* 47 CFR 54.314.). We anticipate that in future orders we will extend the electronic filing requirement to other categories of proceedings (changes which would not require the use of notice and comment procedures, *see* 5 U.S.C. 553(b)(A)). During the transition to a comprehensive electronic filing regime, we permit bureaus and offices to permit paper filing in specific proceedings within the categories listed above, after notice to the public, if such a requirement would raise special technical difficulties or impose undue burdens upon the Commission and its staff; would not materially enhance public accessibility because, for instance, the filings in a proceeding could be accessed electronically in any event; or otherwise would not be in the public interest.

In the *Notice,* we also sought comment on the implications of an electronic filing requirement for parties wishing to submit materials under a request for confidentiality. *See* 25 FCC Rcd at 2435. In the Report and Order, we determine both that confidential filings ought to continue to be made in paper format and that in proceedings subject to electronic filing, parties seeking confidential treatment of a portion of a filing must submit in electronic format either a redacted version of the document (with filers bearing sole responsibility for ensuring that the redacted material is not viewable or accessible) or an affidavit that it is impossible to submit a redacted document consistent with section 0.459 of the Commission's rules. *See* 47 CFR 0.459. In extreme cases, where a party demonstrates that even the fact of the filing must remain confidential and that section 0.459 permits this, the affidavit may be filed in paper format under seal. This approach will ensure an appropriate balance between the twin goals of openness and transparency, on one hand, and protection of legitimate claims of confidentiality on the other.

An additional issue we raised in the *Notice* concerned the Commission's use of electronic filing mechanisms other than ECFS. *See* 25 FCC Rcd at 2435. Because the Commission currently is considering reforms to some of these other systems and envisions establishing a single portal for all Commission licensing systems, we reserve judgment in the Report and Order as to how to resolve issues involving the interplay between ECFS and other systems (such as, for example, whether filers using those systems also should be permitted to file or precluded from filing in ECFS). These issues will be addressed as new systems are developed and brought online.

We also sought comment on whether electronic filings through ECFS or our other electronic filing systems should be "machine readable." *See* 25 FCC Rcd at 2435–36. Specifically, we asked whether to require the submission of text filings in a searchable format (*e.g.,* the Microsoft Word ".doc" format or the non-copy protected, text-searchable Adobe ".pdf" format), and whether to require that submissions containing non-text information, particularly spreadsheets of data, be submitted in the format in which they were created, such as Microsoft Excel, Microsoft Word, or Microsoft PowerPoint ("native format"). In the Report and Order, we determine that electronic filings with the Commission should be machine readable whenever technically possible. In particular, filings containing text should be submitted in a format conducive to electronic search and/or copying, such as a Microsoft Word document or an Adobe .pdf copy. Similarly, filings containing non-text information should be submitted in native format such that, for example, third parties can sort the spreadsheet data within a filing using Microsoft Excel or similar programs. In cases of attachments exceeding 500 pages, information to be submitted in a format that does not permit electronic filing, and other exceptional circumstances, we will consider a waiver of the electronic filing requirement on a case-by-case basis. Filings submitted to ECFS in .pdf or similar format should not be locked or password-protected. Failure to abide by this requirement may result in rejection by the filing system, and parties will have to resubmit by the filing deadline a machine-readable file that meets this requirement. We direct the Consumer and Governmental Affairs Bureau (CGB), in consultation with other bureaus and offices as necessary, to further develop requirements embodying these principles and to publish by public notice any additional technical rules or standards that may be necessary to implement our decision.

Finally, consistent with our goal of minimizing paper submissions to the Commission, we amend sections 1.51 and 1.419 of our rules to provide that parties are required to file with the Commission only one original and one copy of each submission made in paper format, unless another Commission rule specifically provides otherwise. In addition to easing the practical burdens of participation on parties and members of the general public (for example, in some circumstances, our rules currently require the submission of an original and 14 copies of a filing, *see* 47 CFR 1.51(a)(2)), this reform will lessen the storage demands on Commission staff and promote more environmentally sustainable agency practice.

3. Electronic Notification in Certain Proceedings

Section 1.47 of the Commission's rules requires agency service of copies of orders, pleadings, and other documents on parties to a proceeding when required by statute or regulation. *See* 47 CFR 1.47. Typically, such service is made by mail. As we observed in the *Notice,* this process can be cumbersome and time-consuming, particularly when

many parties participate in a particular proceeding or when every document in a long-running docket must be served on every party over the life of the proceeding. *See* 25 FCC Rcd at 2436. In order to streamline Commission processes and improve efficiency, we amend section 1.47 of the Commission's rules, and make conforming changes to section 0.445, to allow the agency to serve parties to a proceeding in an electronic format (*e.g.,* e-mail or an Internet-based notification system such as an RSS feed) following any change in the docket, to the extent the Commission is required to serve such parties. In a proceeding involving a large number of parties, we determine that the Commission's service obligation will be satisfied by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents. We allow staff to decide the appropriate format for electronic notification in a particular proceeding, consistent with any applicable statutory requirements, but expect that service by public notice will be used only in proceedings with 20 or more parties.

4. Termination of Dormant Proceedings

Mindful of the more than three thousand open dockets at the Commission, we proposed in the *Notice* to adopt rules permitting the termination of dormant proceedings. *See* 25 FCC Rcd at 2436. In the Report and Order, we amend section 0.141 of our organizational rules to delegate authority to the Chief of the CGB to review all open dockets periodically. When the CGB Chief identifies an open docket that appears to be a candidate for termination, the CGB Chief will consult with the Commission bureau or office with responsibility for that docket and, with the concurrence of the relevant bureau or office, will take the appropriate action to close the docket. In order to afford interested persons an opportunity to comment before any particular proceeding is terminated, we require the issuance of a public notice and a reasonable opportunity for public input prior to termination of a proceeding. The termination of a dormant proceeding also will be considered to include dismissal as moot of any pending petition, motion, or other request for relief in that proceeding that is procedural in nature or otherwise does not address the merits of the proceeding. A party aggrieved by a termination under this delegation of authority may file a petition for reconsideration with the Consumer and Governmental Affairs Bureau or an application for review with the full Commission. *See* 47 U.S.C. 155(c)(4); 47 CFR 1.115(a); 47 CFR 1.106.

Proceedings that are candidates for termination might include dockets in which no further action is required or contemplated and dockets in which no pleadings or other documents have been filed for several years. On the other hand, proceedings in which petitions addressing the merits are pending—for example, proceedings containing timely filed petitions for reconsideration that have not been addressed—should not be terminated under the authority delegated here unless the parties consent. We leave to the discretion of the CGB Chief the practical determinations involved in deciding which proceedings to terminate (*e.g.,* identifying a minimum period of dormancy that might indicate a particular docket should be considered for termination). We also note that the record in a terminated docket remains part of the Commission's official records, and that the various pleadings, orders, and other documents in that docket will continue to be accessible to the public post-termination.

Reconsideration of Agency Decisions

In the *Notice,* we discussed our current rules regarding reconsideration of Commission orders, noting that updating these rules could promote more efficient and accessible decision-making and give the Commission beneficial procedural flexibility in performing its functions. *See* 25 FCC Rcd at 2431–33. In the Report and Order, we address the two categories of rules on reconsideration that we identified in the *Notice:* petitions for reconsideration in rulemaking and adjudicatory proceedings, and reconsideration on the Commission's own motion.

1. Petitions for Reconsideration

Two procedural rules govern petitions for reconsideration of Commission orders. Section 1.429 applies to petitions for reconsideration of final orders issued in notice and comment rulemaking proceedings, while section 1.106 is a "catch-all" provision for petitions for reconsideration in agency adjudications. *See* 47 CFR 1.429., 1.106. As an initial matter, because the captions of the two rules are generic and do not explicitly reflect the dichotomy between rulemaking and adjudication, we revise the captions for sections 1.106 and 1.429 to "Petitions for reconsideration in non-rulemaking proceedings" and "Petitions for reconsideration of final orders in rulemaking proceedings," respectively. This proposal is a non-substantive clarification that should aid practitioners and the public in distinguishing between the rules for reconsideration in each context.

We also amend these rules to allow the agency to resolve more efficiently and expeditiously petitions for reconsideration filed with the Commission that are procedurally defective or merely repeat arguments the Commission previously has rejected, and that do not require the attention of the full Commission. Specifically, we amend sections 1.429 and 1.106 to authorize bureaus or offices to dismiss or deny petitions such as these on delegated authority. For a similarly procedurally defective or repetitive petition directed to a bureau or office (rather than the full Commission) seeking reconsideration of a staff-level decision, we delegate authority to the relevant bureau or office to dismiss or deny the petition.

For the guidance of staff and the public, the Report and Order includes the following illustrative list of circumstances in which staff may dismiss or deny a reconsideration petition on the basis that it plainly does not warrant consideration by the full Commission: (1) A petitioner omits information required by the Commission's rules to be included with a petition for reconsideration or otherwise fails to comply with procedural requirements set forth by the rules; (2) a petitioner fails to identify any material error, omission, or reason warranting reconsideration or fails to state with particularity the respects in which the petitioner believes the action taken should be changed; (3) a petitioner relies upon arguments that have been fully considered and rejected by the Commission within the same proceeding; (4) a petition relates to matters outside the scope of the order for which reconsideration has been requested; (5) a petitioner relies upon facts or arguments that could have been presented previously to the Commission or its staff but were not; (6) a petition relates to an order for which reconsideration has been previously denied on similar grounds; and (7) a petition was untimely filed. We expect that staff will refrain from exercising this authority to dismiss petitions for reconsideration in close cases, and will avoid dismissal on procedural grounds when it is in the public interest to do so. We also note that a party aggrieved by a staff dismissal or denial of a petition for reconsideration under this provision may file an application for review with the full Commission. *See* 47 U.S.C. 155(c)(4); 47 CFR 1.115(a).

In the *Notice,* we further proposed to require that persons filing petitions for reconsideration of Commission action do so through ECFS. *See* 25 FCC Rcd at 2432. In the Report and Order, we amend our rules to emphasize that in docketed proceedings, petitions for reconsideration submitted by electronic means other than ECFS (such as electronic mail) and petitions submitted directly to staff shall not be considered to have been properly filed, unless a law or rule specifically permits the alternative means of filing.

Finally, we proposed in the *Notice* to amend section 1.429 to provide that this rule, rather than the "catch-all" reconsideration provision in section 1.106, applies to petitions for reconsideration of Commission orders adopting rules without notice and comment (such as orders establishing or amending rules of agency organization, procedure, or practice). *See* 25 FCC Rcd at 2432. In the Report and Order, we decide to apply section 1.429 to orders adopting rules without notice and comment.

2. Reconsideration on the Commission's Own Motion

In the *Notice,* we proposed to amend section 1.108 of the Commission's rules, captioned "Reconsideration on Commission's own motion," which provides that "[t]he Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules." *See* 47 CFR 1.108. One court has construed this provision narrowly to preclude Commission modification of an action. *See Sprint Corp.* v. *FCC,* 315 F.3d 369, 375 (DC Cir. 2003). Because the purpose of the rule is to provide the Commission a mechanism for exercising plenary power to reconsider actions on its own motion, we amend section 1.108 to conform to the fuller definition of "reconsider" in section 1.106(k)(1), 47 CFR 1.106(k)(1).

Miscellaneous Part 1 Rules

We proposed in the *Notice* to amend other Part 1 procedural rules to clarify and improve our practices. We adopt these and other changes, as detailed below.

1. Effective Dates of Rules

Section 1.427(a), entitled "Effective date of rules," provides that "[a]ny rule issued by the Commission will be made effective not less than 30 days from the time it is published in the **Federal Register** except as otherwise specified in paragraphs (b) and (c) of this section." *See* 47 CFR 1.427(a). This provision contemplates that the Commission will specify in its rulemaking orders the effective date of adopted rules. While this typically is the case, the omission of such a statement can create confusion in the absence of a default rule on effective dates. *See* 25 FCC Rcd at 2437 & n.26. To forestall such confusion, we amend section 1.427(a) to provide that in the event a Commission order adopting a rule does not specify an effective date and does not affirmatively defer the setting of an effective date (*e.g.,* when an adopted rule requires approval by the Office of Management and Budget under the Paperwork Reduction Act), the rule will become effective 30 days after publication in the **Federal Register** unless a later effective date is required by statute (such as the Congressional Review Act) or otherwise is specified by the Commission.

2. Computation of Time

Deadlines for Commission Action Established by Rule. As stated in the *Notice,* uncertainty can arise when the Commission's rules set a deadline for Commission action on a date when the agency is not open for business. *See* 25 FCC Rcd at 2438. Although Section 1.4(j) of the Commission's rules adopts a "next business day" standard when a filing is due on such a date, it does not address the parallel situation in which Commission action is due by regulation. *See* 47 CFR 1.4(j). We amend this rule to provide that when the due date for Commission action otherwise would fall on a holiday, as defined by section 1.4(e)(1) of the rules, that date will be extended to the next business day.

Deadlines for Commission Action Established by Statute. As proposed in the *Notice,* we adopt a similar standard for statutory deadlines for Commission action, many of which arise under the Communications Act. *See* 25 FCC Rcd at 2438 & n.35. Specifically, in cases where a statutory deadline for Commission action falls on a holiday, as defined in section 1.4(e)(1) of our rules, we construe that deadline to require Commission action by the next business day, unless the statute provides otherwise. To effect this change, we amend section 1.4(a) of our rules to clarify its application to statutory deadlines for Commission action and add a new section 1.4(l) that applies the "next business day" standard (with the caveat for any statutory filing requirement) in this context.

Definition of "Holiday." As a matter of agency organization and practice, we adopt a clarifying change to section 1.4(e)(1) of our rules. Section 1.4(e)(1) currently defines the term "holiday" as "Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 p.m. For example, a regularly scheduled Commission business day may become a holiday if its offices are closed prior to 5:30 p.m. due to adverse weather, emergency or other closing." 47 CFR 1.4(e)(1). We revise this rule in order expressly to address circumstances in which Commission Headquarters is closed but an office at a different Commission location is open, or a particular Commission office other than Headquarters is closed. Specifically, we amend section 1.4(e)(1) to clarify that the term "holiday" includes any day on which either the Commission's Headquarters are closed and not reopened prior to 5:30 p.m., or on which a Commission office aside from Headquarters is closed, but only with respect to filings that may be made in paper format at that non-Headquarters office or decisions that are issued by that office. For example, a regularly scheduled Commission business day may become a holiday with respect to the entire Commission if Headquarters is closed prior to 5:30 p.m. due to adverse weather, emergency or other closing, and a regularly scheduled Commission business day may become a holiday with respect to a particular Commission office aside from Headquarters if either Headquarters or that office is closed prior to 5:30 p.m. due to similar circumstances.

3. Clerical Corrections to Sections 1.1164 and 1.1912

We make two clerical corrections to sections 1.1164 and 1.1912 of our rules, 47 CFR 1.164 and 1.1912. Section 1.1164 addresses penalties for late or insufficient regulatory fee payments. Section 1.1164(c) provides that "[i]f a regulatory fee is paid in a timely manner, the regulatee will be notified of its deficiency." We amend this section in order to clarify its application to regulatees that do *not* pay requisite fees in a timely manner. Second, 1.1912 establishes procedures for debt collection by administrative offset, and further provides that the Commission "may omit [these] procedures set forth in paragraph (a)(4)(i) of this section" under certain circumstances. We change the reference in this provision to "paragraph (b)(4)(i)" of section 1.1912, which sets forth the relevant procedures.

Miscellaneous Part 0 Rules

Finally, we take this opportunity to make editorial changes to our regulations implementing the Freedom

of Information Act (FOIA), 5 U.S.C. 552, so as to address issues that have come to our attention since we last reviewed and amended these regulations. *See Amendment of Part 0 of the Commission's Rules Regarding Public Information, the Inspection of Records, and Implementing the Freedom of Information Act,* 24 FCC Rcd 6904 (2008) (*FOIA Rules*). In section 0.453(c)(5), we inadvertently omitted the words "carrier-to-carrier" in the description of informal complaints that are routinely available, and amend that subsection accordingly. *See* 47 CFR 0.453(c)(5). Section 0.459(f) incorrectly cites section 0.457(g), instead of section 0.457(d), and is corrected. *See* 47 CFR 0.459(f). In the *FOIA Rules* decision, we indicated that we were amending our rules "to require that written requests to obtain copies of records routinely available for public inspection must be processed through the Commission's copy contractor under section 0.465." *See* 24 FCC Rcd at 6907. We did not amend sections 0.460 or 0.465 to reflect these changes, and therefore do so in this Report and Order. We also change the citation in section 0.465(f) to section 0.460(a) in order to reference the proper rule allowing persons to appear at the Commission to review or copy available records. *See* 47 CFR 0.465(f). Section 0.461 refers to both calendar and business days, and is corrected to consistently refer to calendar days. *See* 47 CFR 0.461. The words "representation of the news media" in the last sentence of section 0.466(a)(4) is changed to "representative of the news media" to reflect the original intent of the law. *See* 47 CFR 0.466(a)(4). Section 0.467(a)(2) of our rules indicates that search and review fees for Commission employees are computed at the General Schedule level plus personnel benefits, but this does not include "other non-FCC personnel who conduct a search" as provided in section 0.467(a)(1). *See* 47 CFR 0.467(a)(1)–(2). We amend section 0.467(a)(2) to include such personnel. Finally, section 0.470(b)(1) refers to copying pages, but also refers to microfiches and computer printouts. *See* 47 CFR 0.470(b)(1). We eliminate the latter obsolete references.

No Notice and Comment Required. We have determined that the changes we adopt here are general statements of policy, interpretive rules, or rules of agency organization, procedure or practice, and are therefore exempt from the notice and comment requirements of the APA, 5 U.S.C. 553(b)(A) (notice requirements inapplicable to "interpretive rules, general statements of policy, or rules of agency organization, procedure or practice"). Nonetheless, the Commission initiated notice and comment procedures in order to obtain public input on proposed changes to our procedural and organizational rules.

Regulatory Flexibility Act. Our action does not require notice and comment, and therefore is not subject to the Regulatory Flexibility Act of 1980, as amended. *See* 5 U.S.C. 601(2), 603(a). We nonetheless note that we anticipate that the rules we adopt today will not have a significant economic impact on a substantial number of small entities. As described above, in proposing to revise certain of our Part 1 Rules of Practice and Procedure and our Part 0 Rules of Commission Organization, we primarily change our own internal procedures and organization and do not impose substantive new responsibilities on regulated entities. There is no reason to believe that operation of the proposed rules would impose significant costs on parties to Commission proceedings. To the contrary, we take today's actions with the expectation that overall they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

Paperwork Reduction Act. This document does not contain new or modified proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4) (SBPRA).

Congressional Review Act. The Commission will not send a copy of this Report and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules relating to agency management or personnel and rules of agency organization, procedure, or practice that do not "substantially affect the rights or obligations of non-agency parties."

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, claims, Communications common carriers, Federal buildings and facilities, Investigations, Lawyers, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.141 is amended by revising paragraph (h) to read as follows:

§ 0.141 Functions of the Bureau.

* * * * *

(h) Serves as the official FCC records custodian for designated records, including intake processing, organization and file maintenance, reference services, and retirement and retrieval of records; manages the Electronic Comment Filing System and certifies records for adjudicatory and court proceedings. Maintains manual and computerized files that provide for the public inspection of public record materials concerning Broadcast Ownership, AM/FM/TV, TV translators, FM Translators, Cable TV, Wireless, Auction, Common Carrier Tariff matters, International space station files, earth station files, DBS files, and other miscellaneous international files. Also maintains for public inspection Time Brokerage and Affiliation Agreements, court citation files, and legislative histories concerning telecommunications dockets. Provides the public and Commission staff prompt access to manual and computerized records and filing systems. Periodically reviews the status of open docketed proceedings and, following:

(1) Consultation with and concurrence from the relevant bureau or office with responsibility for a particular proceeding,

(2) The issuance of a public notice listing proceedings under consideration for termination, and;

(3) A reasonable period during which interested parties may comment, closes any docket in which no further action is required or contemplated (with termination constituting a final determination in any such proceeding).

* * * * *

■ 3. Section 0.445 is amended by revising paragraph (a) to read as follows:

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

(a) Adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority, are mailed or delivered by electronic means to the parties, and as part of the record, are available for inspection in accordance with §§ 0.453 and 0.455.

* * * * *

■ 4. Section 0.453 is amended by revising paragraph (c)(5) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(c) * * *

(5) All formal and informal carrier-to-carrier complaints against common carriers filed under § 1.711 through § 1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto;

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■ 5. Section 0.459 is amended redesignating paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), by revising paragraph (a)(1) and adding new paragraph (a)(2), and revising paragraph (f) to read as follows:

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(a)(1) *Procedures applicable to filings in non-electronic proceedings.* Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection. (If the materials are specifically listed in § 0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified. In the latter circumstance, where confidential treatment is sought only for a portion of a document, the person submitting the document shall submit a redacted version for the public file.

(2) *Procedures applicable to filings in electronic proceedings.* In proceedings to which the electronic filing requirements set forth in § 1.49(f) of this chapter apply, a party seeking confidential treatment of a portion of a filing must submit in electronic format either a redacted version of the document or an affidavit that it is impossible to submit a redacted document consistent with the filing requirements of this section. Where a party demonstrates that even the fact of a filing must remain confidential, and that this is consistent with the requirements of this section, this affidavit may be filed in paper format under seal.

* * * * *

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for non-disclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. *See* § 0.457(d).

* * * * *

■ 6. Section 0.460 is amended by revising paragraph (e)(1) to read as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

* * * * *

(e)(1) Written requests for records routinely available for public inspection under §§ 0.453 and 0.455 shall be directed to the Commission's copy contractor pursuant to the procedures set forth in § 0.465. Requests shall be captioned "Request For Inspection Of Records," shall be dated, shall list the mailing address, telephone number (if any) of the person making the request, and the e-mail address (if any) and for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (*see* § 0.467).

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■ 7. Section 0.461 is amended by revising paragraph (d)(3) introductory text (note remains unchanged) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(d) * * *

(3) If the request is for materials submitted to the Commission by third parties and not open to routine public inspection under § 0.457(d), § 0.459, or another Commission rule or order, or if a request for confidentiality is pending pursuant to § 0.459, or if the custodian of records has reason to believe that the information may contain confidential commercial information, one copy of the request will be provided by the custodian of the records (*see* § 0.461(e)) to the person who originally submitted the materials to the Commission. If there are many persons who originally submitted the records and are entitled to notice under this paragraph, the custodian of records may use a public notice to notify the submitters of the request for inspection. The submitter or submitters will be given ten calendar days to respond to the FOIA request. *See* § 0.459(d)(1). If a submitter has any objection to disclosure, he or she is required to submit a detailed written statement specifying all grounds for withholding any portion of the information (*see* § 0.459). This response shall be served on the party seeking to inspect the records. The requester may submit a reply within ten calendar days unless a different period is specified by the custodian of records. The reply shall be served on all parties that filed a response. In the event that a submitter fails to respond within the time specified, the submitter will be considered to have no objection to disclosure of the information.

* * * * *

■ 8. Section 0.465 is amended by revising paragraphs (b) and (f) to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

* * * * *

(b)(1) Records routinely available for public inspection under §§ 0.453 and 0.455 are available to the public through the Commission's current copy contractor. Section 0.461 does not apply to such records.

(2) Audio or video recordings or transcripts of Commission proceedings are available to the public through the Commission's current copy contractor. In some cases, only some of these formats may be available.

* * * * *

(f) Anyone requesting copies of documents pursuant to this section may either come in person to the Commission (*see* § 0.460(a)) or request that the copy contractor fulfill the request. If a request goes directly to the contractor, the requester will be charged by the contractor pursuant to the price list set forth in the latest contract.

■ 9. Section 0.466 is amended by revising paragraph (a)(4) to read as follows:

§ 0.466 Definitions.

(a) * * *

(4) The term *commercial use* request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial

interests of the requester. In determining whether a requester properly falls within this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to question the use to which a requester will put the documents sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category. The dissemination of records by a representative of the news media (*see* § 0.466(a)(7)) shall not be considered to be for a commercial use.

* * * * *

■ 10. Section 0.467 is amended by revising paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a) * * *

(2) The fees specified in paragraph (a)(1) of this section are computed at Step 5 of each grade level based on the General Schedule or the hourly rate of non-FCC personnel, including in addition twenty percent for personnel benefits. Search and review fees will be assessed in ¼ hour increments.

* * * * *

■ 11. Section 0.470 is amended by revising paragraph (b)(1) to read as follows:

§ 0.470 Assessment of fees.

* * * * *

(b)(1) The 100 page restriction on assessment of reproduction fees in paragraphs (a)(2) and (3) of this section refers to 100 paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14."

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 13. Section 1.2 is revised to read as follows:

§ 1.2 Declaratory rulings.

(a) The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(b) The bureau or office to which a petition for declaratory ruling has been submitted or assigned by the Commission should docket such a petition within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice. Unless otherwise specified by the bureau or office, the filing deadline for responsive pleadings to a docketed petition for declaratory ruling will be 30 days from the release date of the public notice, and the default filing deadline for any replies will be 15 days thereafter.

■ 14. Section 1.4 is amended by revising paragraphs (a), (e)(1) introductory text, redesignating the note following paragraph (e)(1) as "Note to paragraph (e)(1)," revising paragaph (j) introductory text, and adding paragraph (l) to read as follows:

§ 1.4 Computation of time.

(a) *Purpose.* The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. In addition, this rule section prescribes the method for computing the amount of time within which the Commission must act in response to deadlines established by statute, a Commission rule, or Commission order.

* * * * *

(e) * * *

(1) The term holiday means Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's Headquarters are closed and not reopened prior to 5:30 p.m., or on which a Commission office aside from Headquarters is closed (but, in that situation, the holiday will apply only to filings with that particular office). For example, a regularly scheduled Commission business day may become a holiday with respect to the entire Commission if Headquarters is closed prior to 5:30 p.m. due to adverse weather, emergency or other closing. Additionally, a regularly scheduled Commission business day may become a holiday with respect to a particular Commission office aside from Headquarters if that office is closed prior to 5:30 p.m. due to similar circumstances.

* * * * *

(j) Unless otherwise provided (*e.g.* § 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. *See* paragraph (e)(1) of this section. If a rule or order of the Commission specifies that the Commission must act by a certain date and that date falls on a holiday, the Commission action must be taken by the next business day.

* * * * *

(l) When Commission action is required by statute to be taken by a date that falls on a holiday, such action may be taken by the next business day (unless the statute provides otherwise).

■ 15. Section 1.47 is amended by revising paragraph (a) to read as follows:

§ 1.47 Service of documents and proof of service.

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section. Documents that are required to be served by the Commission in agency proceedings (*i.e.,* not in the context of judicial proceedings, Congressional investigations, or other proceedings outside the Commission) may be served in electronic form. In proceedings involving a large number of parties, and unless otherwise provided by statute, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents.

Note to paragraph (a): Section 1.47(a) grants staff the authority to decide upon the appropriate format for electronic notification in a particular proceeding, consistent with any applicable statutory requirements. The Commission expects that service by public notice will be used only in proceedings with 20 or more parties.

* * * * *

■ 16. Section 1.49 is amended by revising paragraph (f) and redesignating the note at the end of the section as "Note to § 1.49".

The revision reads as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(f)(1) In the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, must be filed in electronic format:

(i) Formal complaint proceedings under Section 208 of the Act and rules in §§ 1.720 through 1.736, and pole attachment complaint proceedings under Section 224 of the Act and rules in §§ 1.1401 through 1.1418;

(ii) Proceedings, other than rulemaking proceedings, relating to customer proprietary network information (CPNI);

(iii) Proceedings relating to cable special relief petitions;

(iv) Proceedings involving Over-the-Air Reception Devices; and

(v) Common carrier certifications under rule in § 54.314 of this chapter.

(2) Unless required under paragraph (f)(1) of this section, in the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, may be filed in electronic format:

(i) General rulemaking proceedings other than broadcast allotment proceedings;

(ii) Notice of inquiry proceedings;

(iii) Petition for rulemaking proceedings (except broadcast allotment proceedings); and

(iv) Petition for forbearance proceedings.

(3) For purposes of paragraphs (b) and (c) of this section, and any prescribed pleading lengths, the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of paragraph (a) of this section, or shall be no more that 250 words per page.

■ 17. Section 1.51 is revised to read as follows:

§ 1.51 Number of copies of pleadings, briefs, and other papers.

(a) In hearing proceedings, unless otherwise specified by Commission rules, an original and one copy shall be filed, along with-an additional copy for each additional presiding officer at the hearing, if more than one.

(b) In rulemaking proceedings which have not been designated for hearing, *see* § 1.419.

(c) In matters other than rulemaking and hearing cases, unless otherwise specified by Commission rules, an original and one copy shall be filed. If the matter relates to part 22 of the rules, *see* § 22.6 of this chapter.

(d) Where statute or regulation provides for service by the Commission of papers filed with the Commission, an additional copy of such papers shall be filed for each person to be served.

(e) The parties to any proceeding may, on notice, be required to file additional copies of any or all filings made in that proceeding.

(f) For application and licensing matters involving the Wireless Radio Services, pleadings, briefs or other documents may be filed electronically in ULS, or if filed manually, one original and one copy of a pleading, brief or other document must be filed.

(g) Participants that file pleadings, briefs or other documents electronically in ULS need only submit one copy, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments. (*See* § 1.49)

(h) Pleadings, briefs or other documents filed electronically in ULS by a party represented by an attorney shall include the name, street address, and telephone number of at least one attorney of record. Parties not represented by an attorney that file electronically in ULS shall provide their name, street address, and telephone number.

■ 18. Section 1.106 is amended by revising the section heading and paragraphs (a)(1), (b)(2), (c), (d), (i), and (j), and by adding paragraph (p) to read as follows:

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings.

(a)(1) Except as provided in paragraphs (b)(3) and (p) of this section, petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rulemaking proceedings, *see* § 1.429. This § 1.106 does not govern reconsideration of such actions.)

* * * * *

(b) * * *

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

* * * * *

(c) In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.

(d)(1) A petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests.

(2) A petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed. The petition may request that additional findings of fact and/or conclusions of law be made.

* * * * *

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in

electronic form need only submit one copy.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

* * * * *

(p) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(2), (b)(3), or (c) of this section;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration, such as the affidavit required by paragraph (e) of this section (relating to electrical interference);

(7) Fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of this section;

(8) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (c) of this section; or

(9) Are untimely.

* * * * *

■ 19. Section 1.108 is revised to read as follows:

§ 1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, reconsider any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). When acting on its own motion under this section, the Commission may take any action it could take in acting on a petition for reconsideration, as set forth in § 1.106(k).

■ 20. Section 1.419 is amended by revising paragraph (b) to read as follows:

§ 1.419 Form of comments and replies; number of copies.

* * * * *

(b) Unless otherwise specified by Commission rules, an original and one copy of all comments, briefs and other documents filed in a rulemaking proceeding shall be furnished to the Commission. The distribution of such copies shall be as follows:

Secretary (original)	1
Reference Information Center	1
Total	2

Participants filing the required 2 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary (original)	1
Reference Information Center	1
Total	7

Similarly, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting an original and one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Informal comments filed after close of the reply comment period, or, if on reconsideration, the reconsideration reply comment period, should be labeled "ex parte" pursuant to § 1.1206(a). Letters submitted to Commissioners or Commission staff will be treated in the same way as informal comments, as set forth above. Also, to the extent that an informal participant wishes to submit to each Commissioner a personal copy of a comment and has not submitted or cannot submit the comment by electronic mail, the participant may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary (original)	1
Reference Information Center	1
Total	7

* * * * *

■ 21. Section 1.427 is amended by revising paragraph (a) to read as follows:

§ 1.427 Effective date of rules.

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the **Federal Register** except as otherwise specified in paragraphs (b) and (c) of this section. If the report and order adopting the rule does not specify the date on which the rule becomes effective, the effective date shall be 30 days after the date on which the rule is published in the **Federal Register**, unless a later date is required by statute or is otherwise specified by the Commission.

* * * * *

■ 22. Section 1.429 is amended by revising the section heading and paragraphs (b), (h), and (i), and by adding paragraph (l) to read as follows:

§ 1.429 Petition for reconsideration of final orders in rulemaking proceedings.

* * * * *

(b) A petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;

(2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest.

* * * * *

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System. Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed.

Parties filing in electronic form need only submit one copy.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Any order addressing a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious. In no event shall a ruling which denies a petition for reconsideration be considered a modification of the original order.

* * * * *

(l) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(1) through (3) of this section;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (c) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration;

(7) Fail to comply with the procedural requirements set forth in paragraphs (d), (e), and (h) of this section;

(8) Relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (b) of this section; or

(9) Are untimely.

* * * * *

■ 23. Section 1.1164 is amended by revising paragraph (c) to read as follows:

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

* * * * *

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

* * * * *

■ 24. Section 1.1912 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 1.1912 Collection by administrative offset.

* * * * *

(b) * * *

(4) * * *

(ii) The Commission may omit the procedures set forth in paragraph (b)(4)(i) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in Cecile Industries, Inc. v. Cheney, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the Commission first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Commission shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

* * * * *

[FR Doc. 2011–10356 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–54]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to address fraud, waste, and abuse in the Video Relay Service (VRS) industry. These rules are necessary to combat reported and detected activity that has resulted in inappropriate payments to VRS providers from the Interstate TRS Fund (Fund). The intended impact of these rules is to minimize fraud in order to safeguard the sustainability of the VRS program.

DATES: Effective June 1, 2011, except § 64.604(b)(4)(iii) of the Commission's rules, which shall become effective August 30, 2011. The recordkeeping and reporting requirements contained herein are subject to the Paperwork Reduction Act (PRA) and have not been approved by the Office of Management and Budget (OMB). Written comments by the public on the new information collections are due July 1, 2011. The Commission will publish a document in the **Federal Register** announcing the effective date of these requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission via e-mail at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–7126 or e-mail *Diane.Mason@fcc.gov.*

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via e-mail *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Structure and Practices of the Video Relay Service Program*, Report and Order (*Report and Order*), document FCC 11–54, adopted on April 5, 2011 and released on April 6, 2011, in CG Docket No. 10–51. Notice of Proposed Rulemaking, FCC 10–88, adopted on May 24, 2010 and released on May 27, 2010 is published elsewhere in this issue. The full text of document FCC 11–54 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II,

445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *http://www.bcpiweb.com.* Document FCC 11–54 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

The recordkeeping and reporting requirements in document FCC 11–54 contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In document FCC 11–54, the Commission has assessed the effects of imposing various requirements on VRS providers as well as providers of other forms of TRS. The Commission recognizes that these requirements are necessary to detect and prevent fraud, abuse and waste in the VRS program. The Commission takes these actions to ensure the sustainability of the program upon which individuals of hearing and speech disabilities have come to rely for their daily communication needs. In doing so, the Commission has balanced preserving the integrity of the VRS program and minimizing the information collection burden for small business concerns, including those with fewer than 25 employees. For example, in adopting procedures for the resolution of disputed provider payment claims when payment has been suspended, the *Report and Order* allows providers, including small businesses, to submit claims for payment in a process that is uniform, predictable and equitable for all providers, thereby reducing burdens associated with disputed payments. The Commission also requires automated recordkeeping of TRS minutes submitted to the Fund. The Commission believes that providers automatically receiving records of TRS minutes and submitting them in an electronic format should entail minimal burden and will prove critical to ensuring that submitted data for compensation is accurate. The Commission also finds that requiring providers to provide reports and retain records in an electronic format that is retrievable will provide a seamless transaction for the purpose of compensation from the TRS Fund, which will alleviate burdens on providers, including small businesses. Further, the Commission believes that the whistleblower protection rule adopted in the *Report and Order* will benefit all providers, including small businesses, because it provides their employees with guidance that will reduce uncertainty associated with employee's rights. Finally, the Commission concludes that all TRS providers, including small entities, will be eligible to receive compensation from the Interstate TRS Fund for their reasonable costs of complying with the requirements adopted in the *Report and Order.* These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of document FCC 11–54 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In document FCC 11–54, the Commission adopts rules to detect and prevent fraud and abuse in the provision of video relay service (VRS), which allows users to communicate in sign language via a video link. The Commission recognizes the valuable ways in which VRS fulfills the communication needs of persons who are deaf and hard of hearing. The program's structure, however, has made it vulnerable to fraud and abuse, which have plagued the current program and threatened its long-term sustainability.

In November 2009, the U.S. Department of Justice indicted 26 people for allegedly manufacturing and billing the Fund for illegitimate calls, the vast majority of whom have either pleaded guilty or been convicted. The Commission continues to receive numerous allegations of abusive practices by VRS providers. Some of these allegations have resulted in criminal investigations of VRS practices, which in turn have been the subject of semi-annual reports that the Commission's Office of the Inspector General (OIG) has submitted to Congress. The reports on these investigations have noted evidence of the following illicit VRS activities:

- Callers specifically requesting that the call not be relayed by the communications assistant (CA) to a third party;
- Calls placed to numbers that do not require any relaying, for example a voice-to-voice call;
- Calls initiated from international IP addresses by callers with little or no fluency in ASL where the connection is permitted to "run" (*i.e.*, the line is simply left open without any relaying of the call occurring);
- Implementation of "double privacy screens" (*i.e.,* where both users to the video leg of the call block their respective video displays, thus making communication impossible);
- VRS CAs calling themselves;
- CAs connecting videophones/computers and letting them run with no parties participating in the call;
- Callers disconnecting from one illegitimate call and immediately calling back to initiate another; and
- Callers admitting that they were paid to make TRS calls.

2. Document FCC 11–54 follows the Commission's, *Structure and Practices of Video Relay Service*, Declaratory Ruling, Order and Notice of Proposed Rulemaking (*VRS Call Practices NPRM*), document FCC 10–88, published at 75 FR 51735, August 23, 2010. In the *VRS Call Practices NRPM*, the Commission sought comment on a number of ways to reduce and ultimately eliminate fraud and abuse, and to improve the integrity and sustainability of the TRS Fund that pays for this program. Specifically, the Commission sought comment on:
(1) The location of VRS call centers;
(2) VRS CAs working from home;
(3) compensation for VRS CAs;
(4) procedures for the suspension of payment from the TRS Fund; (5) the permissibility of specific call practices; and (6) ways to detect and stop the billing of illegitimate calls.

Location of VRS Call Centers

3. The Commission declines to adopt its tentative conclusion to require that all VRS call centers be located in the United States. The Commission is concerned about potential violations of international trade agreements, and also agrees with those commenters that argue that it can effectively control fraud and ensure compliance with the

Commission's mandatory minimum standards at any center, regardless of its location, in other ways. However, it will assist the Commission's investigatory efforts to have information about where all current and future call centers are located. Accordingly, the Commission amends its rules to require all VRS providers to submit a written statement to the Commission and the TRS Fund administrator containing the locations of all of their call centers that handle VRS calls, including call centers located outside the United States, twice a year, on April 1st and October 1st. In addition to the street address of each call center, the Commission further directs that these statements contain (1) the number of individual CAs and CA managers employed at each call center; and (2) the name and contact information (phone number and e-mail address) for the managers at each call center. The Commission also amends its rules to require VRS providers to notify the Commission and the TRS Fund administrator in writing at least 30 days prior to any change to their call centers' locations, including the opening, closing, or relocation of any center.

VRS CAs Working From Their Homes

4. Allowing VRS CAs to work from their homes poses substantially more risks than benefits. An unsupervised home environment is more conducive to fraud than a supervised call center with on-site management. In the course of the Commission's ongoing investigations of fraud in the VRS industry, the Commission has identified numerous incidents in which unsupervised VRS CAs may have been complicit in facilitating fraudulent calls.

5. The Commission is also concerned about the ability of home-based VRS arrangements, where there is no on-site management to provide direct supervision, to achieve full compliance with the Commission's TRS mandatory minimum standards. First, the Commission is not convinced that call handling in a home environment can meet the Commission's TRS standard requiring strict confidentiality of all relay calls. *See* 47 CFR 64.604(a)(2) of the Commission's rules. Eavesdropping is more likely to occur in a home environment and provider call centers typically ensure structural or other arrangements that prevent sound from carrying from call station to call station, which are not available in a home. Second, the Commission is concerned about potential violations of the Commission's technical standards in a home environment. Commission rules require TRS facilities to have redundancy features, including uninterruptible power for emergency use, and further require TRS providers to be able to handle all 9–1–1 calls. *See* 47 CFR 64.604(b)(4)(ii) and 64.605 of the Commission's rules. The record does not contain evidence that these critical capabilities, routinely available in provider-operated call centers, are equally available in all home environments.

6. Finally, the Commission has concerns about the ability to achieve service quality standards in a home environment. For example, in provider-based call centers, managerial staff can intervene in the event that a CA is having difficulty understanding someone's signs, assist with an emergency call to 9–1–1, or relieve a CA in the middle of a call if the CA suddenly becomes ill. That is not the case in a home-based setting. Moreover, in a home environment, even when the CA's door is locked and surveillance cameras are used, there is little assurance that interruptions will not occur or that noises coming from outside the room, for example, from other family members, will not adversely affect the CA's ability to accurately and effectively interpret the call. Given the use of VRS as a critical tool for communication in employment and other daily life activities, as well as the statutory mandate to ensure functionally equivalent communication services, the Commission has an obligation to do all that it can to ensure that relay service enables communication that is as accurate and reliable as that of a direct voice telephone conversation. If the Commission determines in the future that home-based VRS can be provided in a manner that meets all of the Commission's requirements, the Commission may revisit this finding.

VRS CA Compensation

7. The indictments resulting from criminal investigations into VRS fraud are replete with alleged instances in which CAs were rewarded for handling calls that otherwise would not have been made, as well as alleged schemes directing VRS call center employees to make illegitimate calls. In addition to being criminal, these arrangements do not support the goal of TRS, which is to provide a telephone service equivalent that allows people with hearing and/or speech disabilities to make or receive calls only when they want to do so. While it may be legitimate to reward VRS employees with bonuses and other forms of compensation for a job well done, or for extra hours worked, incentives based on the number of minutes or calls that these employees handle encourage such employees to generate minutes that would not otherwise have been made by individuals using VRS. Such incentives encourage CAs to process additional traffic, artificially lengthen the time of a call, or even engage in illicit schemes to create fictional calls where no relaying takes place. Such incentives may be the cause of a substantial amount of the fraud that has occurred over the past few years. Accordingly, the Commission now concludes that VRS CAs, either individually or as part of a group, are prohibited from receiving compensation, being given preferential work schedules, or otherwise benefiting in any way based on the number of minutes or calls that they relay.

Procedures for the Suspension of Payment

8. Delay or suspension of payment is expressly authorized by the TRS rules, which state that the Fund administrator "may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so." 47 CFR 64.604(c)(5)(iii)(E) of the Commission's rules. In the past, payment has been withheld either because the minutes have appeared to be non-compensable under the Commission's rules or because the Commission has a basis for believing that fraud is associated with the minutes. To preserve the integrity of the TRS Fund, the Commission must continue withholding payments for TRS minutes, where justified, to ensure compliance with the Commission's rules and to prevent fraud and abuse of the TRS program.

9. However, to provide greater due process and transparency to TRS providers, the Commission adopts a one-year time frame (starting with the date of the provider's initial request for payment) for the evaluation and resolution of disputed payment claims. The time frames set forth below relate only to payment suspension or delay and not to the Commission's investigatory processes used to determine whether a provider has violated the Act or any Commission rule or order. The procedures and time frames for investigation and enforcement will continue to be governed by the provisions of the Act relevant to the Commission's investigative and enforcement functions. The time frames discussed below also are not intended to affect the investigatory processes of other law enforcement bodies, such as the U.S. Department of Justice, in determining

whether a provider has violated any provision of law that such other law enforcement entity enforces. The Commission amends its rules by adopting the following process for suspension or delay of payment to a TRS provider:

- The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.
- If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, the TRS provider will be notified within two months from the date the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. The TRS provider then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If the TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.
- If the TRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.
- If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use. Any payment from the Fund will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.
- If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

International VRS Calls

10. In recent years, the TRS Fund call data has revealed a large number of VRS calls from international IP addresses (*i.e.*, wherein the originating party's IP address indicates that the call originated from outside of the United States). In its 2009 Semi-Annual Report to Congress, the Commission's OIG noted that some of the allegations of conspiracy, fraud, and other criminal activity that have been associated with VRS minutes billed to the TRS Fund were based, among other things, on evidence of "run" calls initiated by callers with little or no fluency in ASL from international IP addresses in which no conversations were relayed. Because many of these minutes are likely attributable to fraudulent or abusive activities, the Commission adopts rules to prohibit compensation for VRS calls that originate with Internet connections from international IP addresses, regardless of where those calls terminate. The Commission adopts a limited exception to this prohibition for VRS calls originating from international IP addresses that are made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, so long as the provider has an accurate means of verifying the identity of such callers and their locations at the time such calls are made. When pre-registering, such individuals must specify the locations to which the individual will be traveling, as well as a finite period of time during which they will be on travel. Only calls made from those locations and during the specified time period will be compensable if otherwise in compliance with the Commission's rules and not associated with fraudulent activities. The general prohibition against Internet calling does not apply to (1) VRS calls initiated by voice callers located outside the United States to deaf users physically located in the United States or (2) legitimate VRS calls originated by individuals with IP addresses associated with registered ten-digit numbers that are made from a location within the United States and terminating outside the United States.

A. Use of Privacy Screens; Idle Calls

11. In recent years, some VRS providers have participated in practices that effectively "suspend" the communication that is supposed to be taking place between the parties to a relay call for what appears to be excessive amounts of time. The Commission adopts two rules to reduce the frequency of these schemes. First, the Commission adopts a rule prohibiting CAs from enabling privacy screens from their side of the call at any time. There is no justification for a CA to ever prevent a caller from seeing him or her, because the precise and sole function of the CA is to interpret the call using sign language, a *visual* language.

12. Second, the Commission adopts a rule requiring CAs to terminate VRS calls if either or both the calling or called party: (1) Enables a privacy screen for more than five minutes; or (2) is completely unresponsive or unengaged (creating an idle call) for longer than five minutes. Prior to disconnecting a call, a CA must first announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates that he or she is still actively participating on the call. This rule will not apply to 9–1–1 calls. Nor will it apply to relay calls that are legitimately placed on hold (*e.g.,* by a customer service agent), where at least one of the parties to the call is still actively present and waiting for the other party to return to the phone. To avoid any ambiguity as to the ongoing nature of the call, the Commission expects that at least one of the parties to the call will check in with the CA periodically, so that the CA knows the call has not ended or become idle.

B. Provider-Involved Remote Training

13. The function of a VRS provider is to provide communication for people with hearing and/or speech disabilities that is functionally equivalent to voice telephone communications. When a VRS provider engages in activities that are designed to attract VRS users to "remote training sessions," it is highly likely that the provider is doing so for the sole purpose of generating minutes. The Commission defines remote training to include any training session, such as a classroom lesson, tutorial lesson, seminar, speaker's conference or other event to which an individual connects from a remote distance via a telephone or Internet-based connection. In the *VRS Call Practices NPRM*, the Commission noted that as many as 232,000 VRS minutes stemmed from these and similar types of remote

training sessions in the second half of 2009, resulting in at least $1.4 million billed to the Fund. Accordingly, the Commission adopts a rule that where a provider is involved, in any way, in remote training, VRS calls to such training sessions are not reimbursable from the Fund. Non-compensable arrangements shall include any program or activity in which a provider or its affiliates of any kind, including, but not limited to, its subcontractors, partnerships, employees and sponsoring organizations or entities, have any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities to VRS users.

C. Ineligible Providers; Revenue Sharing Schemes

14. In order to reduce fraud and establish better oversight of the VRS program, and address the unauthorized revenue sharing arrangements that have escalated in the VRS program, the Commission amends its rules in the following ways. First, only entities determined to be eligible to receive compensation from the TRS Fund under § 64.604(c)(5)(iii)(F) of the Commission's rules will be eligible to provide VRS and hold themselves out as providers of VRS to the general public. VRS service must be offered under the name by which the provider became certified and in a manner that clearly identifies that provider of the service. The foregoing requirement will not prevent a VRS provider from utilizing sub-brands, such as those dedicated to particular states, communities or regions in which it provides service, but requires that each sub-brand clearly identify the certified entity as the actual provider of the service. Calls to any brand or sub-brand of VRS must be routed through a single URL for that brand or sub-brand.

15. Second, the Commission amends its rules to make clear that an eligible provider is prohibited from engaging any third party entity to provide VRS CAs or call center functions (including call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration), on its behalf, unless that third party entity also is an eligible provider under the Commission's rules. This provision will ensure that an eligible provider is responsible for providing the core components of VRS, rather than subcontracting out these responsibilities to third party entities, whose operations are not under the direct supervision of the Commission.

16. Third, to the extent an eligible provider contracts with a third party to provide any other services or functions related to the provision of VRS, at third party entity must not hold itself out to the public as a VRS provider. This will make it easier for consumers, the Commission and the Fund administrator to tie service to the company providing that service.

17. Fourth, to provide effective oversight, all third-party contracts or agreements must be executed in writing and copies of these agreements must be available to the Commission and the TRS Fund administrator upon request. Such contracts or agreements shall provide detailed information about the nature of the services to be provided by the subcontractor.

18. Lastly, the Commission seeks to reduce the risk that marketing and outreach efforts will continue to be vehicles for manufacturing fraudulent minutes, such as those described above. To the extent an eligible VRS provider contracts with a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, the costs for such services cannot be compensated from the TRS Fund on a per-minute basis. In addition, all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, must be described in the providers' annual submissions to the TRS Fund administrator.

D. Whistleblower Protections

19. The Commission adopts specific whistleblower protections for the employees and contractors of TRS providers. Notwithstanding the existence of other Federal and state whistleblower regulations, establishing a specific TRS whistleblower protection rule here will provide an explicit layer of protection for employees who are interested in disclosing information necessary to combat waste, fraud, and abuse with respect to relay services, and thus encourage them to do so. Current or former employees of TRS providers or any contractors ("covered individuals") will be protected from reprisal in the form of a personnel action if they disclose information they reasonably believe evidences a violation of the Act or TRS regulations (including any activities that could result in the improper billing of minutes to the TRS Fund) to the eligible TRS provider billing for those minutes, the Commission, the Interstate TRS Fund administrator, or any Federal or state law enforcement entity. For a disclosure to be protected, the covered individual must have a reasonable belief that the information is true. The actual veracity of any disclosure, however, will not affect whether a disclosure is protected. If a TRS provider violates the TRS whistleblower protection rule, as with any rule violation, the Commission may take enforcement action.

20. Providers shall provide information about these TRS whistleblower protections, including the right to notify the Commission's OIG or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to their employees in writing (*e.g.* in employee handbooks, policies and procedures manuals, or bulletin board postings) must also explicitly include these TRS whistleblower protections in those written materials. The Commission will also take steps to disseminate information about the TRS whistleblower protection rule.

21. Unlike interpreters generally, CAs are strictly bound by the standards set forth in the Commission's regulations. Thus, whatever ethical codes may be imposed upon these individuals by their certifying bodies in community interpreting situations do not necessarily govern VRS situations; rather the specific rules, including those dealing with confidentiality, that are contained in the Commission's mandatory minimum standards are the governing standards for CAs who handle VRS calls.

Data, Audits and Record Retention Requirements

Data Filed With the Fund Administrator to Support Payment Claims

22. The Commission now expands the data collection rules to require the filing of the following data associated with each VRS call for which a VRS provider seeks compensation: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated.

23. The Commission also amends its functional TRS mandatory minimum standards to require VRS and IP Relay providers to submit speed of answer compliance data. Under the Commission's rules, VRS providers are required to answer 80 percent of all

calls within 120 seconds. 47 CFR 64.604(b)(2)(iii) of the Commission's rules. The provision of this data will enable the Commission to ensure compliance with this mandatory minimum standard, which is critical to ensuring that VRS providers promptly answer calls.

24. Finally, in the *VRS Call Practices NPRM*, the Commission amends its rules to require that the call record and speed of answer data be submitted electronically and in a standardized format in order to reduce the burden associated with compiling and filing this data and to facilitate the collection and analysis of this data by the Fund administrator and the Commission.

Automated Call Data Collection

25. The Commission amends its rules to require TRS providers to use an automated record keeping system to capture the following data when seeking compensation from the Fund: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times, at a minimum to the nearest second; (4) conversation start and end times, at a minimum to the nearest second; (5) incoming telephone number (if call originates with a telephone) and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call. The Commission defines automated recordkeeping system for purposes of these rules as a system that captures data in a computerized and electronic format in a manner that does not allow human intervention during the call session (for either conversation or session time). An electronic system that requires the CA or provider's employee to manually press a start and/or end command key in order to capture the required data or to terminate the data recording does not constitute an automated system under this requirement.

Transparency and the Disclosure of Provider Financial and Call Data

26. The Commission has declined to make individual provider cost data available to the public because of its highly proprietary nature, and in light of the significant fraud and abuse that has taken place in this industry. The Commission must consider cost and demand data as part of the VRS compensation rate-setting process, and it will work in conjunction with the Fund administrator to carefully scrutinize data submitted by providers.

Provider Audits

27. The Commission has determined that regular audits of providers must be conducted to ensure the integrity of the TRS Fund. In order to provide the Commission the flexibility and discretion it needs in determining when audits are necessary, the Commission amends the TRS mandatory minimum standards to require that all TRS providers submit to audits annually or, if necessary, at any other time deemed appropriate by the Commission, the Fund administrator, or by the Commission's OIG. The Commission also concludes that providers that fail to fully cooperate in audits, for example, by failing to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of TRS payments until sufficient documentation is provided. The Commission believes that this policy will promote greater transparency and accountability in the compensation process.

Record Retention

28. Providers of all forms of Internet-based TRS must retain all required call detail records, other records that support their claims for payment from the Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form for a minimum of five years, in an electronic format that is easily retrievable for the Commission and TRS Fund administrator for possible future use, including audits. Retained records must include the following data that is used to support payment claims submitted to the Fund administrator: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.

Provider Certification Under Penalty of Perjury

29. The Commission permanently adopts the rule requiring the CEO, CFO, or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, to certify, under penalty of perjury that: (1) Minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Act and the Commission's rules and orders, and are not the result of impermissible financial incentives, payments or kickbacks to generate calls, and (2) cost and demand data submitted to the Fund administrator in connection with the determination of compensation rates or methodologies are true and correct, as follows:

I swear under penalty of perjury that (i) I am __(name and title), __an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and (ii) the TRS calls for which compensation is sought were handled in compliance with section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

30. The Commission believes that this certification will provide an added deterrent against fraud and abuse of the Fund by making senior officers of providers more accountable for the compensation data submitted to the Fund administrator.

Final Regulatory Flexibility Certification

31. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Public Law 104–121, Title II, 110 Stat. 857 (1996). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

32. The *Report and Order* adopts rules to minimize fraud, waste, and abuse in the TRS industry, particularly for VRS. Specifically, the *Report and Order* takes

the following measures: It adopts rules requiring that VRS providers submit a statement describing the location and staffing of their call centers twice a year, and a notification at least 30 days prior to any change in the location of such centers. It prohibits VRS CAs from relaying calls from their homes. It prohibits VRS provider arrangements that involve tying compensation paid or other benefits given to CAs to minutes or calls processed by that CA, either individually or as part of a group. In addition, the Commission adopts procedures for the resolution of disputed provider payment claims when payment has been suspended.

33. In addition to the above, in the *Report and Order,* the Commission adopts a rule prohibiting compensation for VRS calls that originate from IP addresses that indicate the individual initiating the call is located outside of the United States. Under new rules, VRS CAs will be required to terminate a VRS call if either party to the call: (1) Enables a privacy screen or similar feature for more than five minutes, or (2) is unresponsive or unengaged for more than five minutes, unless the call is to 9–1–1 or one of the parties is on hold. In addition, compensation for VRS calls for remote training when the provider is involved in any way with such training will be prohibited. The *Report and Order* also requires automated recordkeeping of TRS minutes submitted to the Fund, and amends the rules governing data collection from VRS providers to add requirements for the filing of data associated with each VRS call for which a VRS provider is seeking compensation.

34. The *Report and Order* prohibits revenue sharing agreements between entities eligible for compensation from the Fund and non-eligible entities. Providers will be prohibited from engaging third party entities to provide CAs or call center functions unless the third party is also an eligible provider. Where providers contract with or otherwise authorize other entities to provide other services or functions related to the provision of VRS, the third party may not hold itself out to the public as a service provider. Any such third party contracts must be in writing and available to the Commission and Fund administrator upon request. In addition, each VRS provider will be required to offer VRS only under the name by which the provider became certified and in a manner that clearly identifies that provider of the service, or a sub-brand name that identifies that provider. All calls to any brand or sub-brand of TRS must be routed through a single URL for that brand or sub-brand.

35. The Commission adopts whistleblower protection rules for current and former employees and contractors of TRS providers. The Commission also will require that VRS providers submit to audits annually or as deemed appropriate by the Fund administrator or the Commission. Internet-based TRS providers will be required to retain all records that support their claims for payment from the Fund for five years. Finally, the Commission makes permanent the emergency rule that requires the CEO, CFO, or another senior executive of a TRS provider with first-hand knowledge of the accuracy and completeness of the information to certify, under penalty of perjury, to the validity of minutes and data submitted to the Fund administrator.

36. In order to be compensated, TRS providers are required to comply with all of the Commission's rules governing the provision of TRS. All reasonable costs of providing service in compliance with the *Report and Order* are compensable from the Fund. Thus, because the providers will recoup the costs of compliance within a reasonable period, the Commission asserts that the providers will not be detrimentally burdened.

37. Therefore, the Commission certifies that the requirements of the *Report and Order* will not have a significant adverse economic impact on any entities, large or small.

38. The Commission has previously limited its RFA considerations to those entities collecting money directly from the TRS Fund. Although there may be various impacted entities that subcontract with providers eligible for direct compensation from the TRS Fund, the Commission does not have oversight of such entities.

39. Therefore, in addressing only those entities currently eligible to receive compensation from the TRS Fund, the Commission also notes that, of the fourteen providers affected by the *Report and Order,* no more than five meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.

40. Currently, fourteen providers receive compensation from the Interstate TRS Fund for providing any form of TRS. Because no more than five of the providers that will be affected by the *Report and Order,* if adopted, are deemed to be small entities under the SBA's small business size standard, the Commission concludes that the number of small entities potentially affected by our proposed rules is not substantial. In addition, because those providers that meet the definition of small entity will be promptly compensated within a reasonable period for complying with the *Report and Order,* the Commission concludes that the financial impact of the Commission's decisions in the *Report and Order* is not substantial.

41. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities, or any entities.

42. The Commission will send a copy of the *Report and Order,* including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and the final certification will be sent to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

43. Pursuant to sections 1, 4(i), (j) and (o), 225, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), document FCC 11–54 *is adopted.*

44. Pursuant to § 1.427(a) of the Commission's rules, 47 CFR 1.427(a), document FCC 11–54 and the rules adopted herein shall become effective June 1, 2011, except for rule, 64.604(b)(4)(iii), which shall become effective August 30, 2011, and except for the rules containing information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

45. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620, unless otherwise noted.

Subpart F—Telecomunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities

■ 2. The authority citation for Subpart F is revised to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), and 620.

■ 3. In 64.601, redesignate paragraph (a)(27) as paragraph (a)(28), and add a new paragraph (a)(27) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(27) *Visual privacy screen.* A screen or any other feature that is designed to prevent one party or both parties on the video leg of a VRS call from viewing the other party during a call.

* * * * *

■ 4. Section 64.604 is revised by adding new paragraphs (a)(6), (a)(7), and (b)(4)(iii), by revising paragraph (c)(5)(iii)(C), and by adding new paragraphs (c)(5)(iii)(L), (c)(5)(iii)(M), and (c)(5)(iii)(N) to read as follows:

§ 64.604 Mandatory Minimum standards.

* * * * *

(a) * * *

(6) *Visual privacy screens/idle calls.* A VRS CA may not enable a visual privacy screen or similar feature during a VRS call. A VRS CA must disconnect a VRS call if the caller or the called party to a VRS call enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive or unengaged for more than five minutes, unless the call is a 9–1–1 emergency call or the caller or called party is legitimately placed on hold and is present and waiting for active communications to commence. Prior to disconnecting the call, the CA must announce to both parties the intent to terminate the call and may reverse the decision to disconnect if one of the parties indicates continued engagement with the call.

(7) *International calls.* VRS calls that originate from an international IP address will not be compensated, with the exception of calls made by a U.S. resident who has pre-registered with his or her default provider prior to leaving the country, during specified periods of time while on travel and from specified regions of travel, for which there is an accurate means of verifying the identity and location of such callers. For purposes of this section, an international IP address is defined as one that indicates that the individual initiating the call is located outside the United States.

(b) * * *

(4) * * *

(iii) A VRS CA may not relay calls from a location primarily used as his or her home.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) *Data Collection and Audits.* (*1*) TRS providers seeking compensation from the TRS Fund shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS investment in general in accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements.

(*2*) Call data required from all TRS providers. In addition to the data requested by paragraph (c)(5)(iii)(C)(*1*) of this section, TRS providers seeking compensation from the TRS Fund shall submit the following specific data associated with each TRS call for which compensation is sought:

(*i*) The call record ID sequence;

(*ii*) CA ID number;

(*iii*) Session start and end times noted at a minimum to the nearest second;

(*iv*) Conversation start and end times noted at a minimum to the nearest second;

(*v*) Incoming telephone number and IP address (if call originates with an IP-based device) at the time of the call;

(*vi*) Outbound telephone number (if call terminates to a telephone) and IP address (if call terminates to an IP-based device) at the time of call;

(*vii*) Total conversation minutes;

(*viii*) Total session minutes;

(*ix*) The call center (by assigned center ID number) that handled the call; and

(*x*) The URL address through which the call is handled.

(*3*) Additional call data required from Internet-based Relay Providers. In addition to the data required by paragraph (c)(5)(iii)(C)(*2*) of this section, Internet-based Relay Providers seeking compensation from the Fund shall submit speed of answer compliance data.

(*4*) Providers submitting call record and speed of answer data in compliance with paragraphs (c)(5)(iii)(C)(*2*) and (c)(5)(iii)(C)(*3*) of this section shall:

(*i*) Employ an automated record keeping system to capture such data required pursuant to paragraph (c)(5)(iii)(C)(*2*) of this section for each TRS call for which minutes are submitted to the fund administrator for compensation; and

(*ii*) Submit such data electronically, in a standardized format. For purposes of this subparagraph, an automated record keeping system is a system that captures data in a computerized and electronic format that does not allow human intervention during the call session for either conversation or session time.

(*5*) *Certification.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of a TRS provider with first hand knowledge of the accuracy and completeness of the information provided, when submitting a request for compensation from the TRS Fund must, with each such request, certify as follows:

I swear under penalty of perjury that:

(i) I am __ (name and title), _an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact, as well as all cost and demand data contained in this Relay Services Data Request, are true and accurate; and

(ii) The TRS calls for which compensation is sought were handled in compliance with Section 225 of the Communications Act and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls.

(*6*) Audits. The fund administrator and the Commission, including the Office of Inspector General, shall have the authority to examine and verify TRS provider data as necessary to assure the accuracy and integrity of TRS Fund payments. TRS providers must submit to audits annually or at times determined appropriate by the Commission, the fund administrator, or by an entity approved by the Commission for such purpose. A TRS provider that fails to submit to a requested audit, or fails to provide documentation necessary for verification upon reasonable request, will be subject to an automatic suspension of payment until it submits

to the requested audit or provides sufficient documentation.

(*7*) Call data record retention. Internet-based TRS providers shall retain the data required to be submitted by this section, and all other call detail records, other records that support their claims for payment from the TRS Fund, and records used to substantiate the costs and expense data submitted in the annual relay service data request form, in an electronic format that is easily retrievable, for a minimum of five years.

* * * * *

(L) *Procedures for the suspension/withholding of payment.*

(*1*) The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.

(*2*) If the Fund administrator in consultation with the Commission, or the Commission on its own accord, determines that payments for certain minutes should be withheld, a TRS provider will be notified within two months from the date for the request for compensation was filed, as to why its claim for compensation has been withheld in whole or in part. TRS providers then will be given two additional months from the date of notification to provide additional justification for payment of such minutes of use. Such justification should be sufficiently detailed to provide the Fund administrator and the Commission the information needed to evaluate whether the minutes of use in dispute are compensable. If a TRS provider does not respond, or does not respond with sufficiently detailed information within two months after notification that payment for minutes of use is being withheld, payment for the minutes of use in dispute will be denied permanently.

(*3*) If the VRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.

(*4*) If the provider meets its burden to establish that the minutes in question are compensable under the Commission's rules, the Fund administrator will compensate the provider for such minutes of use. Any payment by the Commission will not preclude any future action by either the Commission or the U.S. Department of Justice to recover past payments (regardless of whether the payment was the subject of withholding) if it is determined at any time that such payment was for minutes billed to the Commission in violation of the Commission's rules or any other civil or criminal law.

(*5*) If the Commission determines that the provider has not met its burden to demonstrate that the minutes of use in dispute are compensable under the Commission's rules, payment will be permanently denied. The Fund administrator or the Commission will notify the provider of this decision within one year of the initial request for payment.

(M) *Whistleblower protections.* Providers shall not take any reprisal in the form of a personnel action against any current or former employee or contractor who discloses to a designated manager of the provider, the Commission, the TRS Fund administrator or to any Federal or state law enforcement entity, any information that the reporting person reasonably believes evidences known or suspected violations of the Communications Act or TRS regulations, or any other activity that the reporting person reasonably believes constitutes waste, fraud, or abuse, or that otherwise could result in the improper billing of minutes of use to the TRS Fund and discloses that information to a designated manager of the provider, the Commission, the TRS Fund administrator or to any Federal or state law enforcement entity. Providers shall provide an accurate and complete description of these TRS whistleblower protections, including the right to notify the FCC's Office of Inspector General or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to its employees in writing (*e.g.* in employee handbooks, policies and procedures manuals, or bulletin board postings—either online or in hard copy) must include an accurate and complete description of these TRS whistleblower protections in those written materials.

(N) In addition to the provisions set forth above, VRS providers shall be subject to the following provisions:

(*1*) Eligibility for reimbursement from the TRS Fund.

(*i*) Only an eligible VRS provider, as defined in paragraph (c)(5)(iii)(F) of this section, may hold itself out to the general public as providing VRS.

(*ii*) VRS service must be offered under the name by which the eligible VRS provider offering such service became certified and in a manner that clearly identifies that provider of the service. Where a TRS provider also utilizes sub-brands to identify its VRS, each sub-brand must clearly identify the eligible VRS provider. Providers must route all VRS calls through a single URL address used for each name or sub-brand used.

(*iii*) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless that authorized third party also is an eligible provider.

(*iv*) To the extent that an eligible VRS provider contracts with or otherwise authorizes a third party to provide any other services or functions related to the provision of VRS other than interpretation services or call center functions, that third party must not hold itself out as a provider of VRS, and must clearly identify the eligible VRS provider to the public. To the extent an eligible VRS provider contracts with or authorizes a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, those VRS minutes are not compensable on a per minute basis from the TRS fund.

(*v*) All third-party contracts or agreements entered into by an eligible provider must be in writing. Copies of such agreements shall be made available to the Commission and to the TRS Fund administrator upon request.

(*2*) Call center reports. VRS providers shall file a written report with the Commission and the TRS Fund administrator, on April 1st and October 1st of each year for each call center that handles VRS calls that the provider owns or controls, including centers located outside of the United States, that includes:

(*i*) The complete street address of the center;

(*ii*) The number of individual CAs and CA managers; and

(*iii*) The name and contact information (phone number and e-mail address) of the manager(s) at the center. VRS providers shall also file written notification with the Commission and the TRS Fund administrator of any change in a center's location, including the opening, closing, or relocation of any center, at least 30 days prior to any such change.

(*3*) Compensation of CAs. VRS providers may not compensate, give a preferential work schedule or otherwise

benefit a CA in any manner that is based upon the number of VRS minutes or calls that the CA relays, either individually or as part of a group.

(*4*) Remote training session calls. VRS calls to a remote training session or a comparable activity will not be compensable from the TRS Fund when the provider submitting minutes for such a call has been involved, in any manner, with such a training session. Such prohibited involvement includes training programs or comparable activities in which the provider or any affiliate or related party thereto, including but not limited to its subcontractors, partners, employees or sponsoring organizations or entities, has any role in arranging, scheduling, sponsoring, hosting, conducting or promoting such programs or activities.

* * * * *

■ 5. In § 64.606, revise paragraph (g) to read as follows:

§ 64.606 VRS and IP Relay provider and TRS program certification.

* * * * *

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604. VRS providers shall include within these annual submissions a description of all agreements in connection with marketing and outreach activities, including those involving sponsorship, financial endorsements, awards, and gifts made by the provider to any individual or entity.

[FR Doc. 2011–10342 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2009–0069]

RIN 2127–AK81

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: In this technical amendment, the National Highway Traffic Safety Administration (NHTSA) updates the address for submission, and the procedure to submit designation of target areas on high theft major parts of motor vehicles. E-mail is now included as a means to submit the target area designations. Under the Theft Prevention Standard, manufacturers of high theft passenger motor vehicle lines subject to parts marking, and manufacturers of replacement parts designed for high theft lines, must submit designation of target areas for identifying numbers to be marked on each major part and symbols to be marked on each major replacement part. This rulemaking makes no substantive changes to the Theft Prevention Standard.

DATES: This final rule becomes effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, NHTSA, 1200 New Jersey Ave., SE., Rm. W43–439, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is: (202) 366–0846.

SUPPLEMENTARY INFORMATION: 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard,* specifies that major parts [1] and major replacement parts of motor vehicles subject to the standard must be marked in accordance with Section 541.5, for passenger motor vehicles, and Section 541.6 for replacement parts. The standard specifies that each manufacturer that is the original producer that installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each major part. For replacement parts, the standard specifies that each manufacturer that is the original producer or assembler of the vehicle for which the replacement part is designed shall designate a target area for the identifying symbols to be marked on each replacement part for a major part.

At present, Part 541 specifies that designation of target areas is to be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. NHTSA has moved, and this address is no longer applicable. This technical amendment updates NHTSA's address. In addition, to facilitate timely release of target area information, and to maximize use of electronic means, the target area information henceforth may be sent to the Docket Management Facility (Docket No. NHTSA–2009–0069) which is accessible at: *http://www.regulations.gov.* Through this technical amendment, manufacturers will have several options when providing the target area information: electronic means through the portal *http://www.regulations.gov;* paper copies (via US mail, private courier or hand delivery) to Docket Management at 1200 New Jersey Avenue, SE., (NHTSA's new address); or faxing the information.

Through these new means, it is anticipated that the public will be able to view target area information much more quickly than was the case in the past. Because the information may go directly to a publicly reviewable docket, (*i.e.,* NHTSA–2009–0069), NHTSA does not advise that manufacturers send any information for which a manufacturer wishes to assert confidential treatment to Docket Management or to *http://www.regulations.gov.* In the event that a manufacturer wishes the target location data to be treated as confidential information prior to the release of a new model, it should submit the theft area data to NHTSA's Office of the Chief Counsel and request confidential treatment as set forth in 49 CFR Part 512 *Confidential Business Information.* Because confidential target location data will become public when a new model is released for sale, sections 541.5(e)(2) and 541.6(e)(3) also require submission of the target location data within seven days after the information has been made public or the new vehicle line has been released for sale to the public, whichever comes first.

This change will not make any substantive changes to the Theft Prevention Standard and will not impose any additional substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that a notice of proposed rulemaking and opportunity for comment on these amendments are not necessary. In addition, this final rule will change the address to which manufacturers will provide target location data, but will have no effect on the collection of information burden associated with the Theft Prevention Standard (*See* OMB Clearance No. 2127–0539 *Procedure for Selecting Lines to be Covered by the Theft Prevention Standard,* expiration date: 6/30/2011).

List of Subjects in 49 CFR Part 541

Crime, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR Part 541 as set forth below.

[1] Each of the following parts, if present on a motor vehicle: engine; transmission; right front fender; left front fender; hood; right front door; left front door; right rear door; left rear door; sliding or cargo door(s); front bumper; rear bumper; right rear quarter panel (passenger cars); left rear quarter panel (passenger cars); right side assembly (MPVs); left side assembly (MPVs); pickup box and/or cargo box (LDTs); rear door(s) (both doors in case of double doors), decklid, tailgate, or hatchback, whichever is present.

PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33101, 33102, 33013, and 330105; delegation of authority at 49 CFR 1.50.

■ 2. In § 541.5, paragraph (e)(2) is amended by revising the second sentence, by adding third and fourth sentences, and paragraphs (e)(2)(i) through (iv) are added to read as follows:

§ 541.5 Requirements for passenger motor vehicles.

* * * * *

(e)(2) * * * In those instances where a manufacturer has submitted this target area information to NHTSA with a request for confidential treatment pursuant to 49 CFR Part 512, the manufacturer must also submit a complete copy of the target area information within seven (7) days after the information becomes public, or the new line is released for sale to the public, whichever comes first. The information must be submitted to: Docket Management, Room W12–140, West Building, Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590 by any of the following methods. In all cases, the docket number for the submission, (Docket No. NHTSA–2009–0069) must be cited.

(i) Electronic submission to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting information.

(ii) *By U.S. Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, D.C. 20590.

(iii) *Hand delivery or by courier:* 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *Telephone:* 1–800–647–5527.

(iv) *By Fax transmission:* (202) 493–2251.

* * * * *

■ 3. In § 541.6, paragraph (e)(3) is amended by revising the second sentence, by adding third and fourth sentences, and paragraphs (e)(3)(i) through (iv) are added to read as follows:

§ 541.6 Requirement for replacement parts.

* * * * *

(e)(3) * * * In those instances where a manufacturer has submitted this target area information to NHTSA with a request for confidential treatment under 49 CFR Part 512, the manufacturer shall also submit a complete copy of the target area information within seven (7) days after the information has become public or the new line has been released for sale to the public, whichever comes first. The information should be submitted to: Docket Management, Room W12–140, Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590 by any of the following methods. In all cases, the docket number for the submission, (Docket No. NHTSA–2009–0069) must be cited.

(i) *Electronic submission to the Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting information.

(ii) *By U.S. Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.

(iii) *Hand delivery or by courier:* 1200 New Jersey Avenue, S.E., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *Telephone:* 1–800–647–5527.

(iv) *By Fax transmission:* (202) 493–2251.

* * * * *

Issued on: April 26, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–10605 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA404

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear and catcher vessels greater than or equal to 60 feet (18.3 meters) length overall (LOA) using hook-and-line gear to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2011 total allowable catch of Pacific cod to be harvested.

DATES: Effective April 30, 2011, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The B season apportionment of the 2011 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the Bering Sea and Aleutian Islands management area (BSAI) is 570 metric tons (mt) for the period 1200 hrs, A.l.t., April 30, 2011, through 1200 hrs, A.l.t., August 31, 2011, as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 470 mt of the B season apportionment of the 2011 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 470 mt of Pacific cod from the B season jig gear apportionment to catcher vessels less than 60 feet LOA using hook-and-line or pot gear.

The A season apportionment of the 2011 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear is 207 mt for the period 2400 hrs, A.l.t., January 1, 2011, through 1200 hrs, A.l.t., June 10, 2011, as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The Administrator, Alaska Region, NMFS, has determined that catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear will not be able to harvest 180 mt of the A season apportionment of the 2011

Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 180 mt of Pacific cod from the A season apportionment to catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear to catcher vessels less than 60 feet LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2011 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) are revised as follows: 100 mt to the B season apportionment for vessels using jig gear, 27 mt to the A season apportionment for catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear, and 6,205 mt to catcher vessels less than 60 feet LOA using hook-and-line or pot gear.

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 reallocation of Pacific cod specified from jig vessels and catcher vessels greater than or equal to 60 feet LOA using hook-and-line gear to catcher vessels less than 60 feet LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 26, 2011.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 27, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–10593 Filed 4–27–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA405

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2011 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 30, 2011, through 2400 hrs, A.l.t., December 31, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 17, 2011.

ADDRESSES: Send comments to James W. Balsiger, Regional Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XA405, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on March 8, 2011 (76 FR 13098, March 10, 2011).

NMFS has determined that as of April 26, 2011, approximately 847 metric tons of Pacific cod remain in the 2011 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2011 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

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 opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 26, 2011.

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.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 12, 2011.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 27, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–10596 Filed 4–27–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 84
Monday, May 2, 2011

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AM14

Collection by Offset From Indebted Government Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to eliminate the 10-year statute of limitations on collection of debt by administrative offset, which includes centralized salary offset. The proposed regulations conform with an amendment made by the Food, Conservation, and Energy Act of 2008. This change would authorize the offset of nontax payments (via salary offset) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent. OPM is also proposing several technical changes to be consistent with the Department of the Treasury Federal Claims Collection Standards and salary offset regulations.

DATES: Comments must be received on or before: July 1, 2011.

ADDRESSES: You may submit comments, identified by RIN "3206–AM14," using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: pay-leave-policy@opm.gov.

Fax: (202) 606–0824.

Mail: Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Room 7H31, 1900 E Street, NW., Washington, DC, 20415–8200.

FOR FURTHER INFORMATION CONTACT: Tameka Gillis by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to eliminate the 10-year statute of limitations on collection of debt by administrative offset, which includes centralized salary offset. The proposed regulations conform with an amendment to 31 U.S.C. 3716(e) made by section 14219 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246 (122 Stat. 1651) that became effective on June 18, 2008. This change authorizes the offset of nontax payments (via salary offset) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent.

The Department of the Treasury has updated its regulations to reflect this change (*see* 74 FR 68537, December 28, 2009). To avoid any undue hardship, the Secretary of the Treasury has added a requirement applicable to debts that were previously ineligible for collection by offset because they have been outstanding for more than 10 years. For these debts, creditor agencies must certify to the Secretary of the Treasury that the notice of intent to offset was sent to the debtor after the debt became 10 years delinquent. This is intended to alert the debtor that his or her debt may now be collected by offset and allows the debtor additional opportunities to dispute the debt, enter into a repayment agreement, or otherwise avoid offset.

To be consistent with the Department of the Treasury regulations, OPM is proposing to revise the regulations at 5 CFR 550.1106 to provide that agencies may initiate salary offset to collect a debt without time limitations on debt outstanding after the Government's right to collect the debt first accrued.

OPM is also proposing to revise regulations at 5 CFR 550.1102(b)(1) to clarify that, because the salary offset procedures contained in 5 CFR part 550, subpart K, must be consistent with the Federal Claims Collection Standards (FCCS), they do not apply to any debts which may be excluded by the FCCS or 31 CFR part 285. OPM is proposing to add a new paragraph (b)(3) in 5 CFR 550.1102 to recognize that certain statutes may exist that allow specific agencies to take certain compromise, suspension, or termination of collection actions as provided under such statutes and the FCCS. Further, OPM is proposing to revise the definition of FCCS to include a reference to 31 CFR parts 900 through 904 and delete the obsolete reference to 4 CFR parts 101 through 105.

Also, OPM is proposing to revise regulations at 5 CFR 550.1104 to clarify that the amount deducted for any involuntary installment deductions may exceed 15 percent of the disposable pay only when a greater deduction has been ordered by a court of the United States in an action or suit brought against the debtor. This is to conform with section 124 of Public Law 97–276, October 2, 1982 (96 Stat. 1195) which allows an agency to deduct an amount greater than 15 percent of disposable pay, as determined by a court of the United States.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for subpart K of part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sect 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

2. In § 550.1102, paragraph (b)(1) is revised and paragraph (b)(3) is added to read as follows:

§ 550.1102 Scope.

* * * * *

(b) * * *

(1) *Excluded debts.* The procedures contained in this subpart do not apply to—

(i) Debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(ii) Debts arising under the tariff laws of the United States;

(iii) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.,* travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108); or

(iv) Any other debt excluded by the FCCS or 31 CFR part 285.

* * * * *

(3) *Compromise, suspension, or termination of collection actions.* This subpart does not preclude the compromise, suspension, or termination of collection actions, where appropriate, as provided in the FCCS (31 CFR 900.4) or the use of alternative dispute resolution methods if they are not inconsistent with agency-specific laws and regulations.

3. In § 550.1103, the definition of "FCCS" is revised to read as follows:

§ 550.1103 Definitions.

* * * * *

FCCS means the Federal Claims Collections Standards published in 31 CFR parts 900 through 904.

* * * * *

4. In § 550.1104, paragraphs (d)(3), (i), and (j) are revised to read as follows:

§ 550.1104 Agency regulations.

* * * * *

(d) * * *

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay except as provided in paragraph (i) of this section) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

(i) *Limitation on amount of deductions.* Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS). However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court under section 124 of Public Law 97–276 (96 Stat.1195).

(j) *Duration of deductions.* Prescribe the duration of deductions. Ordinarily, debts must be collected in one lump sum where possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay (or other applicable limitation as provided in paragraph (i) of this section) for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraphs (l) and (m) of this section.

* * * * *

5. Section 550.1106 is revised to read as follows:

§ 550.1106 Time limit on collection of debts.

Agencies may initiate salary offset to collect a debt without time limitations on any debt outstanding after the Government's right to collect the debt first accrued. (See § 550.1108 for requirement when debts are delinquent over 180 days.)

* * * * *

[FR Doc. 2011–10626 Filed 4–29–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0392; Directorate Identifier 2011–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT7–8, CT7–8A, CT7–8A1, CT7–8E, and CT7–8F5 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require the installation of an accessory gearbox (AGB) axis-A oil slinger nut to the axis-A shaft assembly. This proposed AD was prompted by four reports of unrecoverable engine stalls, during hover in a left-roll attitude. We are proposing this AD to prevent an unrecoverable engine stall, leading to a helicopter forced landing or accident.

DATES: We must receive comments on this proposed AD by June 16, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact GE-Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; telephone: 513–552–3272; e-mail: *geaeaoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Walter Meibaum, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7119; fax: 781–238–7199; e-mail: *walter.meibaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0392; Directorate Identifier 2011–NE–12–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received four reports of General Electric Company (GE) CT7–8 series turboshaft helicopter engines experiencing unrecoverable engine stalls, during hover in a left-roll attitude. Investigation revealed that during a prolonged left roll, excessive return oil from the AGB may return to the A-sump and exceed the sump's scavenging capability. The sump then floods, leading to over-heated oil, which preheats the air entering the engine's compressor. This preheated air causes inlet thermal distortion. This condition, if not corrected, could result in an unrecoverable engine stall, leading to a helicopter forced landing or accident.

Relevant Service Information

We reviewed GE Aircraft Engines CT7–8 Turboshaft Engine Service Bulletin (SB) No. CT7–8 S/B 72–0033, dated February 11, 2011. The SB describes procedures for installing the AGB axis-A oil slinger nut to the axis-A shaft assembly.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other engines of the same type design.

Proposed AD Requirements

This proposed AD would require the installation of an AGB axis-A oil slinger nut to the axis-A shaft assembly.

Costs of Compliance

We estimate that this proposed AD would affect 80 engines installed on helicopters of U.S. registry. We also estimate that it would take about one work-hour per engine to perform the actions required by this proposed AD, and that the average labor rate is $85 per work-hour. Required parts would cost about $700 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $62,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2011–0392; Directorate Identifier 2011–NE–12–AD.

Comments Due Date

(a) We must receive comments by June 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following General Electric Company (GE) turboshaft engines:

(1) CT7–8, all engine serial numbers (S/Ns).

(2) CT7–8A, engine S/Ns 947565 and below.

(3) CT7–8A1, engine S/Ns 530017 and below.

(4) CT7–8E, engine S/Ns 953068 and below, and S/Ns 953070 and 953072.

(5) CT7–8F5, engine S/Ns 731005 and below, and S/Ns 731007, 731008, 817021, and 817022.

Unsafe Condition

(d) This AD was prompted by four reports of unrecoverable engine stalls, during hover in a left-roll attitude. We are issuing this AD to prevent an unrecoverable engine stall, leading to a helicopter forced landing or accident.

Compliance

(e) Comply with this AD at the next engine shop visit, the next 1,500-hour helicopter inspection, or before operation after next engine installation, whichever occurs first, unless already done.

Installation of Accessory Gearbox (AGB) Axis-A Oil Slinger Nut

(f) Install the AGB axis-A oil slinger nut to the axis-A shaft assembly. Use Accomplishment Instructions, paragraphs 3.A. through 3.C. of GE Aircraft Engines CT7–8 Turboshaft Engine Service Bulletin No. CT7–8 S/B 72–0033, dated February 11, 2011, to do the installation.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) For more information about this AD, contact Walter Meibaum, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7119; fax: 781–238–7199; e-mail: *walter.meibaum@faa.gov.*

(i) For service information identified in this AD, contact GE-Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; telephone: 513–552–3272; e-mail: *geaeaoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 25, 2011.

Peter A. White,

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

[FR Doc. 2011–10522 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0122; Airspace Docket No. 11–ACE–3]

Proposed Amendment of Class E Airspace; Ava, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Ava, MO. Decommissioning of the Bilmart non-directional beacon (NDB) at Bill Martin Memorial Airport, Ava, MO, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Bill Martin Memorial Airport.

DATES: Comments must be received on or before June 16, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0122/Airspace Docket No. 11–ACE–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.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 ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

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–2011–0122/Airspace Docket No. 11–ACE–3." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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 Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs 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

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Bill Martin Memorial Airport, Ava, MO. Airspace reconfiguration is necessary due to the decommissioning of the Bilmart NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. 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 I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Bill Martin Memorial Airport, Ava, MO.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ACE MO E5 Ava, MO [Amended]

Ava, Bill Martin Memorial Airport, MO
(Lat. 36°58′19″ N., long. 92°40′55″ W.)
Dogwood VORTAC
(Lat. 37°01′24″ N., long. 92°52′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Ava Bill Martin Memorial Airport, and within 1.8 miles each side of the 107° radial of the Dogwood VORTAC extending from the 6.3-mile radius to the VORTAC.

Issued in Fort Worth, TX, on April 14, 2011.

Richard J. Kervin, Jr.,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–10499 Filed 4–29–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1060

RIN 1506–AB12

Financial Crimes Enforcement Network; Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") Reporting Requirements Under Section 104(e)

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN, to comply with the congressional mandate to prescribe regulations under section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") and consistent with its statutory mission under 31 U.S.C. 310, is proposing to issue regulations that would require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank maintains a correspondent account for, or has processed one or more transfers of funds within the preceding 90 calendar days, other than through a correspondent account, related to any financial institution designated by the U.S. Government in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. In addition, FinCEN is proposing to require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to Iran's Islamic Revolutionary Guard Corps ("IRGC") or any of its agents or affiliates designated by the U.S. Government. Under the proposed regulations, U.S. banks will only be required to report this information to FinCEN upon receiving a specific written request from FinCEN.

DATES: Written comments are welcome and must be received on or before June 1, 2011.

ADDRESSES: *FinCEN:* You may submit comments, identified by Regulatory Identification Number (RIN) 1506–AB12, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include 1506–AB12 and the caption "Attention: CISADA Reporting Requirements Under Section 104(e)" in the submission. Refer to Docket Number FINCEN–2011–0002.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506–AB12 and the caption "Attention: CISADA Reporting Requirements Under Section 104(e)" in the body of the text. Please submit comments by one method only.

Comments submitted in response to this notice of proposed rulemaking will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service in response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 8.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On July 1, 2010, the President signed CISADA [1] into law. Section 104(c) of CISADA requires the Secretary of the Treasury ("the Secretary") to prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of correspondent accounts and payable-through accounts for foreign financial institutions that the Secretary finds knowingly engage in sanctionable activities described in section 104(c)(2) of CISADA. The relevant statutory language reads as follows:

"(c) PROHIBITIONS AND CONDITIONS WITH RESPECT TO CERTAIN ACCOUNTS HELD BY FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in an activity described in paragraph (2).

(2) ACTIVITIES DESCRIBED.—A foreign financial institution engages in an activity described in this paragraph if the foreign financial institution—

(A) facilitates the efforts of the Government of Iran (including efforts of Iran's Revolutionary Guard Corps or any of its agents or affiliates)—

(i) to acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction; or

(ii) to provide support for organizations designated as foreign terrorist organizations under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) or support for acts of international terrorism (as defined in section 14 of the Iran Sanctions Act of 1996 (Pub. L. 104–172; 50 U.S.C. 1701 note));

(B) facilitates the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolution 1737 (2006), 1747 (2007), 1803 (2008), or 1929 (2010), or any other resolution that is agreed to by the Security Council and imposes sanctions with respect to Iran;

(C) engages in money laundering to carry out an activity described in subparagraph (A) or (B);

(D) facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in subparagraph (A) or (B); or

(E) facilitates a significant transaction or transactions or provides significant financial services for—

(i) Iran's Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or

(ii) a financial institution whose property or interests in property are blocked pursuant to that Act in connection with—

(I) Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction; or

(II) Iran's support for international terrorism.

(3) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic

[1] Public Law 111–195, 124 Stat. 1312 (2010).

Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed under paragraph (1) of this subsection to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act."

On August 16, 2010, the Office of Foreign Assets Control ("OFAC') published the Iranian Financial Sanctions Regulations, 31 CFR Part 561 (the "IFSR"). Section 561.201 of the IFSR implements section 104(c) of CISADA. It states that the Secretary will, consistent with authorities under CISADA, prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for a foreign financial institution that the Secretary finds knowingly engages in one or more of the sanctionable activities described in section 561.201(a) of the IFSR.

Section 104(e) of CISADA requires the Secretary to prescribe regulations to establish one or more specific requirements for U.S. financial institutions maintaining correspondent accounts for foreign financial institutions, in connection with the sanctionable activities described in section 104(c)(2) of CISADA. The relevant statutory language reads as follows:

"(e) REQUIREMENTS FOR FINANCIAL INSTITUTIONS MAINTAINING ACCOUNTS FOR FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations to require a domestic financial institution maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

(A) Perform an audit of activities described in subsection (c)(2) that may be carried out by the foreign financial institution.

(B) Report to the Department of the Treasury with respect to transactions or other financial services provided with respect to any such activity.

(C) Certify, to the best of the knowledge of the domestic financial institution, that the foreign financial institution is not knowingly engaging in any such activity.

(D) Establish due diligence policies, procedures, and controls, such as the due diligence policies, procedures, and controls described in section 5318(i) of title 31, United States Code, reasonably designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in any such activity.

(2) PENALTIES.—The penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, shall apply to a person that violates a regulation prescribed under paragraph (1) of this subsection, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322."

In order to comply with the congressional mandate to prescribe regulations under section 104(e) of CISADA, and consistent with its statutory mission under 31 U.S.C. 310, FinCEN is implementing section 104(e)(1)(B) of CISADA. FinCEN took into consideration the possibility of implementing any one or more of the options under section 104(e)(1) of CISADA, and determined that implementing section 104(e)(1)(B) is the most useful vehicle for effecting the intent of section 104(e) at this time. Section 104(e)(1)(B) of CISADA authorizes the Secretary to prescribe regulations that require a domestic financial institution maintaining a correspondent account in the United States for a foreign financial institution to report to the Department of the Treasury ("Treasury") with respect to transactions or other financial services provided with respect to sanctionable activities described in section 104(c)(2) of CISADA that may be carried out by the foreign financial institution.

Section 104(e)(1)(B) of CISADA authorizes Treasury to require a domestic financial institution maintaining a correspondent account for a foreign financial institution to report to Treasury with respect to transactions or other financial services the foreign financial institution may provide with respect to sanctionable activities described in section 104(c)(2) of CISADA. FinCEN believes that among the services included within the concept of "transactions or other financial services provided" by a foreign financial institution are correspondent accounts the foreign financial institution maintains for other foreign financial institutions and transfers of funds the foreign financial institution processes for other foreign financial institutions, individuals, or entities. Because a foreign financial institution's provision of correspondent account services and transfer of funds services to a financial institution designated by the U.S. Government in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism may be relevant to the sanctionable activities described under section 104(c)(2) of CISADA, FinCEN is focusing this reporting requirement on the provision of information relating to such correspondent accounts and transfers of funds.[2] In addition, because a foreign financial institution's provision of transfer of funds services to the IRGC or any of its agents or affiliates designated by the U.S. Government may also be relevant to the sanctionable activities described under section 104(c)(2) of CISADA, FinCEN is also focusing this reporting requirement on the provision of information relating to such transfers of funds.[3]

FinCEN is proposing to implement section 104(e)(1)(B) of CISADA by issuing regulations that would require a bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN, with respect to whether the foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act ("IEEPA");[4] whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA.[5] Specifically, if a bank receives a written request from FinCEN and the bank maintains a correspondent account for the foreign bank(s)[6] specified in FinCEN's request, the bank will be required to report to FinCEN the following information:

- The name of any specified foreign bank that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and certain information with respect to such account;
- The name of any specified foreign bank that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than

[2] *See, e.g.*, CISADA subsection 104(c)(2)(E)(ii), which includes focus on the provision by foreign financial institutions of significant financial services to financial institutions that are of concern under CISADA.

[3] *See, e.g.*, CISADA subsection 104(c)(2)(E)(i), which includes focus on the provision by foreign financial institutions of significant financial services to entities or individuals that are of concern under CISADA.

[4] *See below* Section III.A. for the definition of Iranian-linked financial institution designated under IEEPA.

[5] *See below* Section III.A. for the definition of IRGC-linked person designated under IEEPA.

[6] The specific foreign banks about which FinCEN will be requesting information will be those foreign banks which are of interest to Treasury as they relate to CISADA.

through a correspondent account, and certain information with respect to such transfers of funds;

- The name of any specified foreign bank that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, and certain information with respect to such transfers of funds;
- The name of any specified foreign bank that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA; and
- The name of any specified foreign bank for which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect.[7]

In addition, FinCEN is proposing to require a bank to request, upon inquiry of a specified foreign bank, that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, and report such information to FinCEN.

FinCEN is also proposing to require a bank to report to FinCEN instances in which the bank does not maintain a correspondent account for a foreign bank specified in a written request from FinCEN. This requirement will only apply when FinCEN specifically requests in writing that the bank report such information. To the extent possible and based on all available information, FinCEN intends to send requests directly to banks that FinCEN believes may maintain correspondent accounts with the specified foreign bank(s). The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances.

[7] If a foreign bank does not respond to an inquiry made by a bank under this proposed rulemaking, the bank will be in compliance with these proposed reporting requirements so long as the bank reports to FinCEN that the foreign bank did not respond to the bank's inquiry.

II. Background Information

A. 31 CFR Part 561 Iranian Financial Sanctions Regulations—Office of Foreign Assets Control

On August 16, 2010, OFAC published the IFSR, 31 CFR part 561. As noted above, section 561.201 of the IFSR implements section 104(c) of CISADA. It states that the Secretary will, consistent with authorities under CISADA, prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for a foreign financial institution that the Secretary finds knowingly engages in one or more of the sanctionable activities described in section 561.201(a) of the IFSR. The names of foreign financial institutions that are found by the Secretary to knowingly engage in such sanctionable activities, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts in the United States, will be published in the **Federal Register** and listed in appendix A to the IFSR. If the Secretary decides to impose strict conditions on the opening or maintaining of a correspondent account or a payable-through account for a foreign financial institution, the actual condition(s) to be imposed will be specified upon the identification of the foreign financial institution in an order or regulation published in the **Federal Register**.

B. Use of CISADA Reports

The reports will be used primarily to provide Treasury with potentially useful information from U.S. banks regarding the nature of foreign bank activities that may be relevant to CISADA. Based on the reports, Treasury officials may decide to take immediate action under section 104(c) of CISADA, or, among other things, to consult with those foreign banks that maintain correspondent accounts with Iranian-linked financial institutions designated under IEEPA, that have processed one or more transfers of funds related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, or that have been unwilling to respond to inquiries from the banks at which the foreign banks maintain correspondent accounts. An investigation by OFAC into the activities of such foreign banks could result in a finding by the Secretary under section 104(c) of CISADA and section 561.201 of the IFSR. For example, when a bank reports that a foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, or has processed one or more transfers of funds related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, OFAC could use the information to corroborate or supplement data derived from other sources and may request further information from the foreign bank to clarify whether the foreign bank is facilitating significant transactions or providing significant financial services for an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. Such transactions or services can be the basis for prohibiting or imposing strict conditions on the foreign bank's correspondent or payable-through accounts in the United States under section 104(c) of CISADA and section 561.201 of the IFSR.

III. Section-By-Section Analysis

A. General (§ 1060.300(a))

FinCEN proposes to add 31 CFR 1060.300(a). This section would add a requirement that upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of the foreign bank and report to FinCEN within 30 days, to the best of the knowledge of the bank, with respect to any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA, any transfer of funds related to an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account, and any transfer of funds related to an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

Definitions

Bank

For the purpose of this proposed rulemaking the term "bank" is defined in 31 CFR § 1010.100(d). A bank includes each agent, agency, branch, or office within the United States of persons doing business in one or more of the following capacities: commercial banks or trust companies, private banks, savings and loan associations, national banks, thrift institutions, credit unions,

other organizations chartered under banking laws and supervised by banking supervisors of any State, and banks organized under foreign law.

FinCEN and Treasury have determined that limiting the reporting requirement in this proposed rulemaking to banks will provide useful information as it relates to CISADA, while limiting the obligations of the financial industry. Although there are other financial institutions that could fall within the scope of this rule in light of the breadth of the definition of financial institution in CISADA and the breadth of the definition of correspondent account, this rule focuses on those financial institutions deemed to provide the services most traditionally associated with correspondent banking. FinCEN and Treasury may consider expanding this reporting requirement to other types of financial institutions that maintain correspondent accounts with foreign financial institutions if we determine that information will be useful for Treasury's implementation of CISADA. FinCEN requests comment as to whether this rulemaking should be expanded to include other types of financial institutions, such as those financial institutions included in FinCEN's definition of "covered financial institution." [8]

Correspondent Account

For the purpose of this proposed rulemaking the term "correspondent account" is defined in 31 CFR 1010.605(c)(1)(ii) and means an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.[9] Although there is a reference in section 104(e) of CISADA to payable-through accounts, as FinCEN is incorporating this requirement into its regulations, such payable-through accounts are subsumed within the definition of a correspondent account at 31 CFR 1010.610(b)(1)(iii)(B).[10]

Processed One or More Transfers of Funds

FinCEN is using the general phrase "processed one or more transfers of funds." This terminology is meant to address circumstances through which transfers of funds are made without requiring a correspondent account, specifically including circumstances in which financial institutions are part of a common payments or clearing mechanism that provides for transfers of funds among participants without requiring bilateral correspondent account relationships. FinCEN requests comment as to whether this terminology should be further clarified, and if so, how and what terms should be used in the alternative.

Foreign Bank

For the purpose of this proposed rulemaking the term "foreign bank" is defined in 31 CFR 1010.100(u) and means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

FinCEN and Treasury have determined that limiting the reporting requirement in this proposed rulemaking to information pertaining to the activities of foreign banks will provide useful information as it relates to CISADA, while limiting the obligations of the financial industry. Although there are other foreign financial institutions that maintain correspondent accounts with U.S. financial institutions that could provide useful information with respect to CISADA-relevant activities, this rule focuses on those foreign financial institutions deemed to receive the services most traditionally associated with correspondent banking. FinCEN and Treasury may consider expanding this reporting requirement to include reports to FinCEN with respect to other types of foreign financial institutions serviced by U.S. financial institutions if we determine that such information will be useful for Treasury's implementation of CISADA. FinCEN requests comment as to whether this rulemaking should be expanded to include other types of foreign financial institutions, such as those included in FinCEN's definition of "foreign financial institution," [11] or OFAC's definition of "foreign financial institution" [12] in the IFSR.

Iranian-Linked Financial Institution Designated Under IEEPA

For the purpose of this proposed rulemaking the term "Iranian-linked financial institution designated under IEEPA" means a financial institution designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism.[13]

IRGC-Linked Person Designated Under IEEPA

For the purpose of this proposed rulemaking the term "IRGC-linked person designated under IEEPA" means Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act).[14]

The names of persons whose property and interests in property are blocked pursuant to IEEPA are published on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List"). Iranian-linked financial institutions designated under IEEPA are those whose property and interests in property are blocked pursuant to 31 CFR part 544 or 31 CFR part 594 in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism and are identified by "[IFSR]" tags located at the end of their entries on the SDN List (e.g., [NPWMD][IFSR] or [SDGT][IFSR]). IRGC-linked persons designated under IEEPA are those whose property and interests in property are blocked pursuant to one or more parts of 31 CFR Chapter V and are identified by "[IRGC]" tags located at the end of their entries on the SDN List (*e.g.,* [NPWD][IRGC] or [SDGT][IRGC]). OFAC's electronic SDN List can be found at the following URL: *http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx*. The following financial institutions meet the criteria of Iranian-linked financial institutions designated under IEEPA ([IFSR] tags), and the following persons meet the criteria of IRGC-linked persons designated under IEEPA ([IRGC] tags): *http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf.* These listings are part of the SDN List,

[8] *See* 31 CFR 1010.605(e) (defining a "covered financial institution" as any one of a number of specific U.S. financial institutions, including banks, broker-dealers, futures commission merchants, and mutual funds).

[9] This definition of correspondent account is consistent with the proposed rule's focus on U.S. banks' correspondent account relationships with foreign banks.

[10] 31 CFR 1010.610(b)(1)(iii)(B) states "* * * a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States."

[11] *See* 31 CFR 1010.605(f).

[12] *See* 31 CFR 561.308.

[13] *See* CISADA subsection 104(c)(2)(E)(ii).

[14] *See* CISADA subsection 104(c)(2)(E)(i).

administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.

B. Duty To Inquire (§ 1060.300(b))

This section describes a bank's duty to inquire of a specified foreign bank for which the bank maintains a correspondent account, as to whether such foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. In addition, when the bank makes its inquiry, the bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

To assist a bank in obtaining the required information from a specified foreign bank, FinCEN is proposing a model certification format for a bank to provide to a specified foreign bank when the bank makes its inquiry regarding whether the specified foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. This proposed model certification will not appear in the Code of Federal Regulations; however, it is included at Appendix A to this **Federal Register** notice. In addition, FinCEN will use its website to make this proposed model certification available to the public. FinCEN requests comment as to the effectiveness of the proposed model certification.

The proposed model certification includes language identifying the purpose for which the bank is requesting information from the foreign bank. As proposed, the model certification will include the following language: "The information contained in this Certification is sought for purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") (Public Law 111–195). This Certification will be used to provide the Department of the Treasury with information regarding the nature of foreign bank activities that may be relevant to CISADA." In addition, the model certification will define foreign bank, bank, correspondent account, Iranian-linked financial institution designated under IEEPA, and IRGC-linked person designated under IEEPA in accordance with the proposed rule.

In the certification, a foreign bank that maintains a correspondent account with a bank is asked to certify to the bank either that (1) it does not maintain a correspondent account(s) for an Iranian-linked financial institution designated under IEEPA; or (2) it maintains a correspondent account(s) for an Iranian-linked financial institution designated under IEEPA. If a foreign bank certifies that it maintains a correspondent account(s) for an Iranian-linked financial institution designated under IEEPA, it is asked to report the following related information for each such correspondent account: the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, other applicable identifying information for the correspondent account, and the approximate value in United States Dollars ("USD") of transactions processed through the correspondent account within the preceding 90 calendar days.

In the certification, a foreign bank that maintains a correspondent account with a bank is also asked to certify to the bank either that (1) it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; or (2) it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account. If a foreign bank certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, it is asked to report the following related information for each Iranian-linked financial institution designated under IEEPA: the name of the Iranian-linked financial institution designated under IEEPA, the identity of the system or means by which the transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for the transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days.

In the certification, a foreign bank that maintains a correspondent account with a bank is also asked to certify to the bank either that (1) it has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA; or (2) it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. If a foreign bank certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, it is asked to report the following related information for each IRGC-linked person designated under IEEPA: the name of the IRGC-linked person designated under IEEPA, the identity of the system or means by which the transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for the transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days.

As part of the certification, the foreign bank is asked to agree to notify, in writing, the bank at which it maintains a correspondent account if the foreign bank establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's response. The certification form sets forth the expectation that the notification shall be due to the bank within 30 calendar days of such change. If a bank does not utilize the proposed model certification, the bank will need to request separately that the foreign bank provide such

information with respect to the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA.

C. Filing Procedures (§ 1060.300(c))

What To File (§ 1060.300(c)(1))

This section describes the filing procedures a bank shall follow to report to FinCEN information required by this proposed rulemaking. Upon receiving a written request from FinCEN, a bank is required to report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, together with the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, other applicable identifying information for the correspondent account, and the approximate value in USD of transactions processed through the correspondent account within the preceding 90 calendar days;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, together with the name of the Iranian-linked financial institution designated under IEEPA, the identity of the system or means by which such transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for such transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the name of the IRGC-linked person designated under IEEPA, the identity of the system or means by which such transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for such transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, about which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, together with the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, and other applicable identifying information for the correspondent account; and
- If applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information.

If a bank utilizes the proposed model certification to inquire of a specified foreign bank, the bank can submit the certification from the specified foreign bank to FinCEN in order to comply with this proposed reporting requirement. If a bank does not utilize the proposed model certification to inquire of a specified foreign bank, the bank can report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this proposed rulemaking. If a specified foreign bank, for which the bank maintains a correspondent account, does not adequately respond to the bank's inquiry, the bank can report to FinCEN, in such format and manner as may be prescribed by FinCEN, the name of the foreign bank for which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect.

If a bank receives a notification from a specified foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this proposed rulemaking, including the name of the specified foreign bank, the name of the Iranian-linked financial institution designated under IEEPA for which the specified foreign bank has established a new correspondent account, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, and other applicable identifying

information for the correspondent account.

If a bank receives a written request from FinCEN regarding a specified foreign bank, for which the bank does not maintain a correspondent account, and FinCEN has specifically requested that the bank report instances in which the bank does not maintain a correspondent account for such specified foreign bank, the bank shall report this information to FinCEN, in such format and manner as may be prescribed by FinCEN.

When To File (§ 1060.300(c)(2))

A bank is required to report the information required by this proposed rulemaking to FinCEN within 30 days of the date of the written request from FinCEN. If a bank receives notification from a foreign bank that the foreign bank has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank is required to report the information required by this proposed rulemaking within 10 days of receiving that notification. FinCEN requests comment as to whether these proposed timeframes are appropriate.

D. Record Retention (§ 1060.300(d))

This section describes the recordkeeping requirements applicable to this proposed rulemaking. A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this proposed rulemaking.

E. No Other Action Required (§ 1060.300(e))

Paragraph (e) states that "[n]othing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account established for, or a transaction engaged in with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation." While this paragraph clarifies that the section does not require a bank to take any steps with respect to the foreign bank other than those relating to the collection of information outlined in this section, it also clarifies that this section does not preclude a bank from taking any other action, including restricting or terminating a correspondent account relationship with a foreign bank, or filing a suspicious activity report, based on the bank's risk-based assessment of the facts and bank policy.

IV. Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

V. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*), FinCEN certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The proposed rule would apply to banks that maintain correspondent accounts with foreign banks. As previously stated in our final rules implementing section 312,[15] 313,[16] and 319(b)[17] of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, most banks that maintain correspondent accounts with foreign banks tend to be large banks. We expect that small banks will be less likely to maintain correspondent accounts with foreign banks. In most cases, small banks utilize their domestic correspondent accounts with large banks to conduct transactions with foreign banks. Accordingly, a regulatory flexibility analysis is not required. FinCEN invites comments on the impact of this proposal on small entities.

VII. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the information collection should be sent to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503, or by the Internet to *oira_submission@omb.eop.gov* with a copy to the Financial Crimes Enforcement Network by mail or as part of the comments through the Internet. Comments are welcome and must be received by July 1, 2011.

Reporting Requirements Under Section 104(e) of CISADA

The collection of information in this proposal is in 31 CFR 1060.300. The information may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions. The collection of information is mandatory. FinCEN is proposing to issue regulations that would require a bank to report to FinCEN, upon request, certain information regarding certain foreign banks specified by FinCEN.

Description of Affected Financial Institutions: Banks as defined in 31 CFR 1010.100(d).

Estimated Number of Affected Financial Institutions: 350 banks.

FinCEN estimates that approximately 350 banks maintain correspondent accounts with foreign banks.[18]

[15] Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts, 71 FR 496 (Jan. 4, 2006).

[16] Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks, 67 FR 60562 (Sept. 26, 2002).

[17] *Id.*

[18] 177 banks reported a balance due as of September 30, 2010 in either line item 3.a. or 3.b.

However, FinCEN estimates that on average only around five percent of banks that maintain correspondent accounts with foreign banks will have an account with the specific foreign bank about which FinCEN is requesting information. This smaller proportion of actual affected financial institutions in each case of a request is based on the fact that foreign banks generally only hold a limited number of correspondent account relationships with separate U.S. banks. For this reason, the estimated number of financial institutions that may maintain a correspondent account with a specific foreign bank identified in any one request from FinCEN will be in the range of 18 banks. In order to further reduce the number of affected financial institutions, when possible, FinCEN will rely on information available to Treasury to help limit the number of banks requested to provide information with respect to the foreign banks that are the subject of specific requests. In turn, FinCEN intends to send requests directly to banks that FinCEN, based on all available information, believes maintain correspondent accounts with the specified foreign bank(s). The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances.

Estimated Average Annual Burden Hours Per Affected Financial Institution: Fewer than 31 hours per bank

FinCEN estimates that while there may be a series of requests to U.S. banks at the outset of implementing this regulation, subsequent requests will be infrequent. The scope of any request may be with respect to one foreign bank or a number of foreign banks (for example, a number of foreign banks operating in the same jurisdiction). FinCEN believes that regardless of the number of requests transmitted, such requests will pertain to 50 foreign banks or fewer in any given year.

Financial Institutions That Maintain a Correspondent Account for a Specified Foreign Bank

A bank will only be required to comply with the requirements of this proposed rulemaking if the bank receives a written request from FinCEN. As noted above, FinCEN estimates that on average fewer than five percent of the banks that maintain correspondent accounts with foreign banks, i.e., fewer than 18 banks, will maintain correspondent accounts with the specific foreign bank about which FinCEN is requesting information. If FinCEN makes requests with respect to fewer than 50 foreign banks per year and fewer than 18 banks are required to respond, per request, with regard to a correspondent account they maintain with a specified foreign bank, there will be fewer than 900 CISADA-related reports per year.

Each time a bank receives a request from FinCEN regarding a specific foreign bank for which it maintains a correspondent account, it will incur a reporting burden associated with section 1060.300(b) (inquiry); a reporting burden associated with section 1060.300(c) (reporting); and a recordkeeping burden associated with section 1060.300(d) (record retention).

The estimated average reporting burden associated with section 1060.300(b) for one request from FinCEN is one hour per responding U.S. bank with respect to each specific foreign bank about which FinCEN is requesting information. The estimated average reporting burden associated with section 1060.300(c) for one request from FinCEN is one hour per bank. The estimated average recordkeeping burden associated with section 1060.300(d) for one request from FinCEN is one hour per bank. This results in a total estimated average burden of three hours per bank with respect to each foreign bank about which FinCEN is requesting information. In the unlikely scenario in which the same bank were required to respond to FinCEN with respect to each foreign bank about which FinCEN is seeking information in any given year, the estimated annual burden hours would be 150. It is more likely that a particular U.S. bank will only have to respond to FinCEN queries in more limited situations and the average time spent per bank will be much less. FinCEN believes that even with respect to the banks that are most active in the provision of correspondent accounts to foreign banks, they are likely to be required to respond to FinCEN with respect to one fifth of the foreign banks about which FinCEN is seeking information, which corresponds to roughly 30 burden hours per year based on the above calculations.

Financial Institutions That Do Not Maintain a Correspondent Account for a Specified Foreign Bank

In certain instances FinCEN may request that if a bank receives a written request from FinCEN regarding a specified foreign bank, and the bank does not maintain a correspondent account for such specified foreign bank, the bank report this information to FinCEN. As noted above, FinCEN intends to send requests to banks that FinCEN is aware have a correspondent account with a specified foreign bank as often as possible. In instances in which FinCEN is not aware of which banks maintain a correspondent account for a specified foreign bank, FinCEN may send requests to those banks FinCEN believes might have a correspondent account with a specified foreign bank.

In instances in which FinCEN is sending a request to a small number of banks that FinCEN believes might have a correspondent account with a specified foreign bank, FinCEN may request, in the written request sent to those banks, that the banks that do not have an account with the specified foreign bank report such information to FinCEN. FinCEN believes that we will rarely be sending a request to a large number of banks that we are not certain have an account with the specified foreign bank for which we are requesting information. In those rare cases, FinCEN would most likely not ask those banks to report if they do not maintain a correspondent account with such foreign bank.

FinCEN believes that the estimated average reporting burden for a bank to report to FinCEN that it does not maintain a correspondent account for the foreign bank specified in a request from FinCEN will only be 30 minutes per request. FinCEN also estimates that across the 50 requests FinCEN anticipates making annually, on average only two to five banks will receive a

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of Schedule RC–A—Cash and Balances Due From Depository Institutions on the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031, or on the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only—FFIEC 041. Line item 3.a. represents balances due from foreign branches of other U.S. banks and line item 3.b. represents balances due from other banks in foreign countries and foreign central banks. As of September 30, 2010, 7,020 banks, regulated by either the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency, filed either FFIEC 031 or FFIEC 041. 177 of those 7,020 banks reported a balance due for a correspondent account with a foreign bank. These numbers do not include agents, agencies, branches, or offices within the U.S. of a bank organized under foreign law, which are also included within the definition of bank for purposes of this proposed rulemaking. According to the Federal Reserve Board Structure Data for U.S. Banking Offices of Foreign Entities, there are approximately 214 U.S. Offices of Foreign Banking Organizations, as of September 30, 2010. *See http://www.federalreserve.gov/releases/iba/201009/bycntry.htm.* Of those 214 U.S. Offices of Foreign Banking Organizations, approximately 43 only operate in the U.S. as representative offices. *See http://www.federalreserve.gov/releases/iba/201009/bytype.htm.* Representative offices do not maintain correspondent accounts. For this reason, FinCEN is conservatively estimating that it is likely the remaining 171 U.S Offices of Foreign Banking Organizations do maintain some form of correspondent account with a foreign bank. This results in a total estimate of 348 U.S banks and foreign banks operating in the U.S. that maintain a correspondent account with a foreign bank.

request from FinCEN regarding a foreign bank for which they do not maintain a correspondent account, and for which FinCEN requests that they report such information. This means that no more than 250 banks will be required to report that they do not maintain a correspondent account with a foreign bank specified in a request from FinCEN in any given year. This also means that no more than 125 estimated annual burden hours will be expended each year. FinCEN also estimates that no single bank will receive a request from FinCEN more than two times per year regarding a specified foreign bank for which it does not maintain a correspondent account, and for which FinCEN requests that it report such information. This corresponds to roughly one estimated average annual burden hour per bank.

Estimated Total Annual Burden: 2,825 total annual burden hours.

Fewer than 900 CISADA-related reports anticipated each year (provided by a varying number of banks) multiplied by three burden hours per report. (2,700 total annual burden hours). Fewer than 250 reports from banks that do not maintain a correspondent account with a specified foreign bank (provided by a varying number of banks) multiplied by 30 minutes of burden per report. (125 total annual burden hours).

Request for Comments Regarding the Paperwork Reduction Act Analysis

FinCEN is seeking comments on these estimates. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN and other components of Treasury, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

VIII. Request for Comments

FinCEN invites comments on any and all aspects of this proposal.

FinCEN specifically invites comment on requests above, as well as the following:

Effects of the Rule on Foreign Correspondent Account Relationships: FinCEN is also seeking comments regarding the impact of this information collection on banks' correspondent account relationships with foreign banks.

Minimum Dollar Threshold for Reporting on Transfers of Funds Related to an Iranian-Linked Financial Institution Designated Under IEEPA or an IRGC-Linked Person Designated Under IEEPA: FinCEN is also seeking comments regarding whether setting a minimum dollar threshold for a foreign bank to be required to report on transfers of funds processed within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA or related to an IRGC-linked person designated under IEEPA would lessen the reporting obligations, while still providing useful information. FinCEN seeks comments regarding what that minimum dollar threshold should be.

List of Subjects in 31 CFR Part 1060

Banks, Banking, Counter-terrorism, Foreign banking, Reporting and recordkeeping requirements, Terrorism.

Authority and Issuance

For the reasons set forth above, part 1060 is added to read as follows:

PART 1060—PROVISIONS RELATING TO THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010

Sec.
1060.100 [Reserved]
1060.200 [Reserved]
1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.
1060.400 [Reserved]
1060.500 [Reserved]
1060.600 [Reserved]
1060.700 [Reserved]
1060.800 Penalties.

Authority: Pub. L. 111–195, 124 Stat. 1312.

§ 1060.100 [Reserved]

§ 1060.200 [Reserved]

§ 1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.

(a) *General.*

(1) Upon receiving a written request from FinCEN, a bank (as defined in 31 CFR 1010.100(d)) that maintains a correspondent account (as defined in 31 CFR 1010.605(c)(1)(ii)) for a specified foreign bank (as defined in 31 CFR 1010.100(u)) shall inquire of the foreign bank, and report to FinCEN, to the best of the knowledge of the bank, with respect to any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA; any transfer of funds related to an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account; and any transfer of funds related to an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

(2) For the purposes of this section, an "Iranian-linked financial institution designated under IEEPA" means a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. For the purposes of this section, an "IRGC-linked person designated under IEEPA" means Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act).

Note to Paragraph (a)(2)

Section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), Public Law 111–195, 124 Stat. 1312, provides the Secretary of the Treasury with authority to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in certain specified activities. Those specified activities include facilitating a significant transaction or transactions or providing significant financial services for a financial institution whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism, or for Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose

property or interests in property are blocked pursuant to that Act.

(b) *Duty to inquire.*

Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. Upon such inquiry, a bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

(c) *Filing Procedures.*

(1) *What to file.* Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

(i) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The full name(s) on the correspondent account and the correspondent account number(s);

(C) Applicable information regarding whether the correspondent account has been blocked or otherwise restricted;

(D) Other applicable identifying information for the correspondent account; and

(E) The approximate value in U.S. dollars of transactions processed through the correspondent account within the preceding 90 calendar days;

(ii) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The identity of the system or means by which such transfer(s) of funds was processed;

(C) The full name on the account(s) and the account number(s), if applicable;

(D) Other applicable identifying information for such transfer(s) of funds; and

(E) The approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iii) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, and the following related information:

(A) The name of the IRGC-linked person designated under IEEPA;

(B) The identity of the system or means by which such transfer(s) of funds was processed;

(C) The full name on the account(s) and the account number(s), if applicable;

(D) Other applicable identifying information for such transfer(s) of funds; and

(E) The approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iv) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that it has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA;

(v) The name of any specified foreign bank, for which the bank maintains a correspondent account, about which the bank has not been able to establish to its satisfaction that the foreign bank does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank knows, suspects, or has reason to suspect that the certification is incorrect;

(vi) The name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The full name(s) on the correspondent account and the correspondent account number(s);

(C) Applicable information regarding whether the correspondent account has been blocked or otherwise restricted; and

(D) Other applicable identifying information for the correspondent account; and

(vii) If applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information.

(2) *When to file.* (i) A bank shall report to FinCEN within 30 days of the date of the request from FinCEN.

(ii) Reports based on subsequent notifications received from a foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA shall be due within 10 days of receipt of the notification.

(d) *Retention of records.* A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this section.

(e) *No other action required.* Nothing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account

established for, or a transaction engaged in with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation.

§ 1060.400 [Reserved]

§ 1060.500 [Reserved]

§ 1060.600 [Reserved]

§ 1060.700 [Reserved]

§ 1060.800 Penalties.

A person violating any requirement under this part is subject to the penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.

Dated: April 26, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

Note: This appendix will not appear in the Code of Federal Regulations; however, FinCEN will use its Web site to make this proposed model certification available to the public.

Appendix A

Certification for Purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and 31 CFR 1060.300

[OMB Control Number xxxx–xxxx]

The information contained in this Certification is sought for purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") (Public Law 111–195). This Certification will be used to provide the Department of the Treasury with information regarding the nature of foreign bank activities that may be relevant to CISADA.

This Certification may be completed by a **foreign bank** that maintains a **correspondent account** with a U.S. **bank** (see definitions below). An entity that is not a foreign bank is not required to complete this Certification.

A **Foreign Bank** is a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank (see definition at 31 CFR 1010.100(u)). A **Bank** includes each agent, agency, branch, or office within the United States of persons doing business in one or more of the following capacities: commercial banks or trust companies, private banks, savings and loan associations, national banks, thrift institutions, credit unions, other organizations chartered under banking laws and supervised by banking supervisors of any State, and banks organized under foreign law (see definition at 31 CFR 1010.100(d)).

A **Correspondent Account** for a foreign bank is an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank (see definition at 31 CFR § 1010.605(c)(1)(ii)).

An Iranian-Linked Financial Institution Designated Under IEEPA is a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act ("IEEPA") (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. Iranian-Linked Financial Institutions Designated Under IEEPA are identified by "[IFSR]" tags located at the end of their entries on the Specially Designated Nationals and Blocked Persons List ("SDN List") (e.g., [NPWMD][IFSR] or [SDGT][IFSR]). The Office of Foreign Assets Control's ("OFAC") electronic SDN List can be found at the following URL: *http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx.* The following financial institutions meet the criteria of Iranian-Linked Financial Institutions Designated Under IEEPA ([IFSR] tags): *http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf.* These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding Iranian-Linked Financial Institutions Designated Under IEEPA.

An IRGC-Linked Person Designated Under IEEPA is Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act). IRGC-Linked Persons Designated Under IEEPA are identified by "[IRGC]" tags located at the end of their entries on the SDN List (e.g., [NPWMD][IRGC] or [SDGT][IRGC]). OFAC's electronic SDN List can be found at the following URL: *http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx.* The following persons meet the criteria of IRGC-Linked Persons Designated Under IEEPA ([IRGC] tags): *http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf.* These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding IRGC-Linked Persons Designated Under IEEPA.

A. The undersigned financial institution, _____ ("**Foreign Bank**") hereby certifies as follows:

B. Correspondent Account maintained for an Iranian-Linked Financial Institution Designated Under IEEPA: Check box to certify.

☐ Foreign Bank hereby certifies that it **does not** maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA.

☐ Foreign Bank hereby certifies that it **does** maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA. (If this box has been selected please fill out the below information for each correspondent account maintained for an Iranian-Linked Financial Institution Designated Under IEEPA).

Iranian-Linked Financial Institution Designated Under IEEPA	Full Name(s) on Correspondent Account	Correspondent Account Number(s)	Applicable Information regarding whether the Correspondent Account has been Blocked or Otherwise Restricted	Other Applicable Identifying Information for the Correspondent Account	Approximate Value in U.S. Dollars ("USD") of Transactions Processed through the Correspondent Account Within Preceding 90 Calendar Days
1					
2					
3					
4					
5					

(Add more rows as needed.)

C. Processed one or more transfers of funds related to an Iranian-Linked Financial Institution Designated Under IEEPA other than through a correspondent account: Check box to certify.

☐ Foreign Bank hereby certifies that it ***has not processed*** one or more transfers of funds within the preceding 90 calendar days related to an Iranian-Linked Financial Institution Designated Under IEEPA, ***other than through a correspondent account*** detailed above.

☐ Foreign Bank hereby certifies that it ***has processed*** one or more transfers of funds within the preceding 90 calendar days

related to an Iranian-Linked Financial Institution Designated Under IEEPA, ***other than through a correspondent account*** detailed above. (If this box has been selected please fill out the below information for each Iranian-Linked Financial Institution Designated Under IEEPA).

Iranian-Linked Financial Institution Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds	Approximate Value in USD of Transfer(s) of Funds Processed (other than through a Correspondent Account) Within Preceding 90 Calendar Days
1					
2					
3					
4					
5					

(Add more rows as needed.)

D. Processed one or more transfers of funds related to an IRGC-Linked Person Designated Under IEEPA: Check box to certify.

☐ Foreign Bank hereby certifies that it ***has not processed*** one or more transfers of funds within the preceding 90 calendar days related to an IRGC-Linked Person Designated Under IEEPA.

☐ Foreign Bank hereby certifies that it ***has processed*** one or more transfers of funds within the preceding 90 calendar days related to an IRGC-Linked Person Designated Under IEEPA. (If this box has been selected please fill out the below information for each IRGC-Linked Person Designated Under IEEPA).

IRGC-Linked Person Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds	Approximate Value in USD of Transfer(s) of Funds Processed Within Preceding 90 Calendar Days
1					
2					
3					
4					
5					

(Add more rows as needed.)

E. General

Foreign Bank hereby agrees to notify in writing the Bank if Foreign Bank establishes a new Correspondent Account for an Iranian-Linked Financial Institution Designated Under IEEPA at any time within 365 calendar days from the date of this response. Foreign Bank agrees to provide such notification within 30 calendar days of such change.

Foreign Bank understands that the Bank will provide a copy of this Certification to the U.S. Department of the Treasury. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____ (name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

[Name of Foreign Bank] _____

[Signature] _____

[Printed Name] _____

[Title] _____

Executed on this _____ day of _____, 20____.

To be completed by the Bank: _____

I, _____ (name of signatory), have read and understand this Certification; the statements made in this Certification are complete and correct, to the best of the knowledge of the Bank; and the Bank does not know, suspect, or have reason to suspect that the Certification made by Foreign Bank is incorrect. I am authorized to submit this document on behalf of the Bank.

[Name of Bank] _____

[Signature] _____

[Printed Name] _____

[Title] _____

Submitted on this _____ day of _____, 20____.

[FR Doc. 2011–10482 Filed 4–29–11; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0647; FRL–9301–1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Section 110(a)(2) Infrastructure Requirements for 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards; New Mexico Ambient Air Quality Standards; Approval of New Mexico's PSD Program; CFR Codification Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the State of New Mexico pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS

or standards). We are proposing to find that the current New Mexico State Implementation Plan (SIP) meets the following infrastructure elements for the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also proposing to approve a November 2, 2006, SIP revision to regulation 20.2.3 of the New Mexico Administrative Code (NMAC) (*Ambient Air Quality Standards*), to remove the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). EPA is also proposing to correct an administrative oversight by converting our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964) to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval. Please note the fact that we had not formally converted the February 27, 1987 conditional approval to a full approval, yet this had no impact on New Mexico's authority to implement the PSD program. Lastly, EPA is proposing to make a number of U.S. Code of Federal Regulations (CFR) codification technical corrections to amend the description of the approved New Mexico SIP. This action is being taken under section 110 and part C of the Act.

DATES: Comments must be received on or before June 1, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0647, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6comment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2009–0647. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours by appointment: New Mexico Environment Department (NMED), Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7241; fax number 214–665–6762; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA.

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I. Background

A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS for pollutants that

"may reasonably be anticipated to endanger public health and welfare," and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin.

C. What is the background for this rulemaking?

a. Section 110(a)(1) and (2)

On July 18, 1997, we promulgated new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08 parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM, we set a new annual and a new 24-hour NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted $PM_{2.5}$). The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter ($\mu g/m^3$). The 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$. For more information on these standards, please see the 1997 **Federal Register** notices (62 FR 38856 and 62 FR 38652).

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement (the infrastructure) of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. A table listing all 14 infrastructure elements is included in subsection D of section I of this proposed rulemaking.[1] Thus states were required to submit such SIPs for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS to EPA no later than June 2000.[2] However, intervening litigation over the 1997 8-hour ozone and $PM_{2.5}$ NAAQS created uncertainty about how to proceed and many states did not provide the required "infrastructure" SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008. With regard to the 1997 $PM_{2.5}$ NAAQS, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008.

On March 27, 2008, and October 22, 2008, we published findings concerning whether states had made the necessary 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and $PM_{2.5}$ standards (73 FR 62902). In the March 27, 2008 action, we found that New Mexico had made a submission that addressed some, but not all of the section 110(a)(2) requirements of the Act necessary to implement the 1997

[1] Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements. This action also does not pertain to section 110(a)(2)(D)(i). Section 110(a)(2)(D)(i) contains four distinct requirements, or "prongs," related to the impacts of interstate transport. The Interstate Transport SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states. EPA published a finding on April 25, 2005 (70 FR 21147) that all states had failed to submit SIPs addressing interstate transport for the 8-hour ozone and $PM_{2.5}$ NAAQS, as required by section 110(a)(2)(D)(i). Furthermore, there is a consent decree in place for seven states in the western United States, including New Mexico, to meet the requirements of section 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS (74 FR 64076, December 7, 2009). Under the consent decree, for each of these seven states, EPA is required to fully approve SIPs and/or promulgate FIPs that satisfy the four "prongs" of section 110(a)(2)(D)(i) by specified dates. In prior actions, we approved the New Mexico SIP submittal for (1) the "significant contribution to nonattainment prong" of section 110(a)(2)(D)(i) (75 FR 33174, June 11, 2010) and (2) the "interfere with maintenance" and "interfere with measures to prevent significant deterioration" prongs of section 110(a)(2)(D)(i) (75 FR 72588, November 26, 2010). To address the fourth prong of section 110(a)(2)(D)(i), we proposed to disapprove the New Mexico Interstate Transport SIP provisions that address the requirement that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state to protect visibility (76 FR 491, January 5, 2011). In the same rulemaking, we proposed to promulgate a FIP in order to prevent emissions from New Mexico sources from interfering with other states' measures to protect visibility, and to implement nitrogen oxides (NO_X) and sulfur dioxide (SO_2) emission limits necessary at one source to prevent such interference and to address the requirement for best available retrofit technology (BART) for NO_X for this same source. For the 1997 ozone and $PM_{2.5}$ NAAQS, the requirements of section 110(a)(2)(D)(i) are being addressed separately and are not included in the infrastructure SIPs.

[2] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS. On January 19, 2010, EPA proposed to set different primary and secondary ozone standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938). The final reconsidered ozone NAAQS have yet to be promulgated. This rulemaking does not address the 2008 ozone standard.

8-hour ozone NAAQS.[3] In the October 22, 2008 action, we found that New Mexico had made a complete SIP submission that provides for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 $PM_{2.5}$ NAAQS.

On October 2, 2007, we issued "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," Memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards.[4] The guidance provides that to the extent that existing SIPs for ozone and PM already meet the requirements, states need only certify that fact to us.

On December 10, 2007, the Governor of New Mexico submitted a letter certifying that NMED has evaluated the New Mexico SIP and found that the SIP satisfies the requirements of section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS. On March 3, 2008, the Governor of New Mexico submitted a letter certifying that NMED has evaluated the New Mexico SIP and found that the SIP does not satisfy all the requirements of section 110(a)(1) and (2) for the 1997 $PM_{2.5}$ NAAQS. The March 3, 2008 letter included a table with an explanation of how the current New Mexico SIP meets most of the requirements of section 110(a)(2) for the $PM_{2.5}$ NAAQS and also a table outlining what sections of New Mexico's SIP need to be revised to comply with the section 110(a)(2) requirements for the $PM_{2.5}$ NAAQS.[5] On April 19, 2011, NMED submitted a letter clarifying its submittals to make clear that the portion of the PSD SIP that is currently not acted upon by EPA (*i.e.,* the portions from which EPA removed its previous approval) is not part of its infrastructure submissions.[6] These letters are in the docket for this rulemaking.

b. Greenhouse Gas (GHG) Component of PSD Programs

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's proposed action on the New Mexico SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,[7] the "Johnson Memo Reconsideration,"[8] the "Light-Duty Vehicle Rule,"[9] and the "Tailoring Rule."[10] Taken together and in conjunction with the CAA, these actions: (1) Established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; (2) determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and (3) limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In December 2010, EPA followed up on these actions by issuing the "PSD SIP Narrowing Rule,"[11] in which EPA withdrew its previous approval of SIP PSD programs in 24 states, including New Mexico, that apply to GHG-emitting sources below the thresholds in the final Tailoring Rule. The Tailoring Rule and PSD SIP Narrowing Rule both discuss the states' ability to provide assurances that they will have adequate resources to meet the new GHG PSD permitting requirements at statutory levels of emissions, and the PSD SIP Narrowing Rule affected EPA's prior approval of portions of a state's SIP that do not incorporate thresholds established under the Tailoring Rule. On November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico's GHG rules submitted on December 1, 2010 (76 FR 20907). EPA intends to take final action on the December 1, 2010 submittal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals. Additionally, the NMED submitted a clarification letter to EPA on April 19, 2011, clarifying that the portions of the PSD program related to greenhouse gas permitting that remained approved after the promulgation of EPA's PSD SIP Narrowing Rule satisfy sections 110(a)(2)(C) and (J) of the Act. As we discuss further in this notice and in the TSD, New Mexico currently has adequate resources to carry out the GHG component of the currently approved PSD SIP program, which requires PSD permitting for sources emitting GHGs at or above the 75,000/100,000 tons per year (tpy) threshold specified by the Tailoring Rule.

D. What elements are required under Section 110(a)(2)?

The October 2, 2007, EPA guidance for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2) for the 1997 ozone and $PM_{2.5}$ NAAQS, provides a list of 14 essential components that States must include in their SIPs. These are listed in Table 1 below.

[3] In the March 27, 2008 action we found that New Mexico had not submitted a SIP revision that modified New Mexico's Prevention of Significant Deterioration (PSD) SIP for the 1997 8-hour ozone NAAQS to include NO_X as an ozone precursor, which is necessary for approval of elements 110(a)(2)(C) and the PSD and visibility portion of element 110(a)(2)(J). On September 21, 2009, New Mexico submitted the necessary PSD SIP revision. We approved New Mexico's NO_X as an ozone precursor submittal on November 26, 2010 at 75 FR 72688.

[4] This and any other guidance documents referenced in this action are in the docket for this rulemaking.

[5] In New Mexico's March 3, 2008 infrastructure SIP submittal, the State indicated that, at that time, the New Mexico SIP did not satisfy all the infrastructure requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS. As explained in section III of this rulemaking and in the TSD, we are proposing to find that New Mexico's current SIP now meets all the infrastructure requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS.

[6] The April 19, 2011 letter clarified the State's December 10, 2007 infrastructure SIP submittal for the 1997 8-hour ozone standard; the State's March 3, 2008 infrastructure SIP submittal for the 1997 $PM_{2.5}$ standard; and the State's June 12, 2009 infrastructure SIP submittal for the 2006 $PM_{2.5}$ standard. The State's April 19, 2011 letter is severable, as it clarifies three separate infrastructure SIP submittals. At this time, we are only proposing to take action on the State's December 10, 2007, and March 3, 2008 submittals for the 1997 8-hour ozone and 1997 $PM_{2.5}$ standards. We will take action on the June 12, 2009 submittal for the 2006 $PM_{2.5}$ standard in a separate rulemaking.

[7] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[8] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

[9] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[10] "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

[11] "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans." 75 FR 82536 (December 30, 2010).

TABLE 1—SECTION 110(A)(2) ELEMENTS REQUIRED IN SIPS

Clean Air Act Citation	Brief description
Section 110(a)(2)(A)	Emission limits and other control measures.
Section 110(a)(2)(B)	Ambient air quality monitoring/data system.
Section 110(a)(2)(C)	Program for enforcement of control measures.
Section 110(a)(2)(D)(ii) [12]	Interstate and international transport.
Section 110(a)(2)(E)	Adequate resources.
Section 110(a)(2)(F)	Stationary source monitoring system.
Section 110(a)(2)(G)	Emergency power.
Section 110(a)(2)(H)	Future SIP revisions.
Section 110(a)(2)(J) [13]	Consultation with government officials.
Section 110(a)(2)(J)	Public notification.
Section 110(a)(2)(J)	Prevention of significant deterioration (PSD) and visibility protection.
Section 110(a)(2)(K)	Air quality modeling/data.
Section 110(a)(2)(L)	Permitting fees.
Section 110(a)(2)(M)	Consultation/participation by affected local entities.

II. What action is EPA proposing?

A. Section 110(a)(1) and (2)

EPA is proposing to approve the New Mexico SIP submittals that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP as specified in section 110(a)(2) of the Act. The New Mexico submittals do not include revisions to the SIP, but document how the current New Mexico SIP already includes the required infrastructure elements. In today's action, we are proposing to find that the following section 110(a)(2) elements are contained in the current New Mexico SIP and provide the infrastructure for implementing the 1997 ozone and $PM_{2.5}$ standards: Emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

B. CFR Codification Technical Correction to 40 CFR 52.1620(e)

EPA is proposing to correct a CFR codification technical error made in the table titled "*EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP,*" found at 40 CFR 52.1620(e).[14] EPA approved New Mexico's Air Pollution Episode Contingency Plan into the SIP on August 21, 1990 (55 FR 34013) under the SIP codification method in existence at the time. When we changed our SIP codification method for New Mexico on July 13, 1998 (63 FR 37493), we added the table currently found under 40 CFR 52.1620(e), and included entries in this table for all EPA approved nonregulatory provisions in the New Mexico SIP, including those approved prior to 1998. We note that we made an error in not including the already SIP approved New Mexico Air Pollution Episode Contingency Plan when we added this table under 40 CFR 52.1620(e). We are proposing to make a CFR codification technical correction to amend the table titled "*EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP*" to include an entry for the New Mexico Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990 (55 FR 34013, 40 CFR 52.1639(a)).[15] EPA is proposing to make this CFR codification technical correction because it clarifies that EPA has approved the State's air pollution episode provisions into the New Mexico SIP.

C. CFR Codification Technical Corrections to 40 CFR 52.1620(c) and 40 CFR 52.1640(c)(66)(i)(B)

EPA is also proposing to correct two CFR codification technical errors made in the table titled "*EPA Approved New Mexico Regulations,*" found at 40 CFR 52.1620(c).[16] On October 20, 1995, New Mexico adopted a recodification of the State's air quality control regulations

[12] Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement, respectively. Under section 126(a)(1), SIPs must require notification to nearby, affected states of "major proposed new (or modified) sources" in either of two instances: (1) when the source is subject to PSD (section 126(a)(1)(A)); or (2) when the source "may significantly contribute to levels of air pollution in excess" of the NAAQS in air quality control regions in other states (section 126(a)(1)(B)). Any new major stationary source or major modification in an attainment or unclassifiable area is subject to PSD. Therefore, in attainment or unclassifiable areas, any source that potentially falls under section 126(a)(1)(B) must also fall under (A). Thus, to the extent that section 126(a)(1)(B) provides any requirements separate from those in section 126(a)(1)(A), it does so only for major proposed new or modified sources in nonattainment areas, that is, for sources subject to nonattainment NSR. The requirements of section 126(a)(1)(B) should therefore be addressed in states with nonattainment areas through those states' nonattainment NSR programs. As explained elsewhere in this proposed rulemaking, nonattainment NSR programs are not a subject of this action, so EPA will not address the requirements of section 126(a)(1)(B) in the infrastructure SIPs.

[13] Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

[14] 40 CFR 52.1620 provides the Identification of Plan for New Mexico, which lists the EPA-approved provisions of the SIP for the State, as provided under section 110 of the Act, 42 U.S.C. 7410, and 40 CFR 51 to meet the NAAQS. New Mexico's EPA approved nonregulatory provisions are provided under 40 CFR 52.1620(e).

[15] The New Mexico Air Pollution Episode Contingency Plan is applicable statewide outside of the boundaries of Bernalillo County and Indian Lands, and was adopted by New Mexico on July 7, 1988, and submitted to EPA as a SIP revision on August 19, 1988.

[16] New Mexico's air quality regulations approved by EPA into the SIP, along with the State's approval/effective date of the regulations, EPA's approval date of the regulations into the SIP, and the **Federal Register** notice citation for approval into the SIP are provided under 40 CFR 52.1620(c).

(AQCRs).[17] New Mexico submitted the recodification of, and revisions to, the SIP on January 8, 1996, and EPA approved these revisions into the SIP on September 26, 1997 (62 FR 50514). We would like to clarify that when we approved the recodification of, and revisions to, the New Mexico SIP in the September 26, 1997 rulemaking, we made a codification error in 40 CFR 52.1620(c) by incorrectly including entries in the table titled "*EPA Approved New Mexico Regulations*" for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC, which constitute New Mexico's Title V permitting program and the associated permitting fees, respectively.[18] The preamble of the September 26, 1997 rulemaking contains a table listing the rules submitted by New Mexico as a recodification, which EPA had reviewed and approved as a recodification to the New Mexico SIP (62 FR 50514, see pages 50516–17). This table in the preamble did not contain part 70 or part 71 of 20.2 NMAC, yet the CFR table found at 40 CFR 52.1620(c) and the New Mexico Identification of Plan at 40 CFR 52.1640(c)(66)(i)(B) [19] erroneously included the two Title V regulations. The preamble of the September 26, 1997 rulemaking did not act to approve these two Title V regulations as part of the New Mexico SIP. Further, we have never taken any rulemaking action to approve parts 70 and 71 into the New Mexico SIP. Therefore, New Mexico's Title V permitting program has always been, and continues to be outside the scope of the New Mexico SIP.[20] In addition, the table titled "*EPA Approved New Mexico Regulations,*" currently incorrectly lists the EPA approval date of the recodification of New Mexico's regulations in the SIP to be November 25, 1997. Although the **Federal Register** citation (62 FR 50514) listed under the table is correct, the November 25, 1997 date is incorrect and should be changed to September 26, 1997. EPA is proposing to amend the table titled "*EPA Approved New Mexico Regulations,*" found at 40 CFR 52.1620(c), by deleting the entries for parts 70 and 71 of 20.2 NMAC and by changing the EPA approval date of the 62 FR 50514 rulemaking from the currently listed date of November 25, 1997 to the correct date of September 26, 1997. We are also proposing to amend 40 CFR 52.1640(c)(66)(i)(B) such that it reads as follows: "New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 72 (Subparts I, II and III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995." EPA is proposing to make the CFR codification technical corrections to 40 CFR 52.1640(c)(66)(i)(B) and to the table titled "*EPA Approved New Mexico Regulations,*" found under 40 CFR 52.1620(c), as indicated above, because it is necessary to clarify which New Mexico air quality regulations are currently approved into the New Mexico SIP and the EPA approval date of these regulations into the SIP.[21]

D. Conversion of Our Conditional Approval of New Mexico's PSD Program to Full Approval and the CFR Codification Technical Corrections to 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39)

In reviewing the history of New Mexico's PSD program for the purposes of the infrastructure SIP, we found that the State's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964). In the February 27, 1987 rulemaking, New Mexico's PSD program was conditionally approved by EPA on the basis that (i) the State would not issue permits to sources that would require review under EPA's stack height regulations because they would have a stack height over 65 meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh); and (ii) as quickly as possible, the State would adopt and submit as a plan revision a regulation that is equivalent to the regulations in 40 CFR Part 51 promulgated to implement Section 123 of the Act, regarding stack heights. On May 14, 1985, the Governor of New Mexico submitted a letter in which he committed the State not to issue PSD permits to sources that would require review under EPA's stack height regulations because they would have stack heights over 65 meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh).[22] On April 26, 1988, New Mexico submitted as a SIP revision a new regulation on stack height requirements to satisfy the Federal requirements of 40 CFR Part 51. On November 2, 1988, EPA approved New Mexico's stack height regulation into the SIP (53 FR 44191). Thus, condition (i) of our February 27, 1987 conditional approval of New Mexico's PSD program was met when New Mexico complied with the Governor's May 14, 1985 commitment letter in the interim, and condition (ii) was met when we approved New Mexico's stack height regulations in the November 2, 1988 rulemaking. Therefore, upon our approval of New Mexico's stack height regulations in the November 2, 1988 rulemaking, New Mexico had fully met all the conditions of EPA's February 27, 1987 conditional approval of the State's PSD program. However, due to an administrative oversight, EPA failed to convert the conditional approval of New Mexico's PSD program into a full approval at that time. We note that the fact that EPA has not formally converted the conditional approval to a full approval has no impact on the State's authority to implement the PSD program. Therefore, we now propose to convert our February 27, 1987 conditional approval of the State's PSD program to a full approval based on our approval of the State's stack height regulations in the November 2, 1988 rulemaking (53 FR 44191).

In accordance with our proposal to convert our February 27, 1987 conditional approval of New Mexico's PSD program to a full approval, we intend to make codification technical corrections to 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39).[23] 40 CFR 52.1634(a) currently identifies New Mexico's PSD program as meeting the requirements of part C of the Act for prevention of significant deterioration of air quality and as being SIP approved, but does not explain that we initially conditionally approved the State's PSD program on February 27, 1987, and that New Mexico has since then met the conditions of our

[17] In New Mexico's 1995 adoption of the recodification of the State's air quality regulations, the AQCRs existing at the time were renumbered and reformatted into the current NMAC, as was required by the New Mexico State Records Center.

[18] After construction, a source must obtain an operating permit, also called a Title V operating permit, as this requirement comes from Title V of the Act. Most Title V permits are issued by approved State and local permitting authorities. These permits are often called part 70 permits because the regulations that establish minimum standards for State permit programs are found at 40 CFR part 70.

[19] 40 CFR 52.1640 identifies the original New Mexico SIP and all revisions submitted by New Mexico that were federally approved prior to January 1, 1998.

[20] New Mexico's Title V permitting program is legally not part of the SIP, but was approved by EPA on November 26, 1996 (61 FR 60032) as the State's Title V permitting program.

[21] Any other CFR corrections to the New Mexico SIP that may be required will be addressed in a separate future action.

[22] See 40 CFR 52.1640(c)(37)(B).

[23] 40 CFR 52.1634(a) provides for New Mexico's SIP approved PSD program. As stated elsewhere in this rulemaking, 40 CFR 52.1640(c) provides for all revisions submitted by New Mexico that were federally approved into the SIP prior to January 1, 1998. 40 CFR 52.1640(c)(39) provides for New Mexico's SIP approved stack height regulation.

conditional approval. We are proposing to amend the paragraph at 40 CFR 52.1634(a) to read as follows: "The plan submitted by the Governor of New Mexico on February 21, 1984 (as adopted by the New Mexico Environmental Improvement Board (NMEIB) on January 13, 1984), August 19, 1988 (as revised and adopted by the NMEIB on July 8, 1988), and July 16, 1990 (as revised and adopted by the NMEIB on March 9, 1990), Air Quality Control Regulation 707—Permits, Prevention of Significant Deterioration (PSD) and its Supplemental document, is approved as meeting the requirements of part C, Clean Air Act, for preventing significant deterioration of air quality. Additionally, on November 2, 1988, EPA approved New Mexico's stack height regulation into the SIP (53 FR 44191), thereby satisfying the conditions of EPA's conditional approval of the State's PSD program on February 27, 1987 (52 FR 5964). Therefore, the conditional approval is converted to a full approval when we take final action on this CFR correction." 40 CFR 52.1640(c)(39) currently identifies New Mexico's stack height regulation submitted on April 26, 1988 as having been approved into the SIP, but does not identify that this denotes that New Mexico has fully satisfied all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program. We are proposing to amend the paragraph at 40 CFR 52.1640(c)(39) to read as follows: "On April 26, 1988, the Governor of New Mexico submitted a revision to the State Implementation Plan that contained Air Quality Control Regulation No. 710—Stack Height Requirements, as adopted by the New Mexico Environmental Improvement Board on March 10, 1988. Regulation No. 710 enables the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height that exceeds GEP or by any other dispersion technique. With EPA's November 2, 1988, approval of the State's revision to the State Implementation Plan to include Regulation No. 710 (53 FR 44191), the State has satisfied the conditions of our February 27, 1987 conditional approval of the State's plan for preventing significant deterioration of air quality (52 FR 5964). When we take final action on this CFR correction, the conditional approval will be converted to a full approval."

We are proposing the above CFR codification technical corrections to the paragraphs at 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39) because we are proposing to convert our February 27, 1987 conditional approval of New Mexico's PSD program to a full approval.

E. SIP Revision to 20.2.3 NMAC

In conjunction with our proposed finding that the New Mexico SIP meets the section 110(a)(1) and (2) infrastructure SIP elements listed above, we are also proposing to fully approve a severable portion of a SIP revision submitted by NMED to EPA on November 2, 2006. This portion of the submittal contains a revision to 20.2.3 NMAC (*Ambient Air Quality Standards*) and is not a requirement under the infrastructure SIPs, and therefore our proposed approval of this revision is severable from our proposed approval of New Mexico's infrastructure SIP submittals. The revision adds a new subpart 9 to 20.2.3 NMAC, including language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Construction Permits*), are required to continue to address the State's ambient air quality standards in their application. The revision includes language in 20.2.3.9 NMAC that removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). Because New Mexico's Title V program is outside the scope of the New Mexico SIP, this revision does not constitute a relaxation of the current New Mexico SIP.[24] As described above in subsection C of this section, we made a codification error in 40 CFR 52.1620(c) by incorrectly including entries in the table titled "*EPA Approved New Mexico Regulations*" for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC, which are State regulations that have not been approved into the New Mexico SIP. As the New Mexico Title V permitting program, codified at 20.2.70 NMAC, has not been approved into the New Mexico SIP, approval of the November 2, 2006 revision to 20.2.3 NMAC is appropriate and will not constitute a relaxation of the current New Mexico SIP. The SIP revision to 20.2.3 NMAC we are proposing to approve is severable from the portions of the November 2, 2006 SIP submittal on which we are taking no action in this rulemaking. By severable, we mean that the portion of the SIP revisions we are proposing to approve can be implemented independently of the portions on which we are not acting, without affecting the stringency of the submitted rules. EPA is not proposing to take action on any other portions of the November 2, 2006 SIP revisions in this proposed rulemaking; EPA intends to act on the other revisions in a separate rulemaking. EPA proposes to approve the portion of the November 2, 2006 revision, as indicated above, because it clarifies the permitting requirements under the New Mexico SIP.

[24] See footnote 20 above.

III. How has New Mexico addressed the elements of Section 110(a)(2)?

The New Mexico submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the New Mexico infrastructure SIP elements in the Technical Support Document (TSD), located in the docket for this rulemaking.

Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A): Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 8-hour ozone and $PM_{2.5}$ standards. Those regulations are due later as part of attainment demonstrations.

The New Mexico Environmental Improvement Act, found in Chapter 74, Article 1 of the New Mexico Statutes Annotated 1978 (denoted NMSA 1978 74–1), created the NMED and the New Mexico Environmental Improvement Board (EIB). The New Mexico Air Quality Control Act codified at NMSA 1978 74–2, delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain NAAQS and prevent or abate air pollution. See NMSA 1978 74–2–5(B)(1). The Air Quality Control Act also designates the NMED as the State's air pollution control agency and the Environmental Improvement Act provides the NMED with enforcement authority. The SIP rule at Title 20 of the New Mexico Administrative Code (denoted as 20 NMAC) describes NMED as the State's air pollution control agency and its enforcement authority, referencing the NMSA 1978 (44 FR 21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; recodified approved in 62 FR 50518, September 26, 1997).

The NMED has promulgated rules to limit and control emissions of PM, sulfur dioxide (SO_2), nitrogen oxides (NO_X) and volatile organic compounds

(VOCs).[25] These rules include emission limits, control measures, permits, fees, and compliance schedules and are found in Title 20, chapter 2 of the NMAC[26] (denoted 20.2 NMAC): 20.2 NMAC parts 3, 5, 7–8, 10–22, 30–34, 40–41, 72–75, and 98–99.

In this proposed action, EPA is not proposing to approve or disapprove any existing New Mexico SIP provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility.[27] EPA believes that a number of states may have SSM SIP provisions that are contrary to the Act and existing EPA guidance,[28] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. Similarly, in this proposed action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the Act and existing EPA guidance (52 FR 45044, November 24, 1987),[29] and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its SIP which is contrary to the Act and EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable 20.2 NMAC parts discussed above is provided in the TSD. New Mexico's SIP clearly contains enforceable emission limits and other control measures, which are in the Federally enforceable SIP. EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(A) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Ambient air quality monitoring/data analysis system, pursuant to section 110(a)(2)(B): Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. The NMED operates and maintains a statewide network of air quality monitors; data are collected, results are quality assured, and the data are submitted to EPA's Air Quality System[30] on a regular basis. New Mexico's Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005), and consists of stations that measure ambient concentrations of the six criteria pollutants, including ozone and $PM_{2.5}$. The air quality surveillance network undergoes annual review by EPA. On July 7, 2010, NMED submitted its 2010 Annual Air Monitoring Network Plan (AAMNP) that included the plans for the 1997 ozone and $PM_{2.5}$ NAAQS. EPA approved New Mexico's 2010 AAMNP on January 7, 2011.[31] The NMED Web site provides the ozone and $PM_{2.5}$ monitor locations, and current and historical data (*http://air.nmenv.state.nm.us/*).

In summary, New Mexico meets the requirement to establish, operate, and maintain an ambient air monitoring network, collect and analyze the monitoring data, and make the data available to EPA upon request. EPA is proposing to find that the current New Mexico SIP meets the requirements of section 110(a)(2)(B) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Program for enforcement of control measures and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program, as required by Parts C and D, pursuant to section 110(a)(2)(C): Regarding a program for enforcement of control measures, as stated previously, the Air Quality Control Act designates the NMED as the State's air pollution control agency and the Environmental Improvement Act provides the NMED with authority to enforce the state's environmental quality rules. The NMED established rules governing emissions of the criteria pollutants and their precursors throughout the State and these rules are in the Federally enforceable SIP. The rules in 20.2 NMAC parts 3, 5, 7–8, 10–22, 30–34, 40–41, 72–75, and 98–99 include allowable emission rates, compliance, control plan requirements, actual and allowable emissions, monitoring and testing requirements, recordkeeping and reporting requirements, and control schedules. These rules clarify the boundaries beyond which regulated entities in New Mexico can expect enforcement action.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required by Parts C and D, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. We are not evaluating nonattainment-related provisions, such as the Nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these two NAAQS because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure SIP submittals are required.

PSD programs apply in areas that are meeting the NAAQS, referred to as areas in attainment, and in areas for which there is insufficient information to designate as either attainment or nonattainment, referred to as unclassifiable areas. As described in the section titled "*What Action is EPA Proposing*?," New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964). Today, we propose to convert the conditional approval to a full approval on the basis of our November 2, 1988 approval of New Mexico's April 26, 1988 submittal to include in the SIP a new regulation on stack height requirements to satisfy the Federal requirements of 40 CFR Part 51. Subsequent revisions to New Mexico's PSD program were approved into the SIP on August 21, 1990 (55 FR 34013), May 2, 1991 (56 FR 20137), October 15, 1996 (61 FR 53639), March 10, 2003 (68 FR 11316), December 24, 2003 (68 FR 74483), September 5, 2007 (72 FR 50879), and November 26, 2010 (75 FR 72688).

To meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the State must

[25] NO_X and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO_X and SO_2 precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

[26] Title 20 addresses *Environmental Protection* and chapter 2 addresses *Air Quality.*

[27] EPA approved New Mexico's current provisions regarding excess emissions occurring during startup, shutdown, and malfunction (SSM) of operations at a facility on September 14, 2009 (74 FR 46910).

[28] "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated August 11, 1999.

[29] The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

[30] The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

[31] A copy of our approval letter is available in the docket for this rulemaking.

have updated its PSD rules to treat NO_X as a precursor for ozone (70 FR 71612). On November 26, 2010, EPA approved revisions to New Mexico's PSD SIP for the 1997 8-hour ozone NAAQS to include NO_X as an ozone precursor (75 FR 72688).

To implement section 110(a)(2)(C) for the 1997 $PM_{2.5}$ standard, EPA believes that States should appropriately implement the interim policy for preconstruction (PSD) review as interpreted by legal rulings.[32] States may follow this approach until May 16, 2011, the date by which we required states to provide revisions to their PSD regulations to implement the $PM_{2.5}$ standard as provided under 73 FR 28321.[33] During the transition to SIP-approved PSD requirements for $PM_{2.5}$, New Mexico confirmed to EPA by letter that: (1) it does not use PM_{10} as a surrogate for $PM_{2.5}$ in its permitting programs; (2) it requires that applicants include $PM_{2.5}$ modeling and emissions in their PSD and minor source permit applications; and (3) the record for the NMED's permitting decision includes an explanation of how $PM_{2.5}$ emissions have been appropriately analyzed and estimated.[34] (See also 75 FR 52692, page 52700; 75 FR 72688, page 72694). Furthermore, the State has recently proposed to revise their rules to address $PM_{2.5}$ in their PSD program, and expects to adopt these revisions in May 2011. The State is planning to submit these revised PSD rules to EPA as a SIP revision by May 16, 2011. EPA will act on this submission in a separate rulemaking.

New Mexico has the authority to issue permits under the SIP-approved PSD program to sources of GHG emissions (75 FR 82536, page 82536, December 30, 2010).[35] The Tailoring Rule established thresholds that phase in the applicability of PSD requirements to GHG sources, starting with the largest GHG emitters, and were designed to relieve the overwhelming administrative burdens and costs associated with the dramatic increase in permitting burden that would have resulted from applying PSD requirements to GHG emission increases at or above only the mass-based statutory thresholds of 100/250 tpy generally applicable to all PSD-regulated pollutants starting on January 2, 2011. However, EPA recognized that even after it finalized the Tailoring Rule, many SIPs with approved PSD programs would, until they were revised, continue to apply PSD at the statutory thresholds, even though the states would not have sufficient resources to implement the PSD program at those levels. EPA consequently implemented its "PSD SIP Narrowing Rule" and narrowed its approval of those provisions of previously approved SIPs of 24 states, including New Mexico, that apply PSD to GHG emission increases from sources emitting GHGs below the Tailoring Rule thresholds (75 FR 82536, December 30, 2010). Through the PSD SIP Narrowing Rule, EPA withdrew its previous approvals of those programs to the extent the SIPs apply PSD to increases in GHG emissions from GHG-emitting sources below the Tailoring Rule thresholds. The portions of the PSD programs regulating GHGs from GHG-emitting sources with emission increases at or above the Tailoring Rule thresholds remained approved. The effect of EPA narrowing its approval in this manner is that the provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds have the status of having been submitted by the state but not yet acted upon by EPA (75 FR 82536, December 30, 2010).

On November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico's GHG rules submitted on December 1, 2010 (76 FR 20907). EPA intends to take final action on the above proposal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals. We are proposing to find that the current New Mexico PSD SIP meets the requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, as long as we are able to fully approve New Mexico's GHG submittal on or before our final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals.

Additionally, New Mexico submitted a clarification letter to EPA on April 19, 2011, clarifying that the portion of the GHG PSD program in the State's submittal under infrastructure SIP review is only the portion that remained approved after EPA's promulgation of the PSD SIP Narrowing Rule, which is the portion that regulates GHG-emitting sources with GHG emissions at or above the Tailoring Rule thresholds. Therefore, if we are unable to fully approve New Mexico's GHG submittal, in the alternative, we are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on the basis of the State's April 19, 2011 clarification letter.

Section 110(a)(2)(C) creates "a general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved" (70 FR 71612, 71677). EPA provides states with a "broad degree of discretion" in implementing their Minor NSR programs (71 FR 48696, 48700). The "considerably less detailed" regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. EPA has determined that New Mexico's Minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of all regulated air contaminants for which there is a NAAQS (20.2.72.200 NMAC). New Mexico's Minor NSR permitting requirements are found at 20.2.72 NMAC and were approved into the SIP on May 14, 1973 (38 FR 12702).[36] In this action, EPA is proposing to approve New Mexico's infrastructure SIP for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS with respect to the general requirement of section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any

[32] "Interim Implementation of New Source Review for $PM_{2.5}$," Memorandum from John S. Seitz, Director of Office of Air Quality Planning and Standards, dated October 23, 1997.

[33] The **Federal Register** notice 73 FR 28321 was published May 16, 2008.

[34] July 23, 2010, letter from Mary Uhl, Bureau Chief, Air Quality Bureau, New Mexico Environment Department, to Thomas Diggs, Associate Director for Air Programs, EPA Region 6. This letter is in the docket for this rulemaking.

[35] On June 24, 2010, the State submitted a letter to EPA stating that current New Mexico rules require regulating GHGs at the existing 100/250 tpy threshold, rather than at the higher thresholds set in the Tailoring Rule because the State does not have the authority to apply the meaning of the term "subject to regulation" established in the Tailoring Rule. New Mexico also submitted a letter on September 14, 2010, in response to the proposed GHG SIP Call again confirming that EPA correctly classified New Mexico as a State with authority to apply PSD requirements to GHGs. The September 14, 2010, letter also identifies that NMED is pursuing rulemaking activity to define the terms "greenhouse gas" and "subject to regulation." These two letters are in the docket for this rulemaking. As explained elsewhere in this rulemaking, on November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. On April 14, 2011, EPA proposed approval of New Mexico's GHG rules submitted on December 1, 2010 (76 FR 20907). EPA intends to take final action on the December 1, 2010 submittal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals.

[36] Revisions to New Mexico's minor source permitting program were most recently approved by EPA into the SIP on September 26, 1997 (62 FR 50514).

stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing Minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have Minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state Minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing Minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA is proposing to find that the current New Mexico SIP meets the requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Interstate and international transport, pursuant to section 110(a)(2)(D)(ii): Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115(a) addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115, the Administrator has neither received nor issued a formal notification that emissions from New Mexico are endangering public health or welfare in a foreign country. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. Under section 126(a)(1)(A), SIPs must require notification to nearby, affected states of "major proposed new (or modified) sources" when the source is subject to PSD. New Mexico's SIP approved PSD program rules at 20.2.74.400 NMAC satisfy the requirements of section 126(a)(1)(A) by providing that the NMED must send notice of the proposed action on PSD permits to, among others, "any state * * * whose lands may be affected by emissions from the source or modification." The State also has no pending obligations under section 126 of the Act.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(D)(ii) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Adequate personnel, funding, and authority, pursuant to section 110(a)(2)(E): The Department of the Environment Act provides that the secretary of the NMED "shall * * * employ and fix the compensation of those persons necessary to discharge his duties * * *" See NMSA 1978 9–7A–6(B). The NMED is also authorized to receive State appropriations to implement environmental programs. See generally, NMSA 1978 9–7A. There are Federal sources of funding for the implementation of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, through, for example, the CAA sections 103 and 105 grant funds. The NMED receives Federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. Additionally, the State provides funds equal to 40 percent of the 105 grant fees it receives.

Fees collected for the Title V and non-Title V permit programs, and other inspections, maintenance and renewals required of other air pollution sources also provide necessary funds to help implement the State's air programs. Information on permitting fees is provided in the discussion for section 110(a)(2)(L) below. The Air Quality Control Act designates the NMED as the State air pollution control agency for all purposes under Federal legislation relating to air pollution and provides the NMED with the power "to accept, receive and administer grants or other funds or gifts from public and private agencies, including the Federal government, or from any person * * *" See NMSA 1978 74–2–5.1(F). For more detail on funding sources, please see the TSD.

The Air Quality Control Act delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution. See NMSA 1978 74–2–5(B)(1). The Environmental Improvement Act provides the NMED with the power "to enforce the rules, regulations and orders promulgated by the board * * *" See NMSA 1978 74–1–6(F). The Air Quality Control Act also gives the NMED the duty to "develop and present to the environmental improvement board or the local board a plan for the regulation, control, prevention or abatement of air pollution * * *" and gives the EIB the authority to adopt such a plan. See NMSA 1978 74–2–5.1(H) and NMSA 1978 74–2–5(B)(2). Therefore, the State has demonstrated it has adequate authority under its rules and regulations to carry out its SIP obligations with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

As discussed previously in this rulemaking with regards to section 110(a)(2)(C), on November 10, 2010, New Mexico adopted revisions to the State's PSD rules to implement the GHG thresholds established in EPA's GHG Tailoring Rule and submitted the corresponding SIP revision to EPA on December 1, 2010. EPA proposed approval of these revisions on April 14, 2011 (76 FR 20907). The GHG Tailoring Rule implemented thresholds establishing applicability of the PSD permitting program to GHG-emitting sources only if they emit GHGs in amounts above the 75,000/100,000 tpy of carbon dioxide equivalent (denoted CO_2e). Thus sources in affected states, including New Mexico, will not be subject to Federal or state requirements to obtain permits at the lower 100/250 tpy level. The Tailoring Rule thresholds were designed to relieve the overwhelming administrative burdens and costs associated with the dramatic increase in permitting burden that would have resulted from applying PSD at the statutory levels (100/250 tpy). EPA intends to take final action on the above proposal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals. We are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, as long as we are able to fully approve New Mexico's GHG submittal on or before our final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals; or, in the alternative, we are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on the basis of the State's April 19, 2011 clarification letter.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(E) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Stationary source monitoring system, pursuant to section 110(a)(2)(F): New Mexico's regulations at 20.2 NMAC parts 5, 7–8, 10–20, 30–34, 40–41, and 72–74 require source monitoring for compliance, recordkeeping and reporting, and provide for enforcement with respect to all the NAAQS and their precursors. These source monitoring program requirements generate data for, among other pollutants, ozone, $PM_{2.5}$, and the precursors to these pollutants (VOCs, NO_X, and SO_2).

Under the New Mexico SIP rules, the NMED is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The NMED uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with New Mexico and EPA requirements. The State's emissions data are available on the NMED Web site (*http://www.nmenv.state.nm.us*). These rules have been approved by EPA into the SIP. A list of the rules and **Federal Register** citations are provided in the TSD.

There are two requirements that New Mexico must meet regarding emissions inventories (EIs): the EI requirement for nonattainment areas, and the requirement to submit annual EI data to EPA's National Emissions Inventory (NEI) database. Because Nonattainment NSR is outside the scope of this rulemaking, we are not addressing New Mexico's EI for nonattainment areas in this proposed action. The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states are given to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* The NMED is current with their submittals to the NEI database; the 2008 data was submitted to EPA in 2010. The State's emissions data are also available on EPA's AirData Web site (*http://www.epa.gov/air/data/index.html*).[37]

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(F) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Emergency power, pursuant to section 110(a)(2)(G): Section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The Air Quality Control Act provides the NMED with authority to address environmental emergencies, and the NMED has contingency plans to implement emergency episode provisions in the SIP. New Mexico promulgated the "Air Pollution Episode Contingency Plan for New Mexico," which includes contingency measures, and these provisions were approved into the SIP on August 21, 1990 (55 FR 34013). The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address ozone emergency episodes and are in the Federally approved SIP.

As explained in the section of this rulemaking titled "*What Action Is EPA Proposing?*," in this rulemaking we are also proposing to make a CFR codification technical correction to amend the table titled "*EPA Approved Nonregulatory Provisions And Quasi-Regulatory Measures In The New Mexico SIP*" under 40 CFR 52.1620(e), to include an entry for the New Mexico Air Pollution Episode Contingency Plan approved by EPA into the SIP on August 21, 1990 (see 55 FR 34013, 40 CFR 52.1639(a)). EPA is proposing to make this CFR codification technical correction because it clarifies that EPA previously approved the State's air pollution episode provisions into the New Mexico SIP.

The 2009 Infrastructure SIP Guidance for $PM_{2.5}$ recommends that a state with at least one monitored 24-hour $PM_{2.5}$ value exceeding 140.4 $\mu g/m^3$ since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006–2010 ambient air quality monitoring data[38] for New Mexico do not exceed 140.4 $\mu g/m^3$. The $PM_{2.5}$ levels have consistently remained below this level (140.4 $\mu g/m^3$), and furthermore, the State has appropriate general emergency powers to address $PM_{2.5}$ related episodes to protect the environment and public health. Given the State's low monitored $PM_{2.5}$ levels, EPA is proposing the State is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 $PM_{2.5}$ standard. Additional detail is provided in the TSD.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(G) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Future SIP revisions, pursuant to section 110(a)(2)(H): The Air Quality Control Act provides that the EIB shall "* * * adopt, promulgate, publish, amend, and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution * * *." See NMSA 1978 74–2–5(B)(1). The Environmental Improvement Act provides that the NMED shall, "* * * enforce the rules, regulations and orders promulgated by the board * * *." See NMSA 1978 74–1–6(F). In addition, the Air Quality Control Act requires the NMED to, "* * * advise, consult, contract with and cooperate with local authorities, other states, the Federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control * * *" See NMSA 1978 74–2–5.2(B). Thus, New Mexico has the authority to revise its SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, New Mexico also has the authority under the above provisions to revise its SIP in the event the EPA, pursuant to the Act, finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(H) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Consultation with government officials, pursuant to section 110(a)(2)(J):[39] The Air Quality Control Act, as codified at NMSA 1978 74–2–6, provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." See NMSA 1978 74–2–6(B) and (D). In addition, the Air Quality Control Act provides that the NMED

[37] The AirData Web site provides access to air pollution data for the entire United States and produces reports and maps of air pollution data based on criteria specified by the user.

[38] The ozone and PM data are available through AQS. The AQS data for PM are provided in the docket for this rulemaking.

[39] Section 110(a)(2)(J) is divided into three segments: Consultation with government officials; public notification; and PSD and visibility protection.

shall have the power and duty to "advise, consult, contract with and cooperate with local authorities, other states, the Federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control * * *" See NMSA 1978 74–2–5.2(B). The State's SIP approved PSD rules at 20.2.74.400 NMAC mandate that the NMED shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, and Federal Land Managers (FLM) whose lands may be affected by emissions from the source or modification. The State's SIP approved PSD rules at 20.2.74.403 NMAC require the NMED to consult with FLMs regarding permit applications for sources impacting Class I Federal areas.[40] Furthermore, the State of New Mexico has committed in the SIP to consult continually with the FLMs on the review and implementation of the visibility program and to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.[41] The State's SIP approved Transportation Conformity rules at 20.2.99.116 and 20.2.99.124 NMAC require that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related SIPs.[42] These rules are in the Federally-approved SIP.

EPA is proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J): Public notification begins with the air quality forecast, which advises the public of conditions capable of exceeding the NAAQS (see 54 FR 9783). New Mexico's provisions regarding public notification of instances or areas in which any primary NAAQS was exceeded were approved into the SIP on August 24, 1983 (48 FR 38466). In addition, the NMED air monitoring Web site provides live air quality data for each of the monitoring stations in New Mexico.[43] The Web site also provides information on the health effects of ozone, particulate matter, and other criteria pollutants.

EPA is proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

PSD and visibility protection, pursuant to section 110(a)(2)(J): This portion of section 110(a)(2)(J) in part requires that a state's SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As detailed in the subsection titled "*Program for enforcement of control measures and regulation of the modification and construction of any stationary source * * * pursuant to section 110(a)(2)(C)*" of this rulemaking and in the TSD, New Mexico's PSD program was conditionally approved into the SIP on February 27, 1987 (52 FR 5964). New Mexico has since then met the conditions of our conditional approval, so we are proposing to convert our conditional approval into a full approval. The State's PSD program is in the SIP (52 FR 5964, 53 FR 44191, 55 FR 43013, 56 FR 20137, 61 FR 53639, 68 FR 11316, 68 FR 74483, 72 FR 50879, and 75 FR 72688). In addition, to meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_X as a precursor for ozone. On November 26, 2010, EPA approved a SIP revision that modified New Mexico's PSD SIP for the 1997 8-hour ozone standard to include NO_X as an ozone precursor (75 FR 72688). To implement section 110(a)(2)(C) for the 1997 $PM_{2.5}$ standard, EPA believes that States should appropriately implement the interim policy for preconstruction review, as described above. During the transition to SIP-approved PSD requirements for $PM_{2.5}$, NMED submitted a letter to EPA clarifying that: (1) It does not use PM_{10} as a surrogate for $PM_{2.5}$ in its permitting programs; (2) it requires that applicants include $PM_{2.5}$ modeling and emissions in their PSD and minor source permit applications; and (3) the record for the NMED's permitting decision includes an explanation of how $PM_{2.5}$ emissions have been appropriately analyzed and estimated. Furthermore, the State has recently proposed to revise their rules to address $PM_{2.5}$ in their PSD program, and expects to adopt these revisions in May 2011. The State is planning to submit to EPA these revised PSD rules as a SIP revision by May 16, 2011. The State's minor source permitting requirements were approved at 38 FR 12702. The portions of the State's PSD program related to permitting GHGs at or above the Tailoring Rule thresholds are approvable in light of the PSD SIP Narrowing Rule. As discussed above, regarding GHG permitting, EPA intends to take final action on the December 1, 2010 submittal in a separate rulemaking no later than EPA's final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals. We are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, as long as we are able to fully approve New Mexico's GHG submittal on or before our final action on New Mexico's 1997 ozone and $PM_{2.5}$ infrastructure SIP submittals; or, in the alternative, we are proposing to find that the current New Mexico PSD SIP meets section 110(a)(2)(C) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on the basis of the State's April 19, 2011 clarification letter. EPA is proposing to find that the New Mexico SIP meets the PSD requirement of section 110(a)(2)(C). A more detailed discussion is provided in subsection 110(a)(2)(C) above and in the TSD. EPA is proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

EPA approved New Mexico's Visibility Protection Plan and approved a Long-Term Strategy for Visibility Protection into the New Mexico SIP on January 27, 2006 (71 FR 4490). The State submitted a Regional Haze SIP to EPA on December 1, 2003. On January 15, 2009, we published a "Finding of Failure to Submit State Implementation Plans Required by the 1999 regional haze rule" (74 FR 2392). We found that New Mexico had failed to submit for our review and approval a complete SIP for improving visibility in the nation's national parks and wilderness areas by the required date of December 17, 2007. Specifically, we found that New Mexico had failed to submit the plan elements required by 40 CFR 51.309(g),[44] and the plan element required by 40 CFR 51.309(d)(4), which requires BART for stationary source emissions of NO_X and PM under either 40 CFR 51.308(e)(1) or 51.308(e)(2).[45] On January 13, 2009, New Mexico submitted a letter to EPA,

[40] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA section 162(a).

[41] See 71 FR 4490, published January 27, 2006.

[42] See 65 FR 14877.

[43] Please see *http://air.nmenv.state.nm.us/*.

[44] 40 CFR 51.309(g) concerns the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report.

[45] New Mexico has the option to submit a Regional Haze SIP under either section 51.308 or section 51.309.

clarifying that they intended to submit a Regional Haze SIP revision in 2009 to address the requirements of 40 CFR 51.309(d)(4) and 40 CFR 51.309(g).[46] New Mexico has since stated that they intend to make this necessary submission in 2011. To date, the State has not made a Regional Haze SIP submission. The State proposed to adopt a Regional Haze SIP on February 28, 2011, and the public comment period will run through June 1, 2011. EPA will take action separately on New Mexico's Regional Haze SIP once the State makes this submittal. With regard to the applicable requirements for visibility protection, EPA recognizes that States are subject to visibility and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective; and as such, visibility protection requirements are not relevant for purposes of this action. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA is therefore proposing to find that the New Mexico SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Air quality modeling and submission of data, pursuant to section 110(a)(2)(K): The Air Quality Control Act authorizes NMED to "develop facts and make investigations and studies," thereby providing for the functions of environmental air quality assessment. As an example, New Mexico submitted modeling and control measures in a SIP revision to demonstrate attainment of the 1997 8-hour ozone standard.[47] The modeling and control measures in the SIP revision were approved by EPA and adopted into the SIP.

This section of the Act also requires that a SIP provide for the submission of data related to such air quality modeling to the EPA upon request. The Air Quality Control Act authorizes NMED to cooperate with the Federal government in regard to matters of common interest in the field of air quality control, thereby allowing it to make this submission to EPA. See NMSA 1978 74–2–5.2(B).

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(K) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Permitting fees, pursuant to section 110(a)(2)(L): The Air Quality Control Act provides the EIB with the legal authority for establishing an emission fee schedule and a construction permit fee schedule to recover the reasonable costs of acting on permit applications, implementing, and enforcing permits. See NMSA 1978 74–2–7. New Mexico's Permit Fee System was approved by EPA on July 17, 1991 (56 FR 32511). New Mexico's Permit Fee System implements a fee system for all preconstruction air permits issued by NMED. New Mexico's regulations for construction permit fees are found at 20.2.75 NMAC. The State's Title V program and associated fees legally are not part of the SIP, but were approved by EPA on November 26, 1996 (61 FR 60032) as part of the New Mexico Title V Program. EPA is reviewing the New Mexico Title V program, including the Title V fee structure, separate from this action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding New Mexico's Title V program.

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(L) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

Consultation/participation by affected local entities, pursuant to section 110(a)(2)(M): As indicated above, the Air Quality Control Act provides that, "no regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board" and provides that, "at the hearing, the environmental improvement board or the local board shall allow all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." See NMSA 1978 74–2–6(B) and (D). In addition, the Air Quality Control Act provides that the NMED shall have the power and duty to "advise, consult, contract with and cooperate with local authorities, other states, the Federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control * * *" See NMSA 1978 74–2–5.2(B). New Mexico's SIP approved PSD regulations at 20.2.74.400 NMAC mandate that the NMED shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, and FLMs whose lands may be affected by emissions from the source or modification. New Mexico's SIP approved Transportation Conformity regulations at 20.2.99.116 and 20.2.99.124 NMAC require that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related SIPs.[48]

EPA is proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(M) with respect to the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

IV. Proposed Action

We are proposing to approve the submittals provided by the State of New Mexico to demonstrate that the New Mexico SIP meets the requirements of Section 110(a)(1) and (2) of the Act for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. We are proposing to find that the current New Mexico SIP meets the infrastructure elements listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate and international transport (110(a)(2)(D)(ii) of the Act);

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

EPA is also proposing to make CFR codification technical corrections to amend the following:

1. The table titled "*EPA Approved Nonregulatory Provisions And Quasi-*

[46] January 13, 2009, letter from Bill Richardson, Governor of New Mexico, to Mayor Richard Greene, Regional Administrator, EPA Region 6. This letter is in the docket for this rulemaking.

[47] See the Attainment Demonstration for the San Juan County Early Action Compact Area, approved by EPA and adopted into the SIP on August 17, 2005 (70 FR 48285).

[48] See 65 FR 14877.

Regulatory Measures In The New Mexico SIP," found under 40 CFR 52.1620(e), by including an entry for New Mexico's already SIP approved Air Pollution Episode Contingency Plan.

2. The table titled "*EPA Approved New Mexico Regulations,*" found under 40 CFR 52.1620(c), by (i) deleting entries for part 70 (*Operating Permits*) and part 71 (*Operating Permit Emission Fees*) of 20.2 NMAC and (ii) correcting the currently listed EPA approval date for the recodification of New Mexico's air quality regulations in the SIP.

3. 40 CFR 52.1640(c)(66)(i)(B), by amending the paragraph such that it correctly identifies the State regulations submitted by the State and approved by EPA into the New Mexico SIP.

4. 40 CFR 52.1634(a) and 40 CFR 52.1640(c)(39), by amending each paragraph such that it identifies that New Mexico has fully met all conditions of our February 27, 1987 conditional approval of New Mexico's PSD program such that our conditional approval is converted to a full approval.

We are also proposing to convert our February 27, 1987, conditional approval of New Mexico's PSD program (52 FR 5964), to a full approval based on the November 2, 1988, approval of New Mexico's stack height regulations (53 FR 44191), at which point New Mexico fully met the condition in the conditional approval.

Lastly, EPA is proposing to approve a severable revision to regulation 20.2.3 NMAC (*Ambient Air Quality Standards*), which was submitted by New Mexico on November 2, 2006. The revision to 20.2.3 NMAC removes the state ambient air quality standards from being an applicable requirement under the State's Title V permitting program, found at 20.2.70 NMAC (*Operating Permits*). The revision also adds language to ensure that sources being issued a permit under the State's minor source permitting program, found at 20.2.72 NMAC (*Operating Permits*), are required to continue to address the State's ambient air quality standards in their application.

EPA is proposing these actions in accordance with section 110 and part C of the Act and EPA's regulations and is consistent with EPA guidance.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 22, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–10569 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 10–43; FCC 11–11]

Commission's Ex Parte Rules and Other Procedural Rules

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking

SUMMARY: In this document the Commission seeks comment on amending the rules to require that notices of *ex parte* discussions disclose real parties-in-interest. The change was proposed because the existing rules do not enable interested parties to know whose interests are being represented when a contact is made. By requiring the disclosure of this information the proposed amendment would increase transparency and openness in Commission proceedings. The FNPRM was adopted in conjunction with a Report and Order amending the *ex parte* rules, which is published elsewhere in this **Federal Register.**

DATES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 16, 2011 and reply comments on or before July 18, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 1, 2011.

ADDRESSES: You may submit comments, identified by GC Docket No. 10–43, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* http://fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Office of the Secretary, a copy of any

comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW, Washington, DC 20554, or send an e-mail to *PRA@fcc.gov.* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joel Kaufman, Chief, Administrative Law Division, Office of General Counsel, (202) 418–1758 or *joel.kaufman@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Leslie F. Smith, (202) 418–0217 or *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

In this FNPRM adopted February 1, 2011 and released February 2, 2011, the Commission seeks comment on requiring anyone making an *ex parte* presentation to disclose the identity of any real party in interest to the issues discussed. At times a party making an *ex parte* contact may be representing the interests of another undisclosed party, or the presenter's interest in the proceeding may not be entirely clear. The Commission found that a disclosure requirement that addresses these problems without imposing undue burdens on the disclosing party, or requiring duplicative filing of generally-available information, would serve the public interest. The FNPRM solicits comment on what type of disclosure rule would balance those two interests, and how it should be applied. Comment is sought on the suitability of using existing judicial disclosure rules, such as Supreme Court Rules 29.6 and 37.6, or Rule 26.1 of the Rules for the U.S. Court of Appeals for the DC Circuit. Comment is also sought on the possible use of the Lobbying Disclosure Act as a model. Comment is requested on the range of proceedings to which new disclosure rules should apply, and whether disclosure requirements should apply to trade associations and non-profit entities. Finally, the Commission asks a number of logistical questions regarding disclosure. Comment is sought on whether disclosure should be required when the information to be disclosed can be found in existing Commission records or on the party's Web site. If reliance were to be placed on information already in the Commission's records, how would the Commission ensure its information is up-to-date and easily accessible? Comment is requested on whether the Commission should create a single electronically accessible source for all disclosure statements, and how often filers should be required to update this information.

Regulatory Flexibility Act. Our proposed action does not require notice and comment, and therefore falls outside the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 605(b), and requires no initial or final regulatory flexibility analysis under Section 604 of that Act, 5 U.S.C. 604. We nevertheless note that we anticipate that the alternatives proposed in the FNPRM will not have a significant economic impact on a substantial number of small entities or impose significant costs on parties to Commission proceedings. We will, however, send a copy of the FNPRM to the Chief Counsel of Advocacy of the Small Business Administration.

Initial Paperwork Reduction Act of 1995 Analysis. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due July 1, 2011.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0430.

Title: Section 1.1206, Permit-but-Disclose Proceedings.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Business or other for-profits; Not-for-profit institutions; Federal Government; and State, local or tribal governments.

Number of Respondents and Responses: 11,500 respondents; 34,500 responses.

Estimated time per Response: 45 minutes (0.75 hours).

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: On-occasion reporting requirements; Third party disclosure.

Total Annual Burden: 25,875 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information; however, consistent with the Commission's rules on confidential treatment of submissions, under 47 CFR 0.459, a presenter may request confidential treatment of *ex parte* presentations. In addition, the Commission will permit parties to remove metadata containing confidential or privileged information, and the Commission will also not require parties to file electronically *ex parte* notices that contain confidential information. The Commission will, however, require a redacted version to be filed electronically at the same time the paper filing is submitted, and that the redacted version must be machine-readable whenever technically possible.

Needs and Uses: The Commission's rules, under 47 CFR 1.1206, require that a public record be made of *ex parte* presentations (*i.e.,* written presentations not served on all parties to the proceeding or oral presentations as to which all parties have not been given notice and an opportunity to be present) to decision-making personnel in "permit-but-disclose" proceedings, such as notice-and-comment rulemakings and declaratory ruling proceedings. Persons making such presentations must file two copies of written presentations and two copies of memoranda reflecting new data or arguments in oral presentations no later than the next business day after the presentation; alternatively, in proceedings in which electronic filing is permitted, a copy may be filed electronically.

On February 2, 2011, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking,* CG Docket Number 10–43, FCC 11–11, which amends and reforms the Commission's rules on *ex parte* presentations (47 CFR 1.1206(b)(2)) made in the course of Commission rulemakings and other permit-but-disclose proceedings. The modifications to the existing rules adopted in this Report and Order address these problems by requiring that parties file more descriptive summaries of their *ex parte* contacts, by ensuring that other parties and the public have an adequate opportunity to review and respond to information submitted *ex parte,* and by improving the FCC's oversight and enforcement of the *ex parte* rules. The modified *ex parte* rules provide as follows: (1) *Ex parte* notices will be required for all oral *ex parte* presentations in permit-but-disclose proceedings, not just for those presentations that involve new information or arguments not already in the record; (2) If an oral *ex parte* presentation is limited to material already in the written record, the notice must contain either a succinct summary of the matters discussed or a citation to the page or paragraph number in the party's written submission(s) where the matters discussed can be found; (3) Notices for all *ex parte* presentations must include the name of the person(s) who made the *ex parte* presentation as well as a list of all persons attending or otherwise participating in the meeting at which the presentation was made; (4) Notices of *ex parte* presentations made outside the Sunshine period must be filed within two business days of the presentation; (5) The Sunshine period will begin on the day (including business days, weekends, and holidays) after issuance of the Sunshine notice, rather than when the Sunshine Agenda is issued (as the current rules provide); (6) If an *ex parte* presentation is made on the day the Sunshine notice is released, an *ex parte* notice must be submitted by the next business day, and any reply would be due by the following business day. If a permissible *ex parte* presentation is made during the Sunshine period (under an exception to the Sunshine period prohibition), the *ex parte* notice is due by the end of the same day on which the presentation was made, and any reply would need to be filed by the next business day. Any reply must be in writing and limited to the issues raised in the *ex parte* notice to which the reply is directed; (7) Commissioners and agency staff may continue to request *ex parte* presentations during the Sunshine period, but these presentations should be limited to the specific information required by the Commission; (8) *Ex parte* notices must be submitted electronically in machine-readable format. PDF images created by scanning a paper document may not be submitted, except in cases in which a word-processing version of the document is not available. Confidential information may continue to be submitted by paper filing, but a redacted version must be filed electronically at the same time the paper filing is submitted. An exception to the electronic filing requirement will be made in cases in which the filing party claims hardship. The basis for the hardship claim must be substantiated in the *ex parte* filing; (9) To facilitate stricter enforcement of the *ex parte* rules, the Enforcement Bureau is authorized to levy forfeitures for *ex parte* rule violations; (10) Copies of electronically filed *ex parte* notices must also be sent electronically to all staff and Commissioners present at the *ex parte* meeting so as to enable them to review the notices for accuracy and completeness. Filers may be asked to submit corrections or further information as necessary for compliance with the rules. Where staff believes there are instances of substantial or repeated violations of the *ex parte* rules, staff should report such to the General Counsel; and (11) Minor conforming and clarifying rule changes proposed in the Notice are adopted. The only change entailing increased information collection is the requirement that parties making permissible *ex parte* presentations in restricted proceedings must file an *ex parte* notice.

The information is used by parties to permit-but-disclose proceedings, including interested members of the public, to respond to the arguments made and data offered in the presentations. The responses may then be used by the Commission in its decision-making. The availability of the *ex parte* materials ensures that the Commission's decisional processes are fair, impartial, and comport with the concept of due process in that all interested parties can know of and respond to the arguments made to the decision-making officials.

Currently, persons making *ex parte* presentations have no obligation to disclose whether the person making the presentation represents a real party-in-interest whose identity has not been disclosed. In this FNPRM, the Commission proposed to require the disclosure of the identity of real parties-in-interest, which would further the goal of openness and transparency in the Commission decision making process.

Statutory Authority: 47 U.S.C. 154(i), 154(j), and 303(r).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–10352 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–54]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on proposed modifications to its certification process for Internet-based relay providers to ensure that all entities seeking certification to provide Internet-based telecommunications relay services (TRS) in the future—or currently certified entities seeking re-certification—are fully qualified to provide Internet-based relay service in compliance with the Commission's rules and requirements, and to improve the Commission's oversight of these providers, once they have been certified.

DATES: Comments are due on or before June 1, 2011. Reply comments are due on or before June 16, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 1, 2011.

ADDRESSES: Interested parties may submit comments identified by [CG Docket No. 10–51 and/or FCC 11–54], by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 10–51. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com*.

Document FCC 11–54 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via email at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*, and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167, or via e-mail to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559–5158 (VP), or e-mail: *Gregory.Hlibok@fcc.gov*. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, or email: *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Structure and Practices of the Video Relay Service Program,* Further Notice of Proposed Rulemaking (*VRS FNPRM*), document FCC 11–54, adopted April 5, 2011, and released April 6, 2011, in CG Docket No. 10–51, seeking comment on proposed modifications to its certification process for all Internet-based relay providers. Simultaneously with the *VRS FNPRM,* the Commission issued a *Report and Order* in CG Docket No. 10–51. In the *Report and Order,* the Commission adopted rules to detect and prevent fraud and abuse in the provision of video relay service. The full text of FCC 11–54 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. FCC 11–54 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com*, or by calling 1–800–378–3160. FCC 11–54 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders*.

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the *VRS FNPRM.* The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. The Commission strongly encourages that parties track the organization set forth in the *VRS FNPRM* in order to facilitate its internal review process. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

Pursuant to 47 CFR 1.1200 *et. seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b). To view a copy of this information collection

request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in the document FCC 11–54, as required by the PRA, Public Law 104–13. Public and agency comments are due July 1, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–XXXX.

Title: Structure and Practices of the Video Relay Service Program, Further Notice of Proposed Rulemaking; CG Docket No. 10–51.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 11 respondents and 49 responses.

Estimated Time per Response: 1 hour to 75 hours.

Frequency of Response: Annual, one-time, and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found at section 225 of the Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Hourly Burden: 1,033 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act Impact Assessment: No impacts.

Needs and Uses: In the *VRS FNPRM,* the Commission seeks comment on a number of proposed modifications to the Commission's certification process for all Internet-based relay providers to ensure that all entities seeking certification in the future are fully qualified to provide service in compliance with the Commission's rules and orders. The *VRS FNPRM* contains potential information collection requirements with respect to the following four of its proposals, all of which could further the aims of the *VRS FNPRM.*

(A) Whether potential Internet-based relay providers should be required to provide full and detailed information in its application for certification that show its ability to comply with the Commission's rules. The *VRS FNPRM* specifically proposes that provider applicants provide documentary and other evidence demonstrating that the applicant owns and operates facilities associated with TRS call centers, and employs ASL interpreters, on a full or part-time basis, to staff such call centers at the date of the application.

(B) Whether Internet-based relay providers should be required to submit annual reports that include updates to the information to the application for certification.

(C) Whether each certified Internet-based relay provider should be required to seek prior Commission authorization of any voluntary interruption in the provision of Internet-based TRS.

(D) Whether each certified Internet-based relay provider should be required to submit a written notification to Consumer and Governmental Affairs Bureau within two business days of when an unforeseen service interruption first occurred with an explanation of how the provision of its service had been restored or will be restored imminently.

Synopsis

1. In document FCC 11–54, the Commission seeks comment on a number of proposed modifications to our certification process for all Internet-based relay providers, including VRS providers, to ensure that all entities seeking certification in the future—or currently certified entities seeking re-certification—are fully qualified to provide Internet-based relay service in compliance with the Commission's rules, including all of the new obligations adopted in the accompanying *Report and Order* to reduce waste, fraud and abuse, and improve oversight of the Commission's relay programs.

2. The Commission proposes to ensure that the certification process enables the Commission to identify providers that are qualified to provide Internet-based relay services in accordance with our rules.

3. First, the Commission proposes that all Internet-based relay providers be required to receive certification from the Commission, under the procedures and guidelines proposed herein, to be eligible to receive compensation from the TRS Fund. Under this proposal, certification by the Commission would be the sole method by which an Internet-based TRS provider could become eligible to receive compensation from the TRS Fund. An Internet-based relay provider would no longer be permitted to receive compensation from the TRS Fund merely: (1) by virtue of its contract with a certified state TRS program; (2) through its contract with an interstate common carrier; (3) because it is an interstate common carrier; or (4) because it is certified by a state. Eligibility through these methods has failed to ensure that providers are qualified to provide VRS or to provide the Commission with the requisite information to determine whether providers are complying with the Commission's TRS rules.

4. The Commission proposes that all providers that are not already certified by the Commission, be required to apply to the Commission for certification to

provide Internet-based TRS. The Commission further proposes that an applicant be certified or be permitted to renew its certification only upon a determination by the Commission that such applicant has adequately demonstrated its ability to comply with all of the Commission's rules, including those adopted in the accompanying *Report and Order.* The Commission proposes that mere attestations be inadequate to satisfy this standard. Instead, the Commission proposes requiring evidence of an applicant's ability to comply with the Commission's rules governing the qualifications of CAs, including speed of answer, facility redundancy to ensure continuance of the service, and other operational and technical standards designed to ensure provision of a service that is functionally equivalent to voice telephone service.

5. Specifically, the Commission proposes that applicants provide the following documentary and other evidence, as needed, demonstrating that the applicant owns and operates facilities associated with TRS call centers, and employs ASL interpreters, on a full or part-time basis, to staff such call centers at the date of the application:

- A copy of each deed or lease for each call center operated by the applicant;
- A list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, including the names of its executives, officers, partners, and board of directors, as well as an attestation that no such individual has been convicted of a felony;
- A list of all of the names of applicant's full-time and part-time employees;
- Proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;
- Copies of employment agreements for all of the provider's executives and CAs;
- Copies of any subcontracting agreements for services not directly essential for the provision of Internet-based relay (such as maintenance and transportation services);
- A list of all financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;
- Copies of all other agreements associated with the provision of Internet-based relay service; and
- A list of all sponsorship arrangements (*e.g.,* those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.

6. In addition, the Commission proposes that the certification process include, at the Commission's discretion, other measures, including on-site visits to the premises of applicants, to assess the merits of certification applications, and seeks comment on what those measures may be. The Commission further seeks input on what other types of documentation the Commission should require, including the level of detail it should require, to ensure that it is able to assess whether an applicant is fully qualified to provide Internet-based relay service in compliance with the Commission's rules and requirements.

7. In order to be entitled to compensation from the TRS Fund for providing Internet-based TRS, the TRS provider's facilities must have redundancy features in the event of call center or network outages, as well comply with the other minimum standards that apply to all TRS. At present, however, the Commission's rules do not explicitly address the obligations associated with a provider's decision to temporarily cease its operations. To avoid future interruptions in service that may hamper the ability of relay customers to place Internet-based TRS calls, the Commission proposes requiring that each certified provider seek prior Commission approval of any voluntary interruption in the provision of Internet-based TRS. In order to comply with this requirement, the Commission proposes that a provider be directed to submit a written request to the Commission's CGB at least 60 days prior to any planned interruption, with detailed information of (1) Its justification for such service interruption; (2) its plan to notify customers about the impending interruption; and (3) its plans for resuming service, so as to minimize the impact of such interruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption.

8. The Commission further proposes delegating authority to the Consumer and Governmental Affairs Bureau (CGB) to grant or deny such requests for service interruptions, and provide a timely response to the provider, in order to afford an adequate period of notification to consumers. The Commission also proposes taking enforcement action against certified providers, including, but not limited to the revocation of their certifications and/or suspension of payment in the event that the provider voluntarily interrupts its service without sufficient prior notification to the Commission, or in the event that the requested cessation proceeds notwithstanding CGB's denial of the provider's request.

9. In order to ensure the seamless delivery of Internet-based TRS during any transition period following the Commission's establishment of new eligibility requirements and certification procedures, the Commission proposes to allow any provider currently eligible to receive compensation from the TRS Fund via a means other than FCC certification, concurrently with the submission of its application for Commission certification, to seek a temporary waiver of any new requirements to obtain certification from the Commission prior to offering Internet-enabled TRS, while its application is pending. The Commission seeks comment on what an applicant seeking such a waiver should have to demonstrate in order to establish that a temporary waiver of the certification requirement would serve the public interest. Further, in the event that an applicant's request for temporary waiver and/or application for certification is denied, the Commission proposes that the applicant be given at least 30 days to discontinue its service in order to allow its affected consumers sufficient time for transition to another eligible provider's service.

Initial Regulatory Flexibility Certification

10. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). The RFA generally defines the term "small entity" to have the same meaning as the terms

"small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. In document FCC 11–54, the Commission seeks further comment on a number of proposed modifications to our current eligibility requirements for Internet-based TRS providers, including VRS providers, that seek certification from the Commission to be eligible for compensation from the TRS Fund. The Commission seeks comment on these proposals to ensure that all entities seeking certification in the future—or currently certified entities seeking re-certification—are fully qualified to provide Internet-based relay service in compliance with our rules and requirements, including all of the revised obligations adopted in the accompanying *Report and Order,* to reduce waste, fraud and abuse, and improve oversight.

12. Specifically, the *VRS FNPRM* seeks comment on whether the Commission should require that all Internet-based TRS providers be certified by the Commission to become eligible to receive compensation from the TRS Fund. In addition, the Commission seeks comment on whether new and renewing applicants should provide specific documentary evidence of their ability to comply with our TRS rules. The Commission seeks comment on whether the certification process should include, at the Commission's discretion, other measures, including on-site visits to the premises of applicants, to assess the merits of certification applications. The Commission also proposes to revise its annual report filing guidelines to require further documentation.

13. The Commission further proposes to require that providers seek approval from the Commission for voluntary interruption of service, and that providers notify the Commission of unforeseen service interruptions in the provision of Internet-based TRS. Finally, the Commission proposes to allow a provider that is currently eligible to receive compensation from the TRS Fund via a means other than FCC certification, to file an application for certification under the Commission's new rules. While such a provider's application is pending, the Commission proposes to permit the applicant to seek a temporary waiver of any new requirements to obtain certification from the Commission prior to offering Internet-enabled TRS, to enable the provider to continue to receive compensation from the Fund and to continue providing Internet-based TRS while such provider's application is pending.

14. With regard to the economic impact of the *VRS FNPRM,* the Commission notes that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would be entitled to receive prompt reimbursement for their reasonable costs of compliance. Therefore, the Commission concludes that the *VRS FNPRM,* if adopted, will not have a significant economic impact on any entities. In addition, even if there were an adverse economic impact, no more than five of the eleven providers impacted by the proposed rules meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.

15. Therefore, the Commission certifies that the proposals in the *VRS FNPRM,* if adopted, will not have a significant economic impact on a substantial number of small entities.

16. The Commission will send a copy of the *VRS FNPRM,* including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

17. Pursuant to sections 1, 4(i), (j) and (o), 225, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), document FCC 11–54 *is adopted.*

18. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements; Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2) (B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254 (k), and 620, unless otherwise noted.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

2. The authority citation for Subpart F is revised to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), and 620.

3. Section 64.604 is amended by revising paragraph (c)(5)(iii)(F) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(F) *Eligibility for Payment from the TRS Fund.* (*1*) TRS providers, except Internet-based TRS providers, eligible for receiving payments from the TRS Fund must be:

(*i*) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.606; or

(*ii*) TRS facilities owned or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(*iii*) Interstate common carriers offering TRS pursuant to § 64.604.

(*2*) Internet-based TRS providers eligible for receiving payments from the TRS fund must be certified by the Commission pursuant to § 64.606.

* * * * *

4. Section 64.606 is amended by revising paragraph (a)(2), by adding new paragraph (a)(3), by revising paragraphs (b)(2), (c)(2), (e)(2), and (g), and by adding new paragraph (h) to read as follows:

§ 64.606 VRS and IP Relay provider and TRS program certification.

(a) * * *

(2) *Internet-based TRS provider.* Any entity desiring to provide Internet-based TRS and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer and Governmental Affairs Bureau, TRS Certification Program,

Washington, DC 20554, and captioned "Internet-based TRS Certification Application." The documentation shall include, in narrative form:

(i) A description of the forms of Internet-based TRS to be provided (*i.e.,* VRS, IP Relay, and/or IP captioned telephone relay service);

(ii) A detailed description of how the applicant will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, including documentary and other evidence that the applicant owns and operates facilities associated with TRS call centers and employs interpreters, on a full or part-time basis, to staff such call centers at the date of the application. Such evidence shall include, but not be limited to:

(A) A copy of each deed or lease for each call center operated by the applicant;

(B) A list of individuals or entities that hold at least a 10 percent equity interest in the applicant, have the power to vote 10 percent or more of the securities of the applicant, or exercise de jure or de facto control over the applicant, a description of the applicant's organizational structure, and the names of its executives, officers, partners, and members of its board of directors;

(C) A list of all of the names of applicant's full-time and part-time employees on payroll;

(D) Proof of purchase or license agreement for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;

(E) Copies of employment agreements for all of the provider's executives and CAs;

(F) Copies of any subcontracting agreements pertaining to the provision of the Internet-based relay service other than services not directly essential for the provision of Internet-based relay (such as maintenance and transportation services);

(G) A list of all major financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;

(H) Copies of all other agreements associated with the provision of Internet-based relay service; and

(I) A list of all sponsorship arrangements (*e.g.,* those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated written agreements;

(iii) A description of the provider's complaint procedures;

(iv) Demonstration of the provider's status as a common carrier; and

(v) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(3) *Assessment of Internet-based TRS Provider Certification Application.* In order to assess the merits of a certification application submitted by an Internet-based TRS provider, the Commission may conduct one or more on-site visits of the applicant's premises, to which the applicant must consent.

* * * * *

(b) * * *

(2) *Requirements for Internet-based TRS Provider FCC certification.* After review of certification documentation, the Commission shall certify, by Public Notice, that the Internet-based TRS provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of Internet-based TRS will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the Internet-based TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

* * * * *

(c) * * *

(2) Internet-based TRS Provider FCC certification period. Certification granted under this section shall remain in effect for five years. An Internet-based TRS provider may apply for renewal of its certification by filing updated documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

* * * * *

(e) * * *

(2) *Suspension or revocation of Internet-based TRS Provider FCC certification.* The Commission may suspend or revoke the certification of an Internet-based TRS provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified Internet-based TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified Internet-based TRS provider may not be in compliance with the minimum standards.

* * * * *

(g) Internet-based TRS providers certified under this section shall file with the Commission, on an annual basis, a report demonstrating that they are in compliance with § 64.604. Such reports must include the information required in paragraph (a)(2) of this section supported by current documentation.

(h) *Unauthorized service interruptions.* (1) Each certified Internet-based service provider must provide Internet-based TRS without unauthorized voluntary service interruptions.

(2) An Internet-based service provider seeking to voluntarily interrupt service must first obtain Commission authorization by submitting a written request to the Commission's Consumer and Governmental Affairs Bureau (CGB) at least 60 days prior to any planned service interruption, with detailed information of:

(*i*) Its justification for such interruption;

(*ii*) Its plan to notify customers about the impending interruption; and

(*iii*) Its plans for resuming service, so as to minimize the impact of such disruption on consumers through a smooth transition of temporary service to another provider, and restoration of its service at the completion of such interruption. CGB will grant or deny such a request and provide a response to the provider within 30 days of the proposed interruption, in order to afford an adequate period of notification to consumers. In evaluating such a request, CGB will consider such factors as the length of time of the proposed interruption, the reason for such interruption, the frequency with which such requests have been made by the provider in the past, the potential impact of the interruption on consumers, and the provider's plans for a smooth service restoration.

(3) In the event of a brief, unforeseen service interruption due to circumstances beyond a provider's control, the provider must submit a written notification to CGB within two business days of the commencement of the service interruption, with an

explanation of how it has restored service or its plan to do so imminently.

(4) A certified provider that fails to obtain prior Commission authorization for a voluntary service interruption, or fails to provide written notification after the commencement of a service interruption in accordance with this subsection, may be subject to revocation of certification, suspension of payment from the TRS Fund, or other enforcement action by the Commission, as appropriate.

[FR Doc. 2011–10341 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10–51 and 03–123; FCC 11–62]

Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission tentatively concludes that it will extend the current video relay service (VRS) rates for the upcoming fund year. The Commission is considering various options for reforming the VRS industry, and therefore proposes to maintain the current rates until new VRS rules are adopted. The intended effect of this action is to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to the reform proceeding.

DATES: Comments are due on or before May 16, 2011. Reply comments are due on or before May 23, 2011.

ADDRESSES: Interested parties may submit comments identified by [CG Docket Nos. 10–51 and 03–123 and/or FCC 11–62], by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 10–51 and 03–123. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in response.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.*

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau at (202) 418–7126, or e-mail: *Diane.Mason@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Notice of Proposed Rulemaking (*NPRM*), document FCC 11–62, adopted April 14, 2011, and released April 15, 2011, in CG Docket Nos. 10–51 and 03–123, seeking comment on a proposal to extend the current VRS rates and further comment on VRS reform. The full text of FCC 11–62 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. FCC 11–62 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com,* or by calling 1–800–378–3160. FCC 11–62 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the document FCC 11–62. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act Of 1995 Analysis

Document FCC 11–62 seeks comment on a potential new or revised information collection requirement or may result in a new or revised

information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995. *See* Public Law 104–13 (44 U.S.C. 3501 *et seq.*). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission will seek specific comment from the public on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees, *see* Public Law 107–198; 47 U.S.C. 3506(c)(4)."

Synopsis

1. In document FCC 11–62, the Commission seeks further comment on VRS market structure and compensation method proposals related to the structure and practices of the VRS program initially raised in *Structure and Practices of the Video Relay Service Program,* CG Docket No. 10–51, Notice of Inquiry, published at 75 FR 41863, July 19, 2010 (*2010 VRS NOI*). For example, the Commission seeks comment on specific proposals for VRS accounting. The Commission also seeks comment on how to treat certain costs and expenses. Commenters should address whether the Commission should limit or exclude the expenses of raising capital from VRS rates in general, or whether individual providers should not receive some or all compensation for the costs incurred in various methods of raising capital. Similarly, the Commission invites comment on the proper regulatory treatment of various methods used by providers to raise capital, including appropriate disclosure and approval requirements that may be implemented.

2. In addition, in the event that the Commission is unable to finalize the compensation structure for VRS in time to calculate a new rate for the Fund year beginning July 1, 2011, the Commission tentatively concludes that extending the current interim rates and compensation structure for VRS to the 2011–12 Fund year would be appropriate. The current interim rates have resulted in significant savings for the Fund, demand for VRS has remained stable during the 2010–11 Fund year, and data submitted to the Fund administrator demonstrate that no VRS provider has failed to meet speed of answer requirements under the interim rates. The Commission also recognizes the certainty and stability that the current compensation structure can offer until final rules in the *2010 VRS NOI* proceeding are implemented. The Commission seeks comment on this tentative conclusion.

Initial Regulatory Flexibility Certification

3. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

4. In document FCC 11–62, the Commission seeks comment on the rates and compensation for VRS for the 2011–12 Interstate Telecommunications Relay Services (TRS) Fund (Fund) year. Specifically, the Commission seeks further comment on VRS market structure and compensation method proposals initially raised in a *2010 VRS NOI* related to the structure and practices of the VRS program. In addition, in the event the Commission is unable to fully resolve the issues raised in the *2010 VRS NOI* prior to the beginning of the 2011–12 Fund year, the Commission seeks comment on its tentative conclusion that extending the current interim rates and compensation structure provides the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to this proceeding.

5. The Commission's proposed action is to extend the current 2010–2011 rates for VRS for the upcoming 2011–2012 Fund year. The Commission concludes that this proposal will not impose a financial burden on entities, including small businesses, because these entities will continue to be promptly reimbursed from the Interstate TRS Fund at the same rate at which they are currently compensated.

6. Therefore, the Commission certifies that the proposal in document FCC 11–62 if adopted, would not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of document FCC 11–62, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

7. Pursuant to sections 4(i)–(j), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 225, and 303(r), document FCC 11–62 *is adopted.*

8. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11–62, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–10613 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 17, 37, and 52

[FAR Case 2010–010; Docket 2010–0010, Sequence 1]

RIN 9000–AM06

Federal Acquisition Regulation; Service Contracts Reporting Requirements; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of April 20, 2011, regarding Service Contracts Reporting Requirements. This document adds text that was inadvertently omitted.

DATES: *Effective Date:* April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Clare McFadden, Procurement Analyst, at (202) 501–0044. Please cite FAR Case 2010–010.

Correction

In the proposed rule FR Doc. 2011–9515, beginning on page 22070 in the

issue of April 20, 2011, make the following correction, in the **SUPPLEMENTARY INFORMATION**, I. Background section. On page 22071 in the second column, add after the first full paragraph the following:

"Specifically, the proposed FAR section 4.1603 establishes service contractor reporting requirements based on type of contract and dollar amount as stated below:

- Contract types (*e.g.,* cost-reimbursement, time-and-materials, and labor-hour contracts) that already require contractors to track labor hours closely in order to invoice the Government will have lower dollar thresholds than fixed-price contracts, where this information has not been required historically. Contractors will be required to report on all cost-reimbursement, time-and-materials, and labor-hour contracts at or above the simplified acquisition threshold (SAT).
- Contractors will be required to report on new fixed-price contracts at or above the President's Fiscal Year 2011 Budget's proposed phase-in thresholds—
  - $5 million in Fiscal Year 2011;
  - $2.5 million in Fiscal Year 2012;
  - $1 million in Fiscal Year 2013; and
  - $500,000 from Fiscal Year 2014 onwards.
- For indefinite-delivery contracts, including but not limited to, indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition contracts (GWACs), and multi-agency contracts, reporting requirements will be determined based on the expected dollar amount and type of the orders issued under the contracts.
- Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as—

1. A performance period that extends beyond October 1, 2011; and

2. $5 million or more remaining to be obligated to the indefinite-delivery contract.

The threshold for existing indefinite-delivery contracts is consistent with the threshold for new fixed-price contracts."

Dated: April 27, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–10590 Filed 4–29–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100526226–0229–01]

RIN 0648–AY95

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 16 and Framework Adjustment 44

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

ACTION: Proposed rule; correcting amendment; request for comments.

SUMMARY: This rule proposes to make corrections and clarifications to existing regulations to ensure consistency with measures adopted by the New England Fishery Management Council (Council) to regulate the Northeast (NE) multispecies fishery and to provide additional flexibility for some of the reporting regulatory requirements. The current regulations governing the NE multispecies fishery contain a number of inadvertent errors, omissions, and potential inconsistencies with measures adopted by the Council and approved by the Secretary of Commerce (Secretary) in recent actions regarding the NE Multispecies Fishery Management Plan (FMP). NMFS takes this action under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and solicits public comments on the proposed corrections and clarifications to these regulations.

DATES: Written comments must be received on or before May 17, 2011.

ADDRESSES: You may submit comments, identified by 0648–AY95, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Fax:* (978) 281–9135.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule to Correct/Clarify the NE Multispecies Regulations."

Instructions: All comments received are a part of the public record and will generally be posted to *http://regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR) prepared for this action are available from the Regional Administrator at the above address. Copies of previous management actions, including Amendment 16 and Framework Adjustment (FW 44) and the respective Final Environmental Impact Statements (FEISs) and Environmental Assessments (EAs) prepared for each action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, phone: 978–675–2153, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The most recent management actions in the NE multispecies fishery (Amendment 16 and FW 44) were both implemented by final rules that published in the **Federal Register** on April 9, 2010 (75 FR 18262 and 75 FR 18356, respectively), and became effective on May 1, 2010. Amendment 16 and FW 44 implemented measures necessary to end overfishing and rebuild overfished stocks based on new or existing rebuilding programs and to comply with annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Act. Amendment 16 also substantially revised existing sector management measures and established new sectors.

Amendment 16 superseded measures implemented by an emergency final rule (74 FR 17030, April 13, 2009) which was promulgated to immediately reduce overfishing on certain groundfish stocks managed by the FMP until long-term measures could be implemented by the Amendment 16 final rule.

The final rules implementing Amendment 16 and FW 44, as well as other previous actions, contained several inadvertent errors, omissions, and items inconsistent with the intent of these actions, as identified below. This action proposes to correct these errors, and clarify or modify the current regulations to ensure consistency with their original intent. Also, changes are made to some of the regulations to provide additional flexibility for some of the administrative requirements, such as allowing sector managers more time to complete their weekly reports or exempting vessels from sending a vessel trip report (VTR) on a set-only trip. NMFS proposes this action under section 305(d) of the Magnuson-Stevens Act which provides that the Secretary of Commerce may, on its own, promulgate regulations necessary to ensure that an FMP or its amendments are carried out in accordance with the provisions of this Act. The following proposed corrections are listed in the order in which they appear in the regulations; the last section of proposed corrections is found throughout the regulations.

Proposed Measures

1. VTR Requirements

The current VTR regulations require that a VTR be submitted by a vessel operator upon entering port with fish. This suggests that vessels that may have conducted fishing activity, but that did not catch any fish, do not have to submit a VTR for that trip. This is inconsistent with VTR instructions provided to vessels by NMFS, with industry practice, and the purpose of VTRs. Information for trips on which fishing occurred, but no fish were caught, provides important and necessary fishing data necessary to help evaluate the status of stocks and provides fishing effort information used for future management decisions. To ensure that vessels submit a VTR for all trips that conduct fishing activity, this action proposes to revise the VTR submission regulations to remove the language that states that only trips that land fish must submit a VTR, with an exception for vessels on a set-only trip.

Set-only trips would be defined as a fishing trip on which a federally permitted vessel deploys gear with the intention of retrieving it on a separate trip and does not haul-back or retrieve any gear capable of catching fish on that trip. While set-only trips fall under the definition of fishing in the Magnuson-Stevens Act, VTRs from trips that only set gear and do not intend to land fish, do not contain information pertinent to management decisions and should therefore not be required in this instance. Since these trips would have zero catch and there are limited resources for dockside and at-sea monitoring (DSM and ASM, respectively) coverage requirements implemented by Amendment 16, prioritization of coverage is necessary to ensure trips intending to possess or land fish receive DSM and ASM coverage. Because exempting set-only trips from VTR, DSM, and ASM requirements could create an incentive for a vessel operator to participate in fishing after declaring a set-only trip, and avoid the VTR, DSM, and ASM requirements, as well as avoid any financial costs associated with these programs, this action proposes to include regulations in § 648.14 that would prohibit vessels on a set-only trip from possessing or landing any fish species on that trip. Based on an industry request, NMFS has recently made accommodations for vessels that leave port exclusively to set fixed gear by exempting them from submitting a VTR for such trips, to reduce unnecessary reporting and monitoring requirements when no fish are landed.

2. Dealer Prohibitions

Current regulations at § 648.14(k)(3)(i) are not explicit as to whether they apply to the importation of foreign-caught NE multispecies. Amendment 16 added Atlantic wolffish to the FMP, and included it as a zero-retention species, along with Southern New England (SNE)/Mid-Atlantic (MA) winter flounder, ocean pout, and windowpane flounder. The current dealer provisions in this section could allow the importation of the zero-retention species specified in Amendment 16 that would otherwise be prohibited. This creates an unnecessary enforcement burden for NMFS in cases where a dealer lawfully may be in possession of prohibited species that were obtained from sources other than U.S. fishing vessels. In addition, the regulations do not currently prohibit the export of these zero-retention species. This action proposes to revise the regulatory text to read that it is unlawful for any dealer or person acting in the capacity of a dealer to "possess, import, export, transfer, land, or receive as a dealer, regulated species pursuant to §§ 648.82, 648.85, 648.86, or 648.87" for the purposes of eliminating any uncertainty whether zero-retention species can be imported or exported.

3. Regulated Mesh Area (RMA)

The regulations at § 648.80(a)(3)(vi) state that a vessel may not fish in either the Gulf of Maine (GOM) or Georges Bank (GB) Exemption Area unless fishing under certain restrictions, including the provisions of an exempted fishery. This paragraph references some, but inadvertently, not all of the exempted fisheries, specifically the exempted fisheries outlined at § 648.80(a)(15), (a)(16), and (a)(18). Therefore, this action would revise the regulations at § 648.80(a)(3)(vi) to reference all applicable exempted fisheries through § 648.80(a)(18) and update other references within § 648.80 to be more consistent with current regulations.

4. Applicability of Restricted Gear Areas (RGA)

Amendment 16 adopted RGAs that require a common pool vessel, fishing any part of a trip within a RGA under a NE multispecies day-at-sea (DAS), to use selective gear (*i.e.,* a haddock separator trawl, a Ruhle trawl, a rope separator trawl, hook gear, or flatfish or roundfish gillnets with mesh size greater than or equal to 10 inches (25.4 cm)) to reduce the catch of species requiring substantial reductions in fishing mortality. The current regulations implementing this provision at § 648.81(n) require that these gear restrictions apply to all NE multispecies limited access vessels fishing any part of a trip within a RGA. This proposed rule would revise this paragraph to clarify that the RGAs only apply to vessels fishing under a NE multispecies DAS, to maintain consistency with the original intent of Amendment 16.

5. Small Vessel Category Possession Limits

The Amendment 7 final rule, published May 31, 1996 (61 FR 27709), exempted vessels with a NE multispecies Small Vessel category permit from using NE multispecies DAS when fishing for groundfish. In addition, Amendment 7 exempted the Small Vessel category from specific trip limits for specific species. Regulations at § 648.82(b)(5)(i) specify that a vessel electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder trip limit restrictions specified under

§ 648.86(g). Additionally, this paragraph currently states that vessels with a Small Vessel category permit are not subject to trip limits for other NE multispecies. Since that time, Amendment 16 prohibited the possession of four species in any fishery (windowpane flounder, ocean pout, Atlantic wolffish, and SNE/MA winter flounder). The current Small Vessel category regulations could be interpreted to mean that Small Vessel category permits may possess these prohibited species, which would undermine the purpose of the prohibition on possessing these species. Therefore, this proposed rule would change the reference to "§ 648.86(g)" in § 648.82(b)(5)(i) to read "§ 648.86," and remove the sentence "Such vessel is not subject to a possession limit for other NE multispecies" to more accurately reflect the trip limits revised by Amendment 16 and FW 44.

6. Default AM for Stocks Not Allocated to Sectors

The recent reauthorization of the Magnuson-Stevens Act required fishery management councils to establish a mechanism to specify ACLs for each managed stock such that overfishing does not occur in the fishery, and AMs that would prevent these ACLs from being exceeded in the future and to address any overages of these ACLs that may occur. Amendment 16 was developed to affect these changes in the NE Multispecies FMP. The Amendment 16 final rule established a process to specify and distribute ACLs among various segments of the fishery that catch NE multispecies stocks, along with AMs that apply only to a subset of these segments of the fishery, specifically the directed commercial and recreational NE multispecies fisheries, and the Atlantic herring fishery. To ensure that overfishing does not occur on each NE multispecies stock as a whole due to excessive catch by fisheries not subject to AMs, Section 4.2.1.3 of the Amendment 16 document states that "controls on the portion of the fishery that is subject to AMs must be sufficient to prevent overfishing on the stock as a whole," consistent with the National Standard 1 Guidelines (January 16, 2009; 74 FR 3178).

The Amendment 16 final rule indicated that the groundfish fishery would be responsible for any excessive catch of regulated NE multispecies and ocean pout stocks by vessels that are not subject to AMs and fishing outside of the FMP as specified under § 648.90(a)(5)(ii). This includes vessels fishing for regulated NE multispecies and ocean pout in state waters outside the FMP, catching regulated NE multispecies and ocean pout as part of an exempted fishery, or catching yellowtail flounder when participating in the Atlantic sea scallop fishery. Because Amendment 16 did not provide a specific allocation of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish to sectors, these stocks are not subject to any sector-specific AMs. Therefore, the ACL available to the commercial NE multispecies fishery for each of these stocks is allocated entirely to common pool vessels, and the only AMs established for these stocks are those specified for common pool vessels. Thus, to maintain consistency with Amendment 16, the common pool AMs must consider the catch of these stocks by all vessels, including common pool vessels, sector vessels, and vessels fishing outside of the NE multispecies fishery.

The regulation at § 648.90(a)(4) implemented by the Amendment 16 final rule indicated that common pool AMs would be triggered by excessive catch of vessels fishing outside of the NE Multispecies FMP, it did not specifically incorporate reference to excessive catch of stocks not allocated to sectors, as described above. Further, although the common pool differential DAS counting AM applies to all regulated NE multispecies and ocean pout stocks caught during fishing years (FYs) 2010 and 2011, the hard total allowable catch (TAC) AM specified to begin in FY 2012 for common pool vessels does not provide effective AMs for several of these stocks, including ocean pout, windowpane flounder, and Atlantic halibut. However, the final rule implementing Amendment 16 did not specifically address these deficiencies.

This proposed rule would revise the common pool differential DAS counting AM regulations at § 648.82(n)(1), the ACL distribution regulations at § 648.90(a)(4)(iii)(E)(*2*), and the overall AM regulations at § 648.90(a)(5) to clarify that sector vessel catch of stocks not allocated to sectors (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during FYs 2010 and 2011 will be added to the catch of such stocks by common pool vessels during those FYs to determine if the common pool differential DAS counting AM will be triggered. This would ensure that the regulations implementing Amendment 16 correctly reflect the Council's intent and NMFS's understanding that the AMs applicable to the NE multispecies fishery must be sufficient to prevent overfishing on the stock as a whole for FYs 2010 and 2011. However, because the Council adopted specific measures as part of the FY 2012 common pool hard-TAC AM that explicitly do not apply to all stocks, NMFS does not have the authority to revise the regulations in a correction rule to ensure that AMs are sufficient to prevent overfishing of the stock as a whole beginning in FY 2012. NMFS has communicated this deficiency to the Council in a letter dated January 21, 2010. Measures to address deficient AMs for these stocks are currently being developed by the Council and are expected to be implemented in a separate action by the start of FY 2012 on May 1, 2012.

7. Multispecies Minimum Fish Sizes and Fillet Provisions

On August 10, 2007, a temporary emergency rule (72 FR 44979) reduced the haddock minimum size. That action suspended paragraph § 648.83(a)(1), and inserted paragraph § 648.83(a)(3). The rule was extended through August 10, 2008, by a temporary emergency rule (72 FR 64000) that published on November 14, 2007 and became effective on February 10, 2008. When this latter action expired, paragraph § 648.83(a)(1) was once again effective, but inadvertently, paragraph § 648(a)(3) remained in the regulations. As a result, the current regulations at § 648.83(a) now include two lists specifying minimum fish sizes. This rule proposes to correct this by removing paragraph § 684.83(a)(3) in its entirety. This proposed rule will have no effect on legal fish sizes apart from what is in the current regulations and analyzed in Amendment 16.

On March 1, 1994, Amendment 5 (59 FR 9872) created an exemption to allow crew members aboard a vessel issued a commercial NE multispecies permit to possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and were not sold, bartered or traded. At the time, DAS was the only effort control for the FMP, and the associated regulations applied this provision only to those vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS. Amendment 16 substantially revised sector measures to exempt sector vessels from DAS measures, provided they comply with hard quotas and area closures based on an allocation of most stocks managed by the FMP; however, it did not extend the 25-lb (11.3-kg) fillet exemption to vessels fishing under the sector provisions. NMFS believes that this exemption was meant to apply to all limited access NE multispecies DAS vessels, whether or not a vessel elects to fish under a DAS

or sector provisions in a given FY. Therefore, this action would expand the existing fillet exemption to all vessels issued a limited access NE multispecies DAS permit, including those that are fishing in a sector and exempt from fishing under a DAS. Consistent with the intent of Amendment 16 and the associated regulation at § 648.87(b)(1)(v), all catch by a sector vessel, including fillets retained by crew for personal use, count against the applicable annual catch entitlement (ACE) for the sector in which that vessel participates.

Currently, fillets and parts of fish as referenced at § 648.83(b) are counted at a rate of 3:1 solely for compliance purposes with DAS possession limits. That is, law enforcement multiplies the weight of fillets or parts of fish by 3 and adds that to the weight of whole fish on board. The total weight of whole fish and fillets combined, must comply with trip limits. When landing such fillets for personal consumption, the amount of fish taken home must be recorded in a vessel's VTR for that trip, under the code "999998" for "home consumption." Because the current system does not accurately account for the disposition of fish landed under the "home consumption" field in VTRs, these fish are not currently counted against the common pool sub-ACL. Replacing the current 1:1 counting method with 3:1 counting for quota monitoring purposes would ensure that all fish being retained would be accounted for. This proposed correction would be consistent with the intentions of the FMP that all catch by common pool and sector vessels be accounted for, and would prevent a sector from unknowingly fishing over its respective ACE. Accordingly, fish retained for at-home consumption would be counted at the 3:1 rate.

8. Adjustments to U.S./Canada Management Area TAC

Regulations at § 648.85(a)(2)(ii) provide that any overages of GB cod and GB haddock TACs specified for either the common pool or an individual sector, and any overage of GB yellowtail flounder TAC specified for the common pool, an individual sector, or the scallop fishery in a given FY will be subtracted from the respective TAC in the following FY. However, Amendment 16 incorrectly states that the catch of stocks of yellowtail flounder by the scallop fishery will be treated as an "other sub-component" of the ACL until AMs for the catch of yellowtail flounder in the scallop fishery can be developed in an amendment to the Atlantic Sea Scallop FMP (i.e., Amendment 15). Therefore, this rule would remove the regulatory reference to the scallop fishery in § 648.85(a)(2)(ii) and replace it with a reference to the overall groundfish AM provisions in § 648.90(a)(5)(ii). Since it is likely that the final rule implementing Scallop Amendment 15, if approved, will not be published by the start of the NE multispecies 2011 FY on May 1, 2011, this correction is necessary to ensure that any overage of the overall GB yellowtail flounder ACL caused by another fishery would be divided between the common pool and sector sub-components to determine if the respective AMs will be triggered.

9. Eastern U.S./Canada Landing Limit Restrictions

Amendment 16 revised the existing closure provisions for the Eastern U.S./Canada Area when 100 percent of the TAC is reached for GB cod. Amendment 16 revised the regulation at § 648.85(a)(3)(iv)(A)(*2*) to require that when 100 percent of the TAC is reached for GB cod, the Eastern U.S./Canada Area will be closed to all NE multispecies DAS vessels. This regulation maintains outdated language that fails to recognize the specific allocation of a portion of the Eastern U.S./Canada TACs for this stock to sectors. To maintain consistency with Amendment 16 and ensure that NMFS has the authority to close the Eastern U.S./Canada Area to each component of the NE multispecies commercial fishery that exceeded its allocation of the Eastern U.S./Canada Area GB cod TAC, this proposed rule would clarify the regulations at § 648.85(a)(3)(iv)(A)(*2*) by closing the area to all limited access NE multispecies vessels subject to a particular TAC allocation, once that segment's allocation of the Eastern U.S./Canada Area GB cod TAC is projected to be caught.

10. Special Management Programs

The current regulations at § 648.85(b)(3)(x)(A) restrict the gear that may be used in the Closed Area II Yellowtail Flounder/Haddock Special Access Program (SAP) to only trawl gear when the SAP is open to targeting yellowtail flounder. This is not consistent with the measure originally implemented in the Amendment 13 final rule (69 FR 22906, April 27, 2004). This action would revise these regulations to clarify that vessels also may use hook gear or gillnet gear in this SAP when it is open to the targeting of yellowtail flounder by revising the text to state that NE multispecies vessels "fishing with trawl gear" must use a haddock separator trawl, flounder net, or Ruhle trawl.

The FW 40A final rule, published November 14, 2004 (69 FR 67780), adopted the Regular B DAS Program. The program allows any eligible common pool vessel to harvest certain healthy groundfish stocks when fishing under a NE multispecies Regular B DAS, while minimizing bycatch of less healthy NE multispecies stocks through the use of selective gear types. Amendment 16 further revised the program, with updated stock status information, to focus the effort of the program on three stocks, including GB haddock. Amendment 16 required vessels fishing under the Regular B DAS Program in the GB cod stock area with trawl gear to use a haddock separator trawl, a Ruhle trawl, or other approved trawl gear with a codend composed of at least 6-inch (15.24-cm) diamond or square mesh. However, the regulations implementing Amendment 16 did not specify an area where the 6-inch (15.24-cm) mesh codends could be used. Therefore, this proposed rule would clarify the regulations at § 648.85(b)(6)(iv)(J)(*4*) by specifying that the use of a 6-inch (15.24-cm) codend is only permitted within the GB cod stock area.

In 2005, FW 41 revised the Closed Area I Hook Gear Haddock SAP measures affecting common pool vessels to address concerns identified by NMFS in the original submission of this SAP as part of FW 40–A. The final rule implementing FW 41 inadvertently did not include a provision restricting the bait that may be used by common pool vessels. The final rule implementing Amendment 16 rectified this oversight, but inadvertently, imposed the bait requirements on sector vessels. This action would revise the bait restrictions for this SAP specified at § 648.85(b)(7)(iv)(E) and (vi) to only apply to common pool vessels.

11. Daily Landing Restrictions

Current landing limit regulations at § 648.86(m) prohibit NE multispecies permitted vessels from landing regulated NE multispecies or ocean pout more than once in any 24-hr period. These regulations provide an example that indicates that this period of time begins when a vessel departs port, rather than when the vessel returns to port and lands groundfish. Amendment 16 states that the intent was to be based upon time of landing. Therefore, this proposed rule would change the regulations at § 648.86(m) by modifying the example to reflect the current regulations, which are correctly based upon time of landing. Additionally, the intent of Amendment 16 is to restrict NE multispecies permitted vessels from

landing NE multispecies or ocean pout more than once in any 24-hr period, rather than all fish species.

12. Sector ACE allocation

The current regulations at § 648.87(b)(1)(ii) state that a sector may only fish in a particular stock area if it has been allocated or acquires ACE for all stocks caught in that stock area. As written, this text could be interpreted to mean that a sector would have to be allocated or acquire ACE for a stock that sectors are not allocated, such as SNE/MA winter flounder, to be able to fish, for example, in the SNE/MA yellowtail flounder stock area. To clarify that sectors have the ability to fish in a particular stock area for a stock allocated to sectors, the text at § 648.87(b)(1)(ii) would be revised to state that sectors may fish in each stock area provided it has been allocated or acquires ACE for those stocks "allocated" to sectors that are caught within that stock area.

13. Sector Monitoring

As part of a DSM program, a sector is required to contract with an independent third-party DSM service provider to observe offloads by sector vessels to verify that landings are accurately reported. The DSM program requires all NE multispecies sector vessels on a sector trip in which the NE multispecies catch applies against the sector ACE to submit a trip-start hail (TSH) report to the DSM provider, which provides the information necessary to facilitate the deployment of a DSM. If the vessel operator does not receive a confirmation that the TSH report has been received within 10 min of sending the report, the current regulations at § 648.87(b)(5)(i)(A)(*1*) require the vessel operator to contact the DSM service provider to confirm the receipt of the TSH report via a back-up system specified by the DSM service provider. While the regulations do not specify by what means a TSH must be transmitted, many sectors are using their existing VMS to transmit such reports. The delivery of such reports via VMS are often taking more than 10 min because the 10-min response requirement has proven to be impractical. Therefore, this action proposes to eliminate the 10-min requirement currently specified in § 648.87(b)(5)(i)(A)(*1*), but still require the vessel operator to contact the DSM service provider via a back-up system, after a time determined by the DSM provider, to confirm the receipt of the TSH report.

The DSM provisions require that, for a trip that is selected to be monitored, all offload events must be monitored, including offloads occurring at more than one location, offloads to a truck, and offloads at remote locations. The regulations at § 648.87(b)(5)(ii)(B)(*2*) specify that the roving monitor (RM) must "record all offloaded catch by species and market class" for offloads to a truck. Based upon input from the fishing industry, NMFS has determined that the regulation requiring that species be sorted by market class is impractical, as sorting does not generally occur at offloads to trucks and in remote locations. Additionally, NMFS has determined that this information is unnecessary to accurately monitor landings data, as catch is monitored at the species/stock level and not at the level of market class. This proposed rule would change the data collection requirement for offloads to a truck by a RM to not require the species be sorted by market class, by removing the language "and market class" from regulations at § 648.87(b)(5)(ii)(B)(*2*).

The regulations at § 648.87(b)(5)(ii)(B)(*2*) also require offloads to trucks to specify the number of totes of each species offloaded, the weight of fish in each tote, and that each tote is properly labeled with information that identifies the trip to which the tote is associated. The tote-tagging requirement is intended to ensure that all catch offloaded from a vessel to a truck can be tracked from the offload site to the dealer, where it will be accurately weighed and reported. Based on information provided by sector participants, some offloads to trucks occur within sight of a dealer due to limited capacity of a vessel to land directly to a dealer. To minimize the burden on RMs and the cost associated with such monitoring activities, this proposed rule would exempt the tote-tagging requirement only if the following three conditions are met: (1) The RM that observed the offload at the dock will also serve as the DSM when the truck is offloaded at the dealer; (2) the RM will follow the truck, in line of sight, from the remote offload location to the dealer where the actual weighing of the fish occurs; and (3) the truck is loaded with only the catch from the one trip being monitored.

14. Sector Reporting Requirements

Amendment 16 implemented a number of sector reporting requirements, including weekly catch reports to be submitted to NMFS by each sector. The regulations at § 648.87(b)(1)(vi)(B) specify that each sector must submit a weekly catch report by 2359 hr on Thursday of the week following the reporting week. Such reports contain detailed information, including: Week ending date, species, stock area, gear, number of trips, reported landings, discards, total catch, status of the sector's ACE, whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector, sector enforcement issues, any discrepancies noted by dockside/roving monitors between dealers and offloads, summary of offloads witnessed by dockside/roving monitors for that reporting week, and a list of vessels landing for that reporting week. Dealer reports for the same reporting period are utilized by sectors to accurately complete the weekly sector catch reports and for apportionment purposes. However, dealer data are not available until Wednesday. Based on sector manager input, one day has not been a sufficient amount of time to accurately complete the weekly sector catch reports. This proposed rule would provide additional flexibility § 648.87(b)(1)(vi)(B) by extending the sector deadline submission for the weekly catch report from 2359 hr on Thursday, to 0700 hr on the second Monday for the same reporting week in question.

15. Recreational and Charter/Party Vessel Restrictions

The April 24, 2000, final rule implementing measures approved under FW 33 (65 CFR 21658) created an exemption to allow NE multispecies charter/party permitted vessels to fish in the GOM Closed Areas provided such vessels obtained a letter of authorization (LOA) from NMFS. The regulations at § 648.89(e)(3)(iv) implementing this provision state that a vessel may not use any NE multispecies DAS during the period of participation to ensure that vessels operating under the charter/party provisions cannot fish commercially within these closed areas. However, not all commercial NE multispecies vessels fish under a DAS. For example, vessels fishing under NE multispecies Small Vessel, Handgear A, and Handgear B categories are not required to use NE multispecies DAS to fish commercially. The Council's intent when developing this exemption was to provide the greatest flexibility for limited access vessels to engage in both party/charter and commercial fishing on a seasonal basis, while restricting limited access vessels carrying passengers for hire from selling their catch when fishing as a charter/party vessel within closed areas. This action would clarify the regulations by including language that states that vessels possessing an LOA to fish as a

charter/party vessel in the GOM Closed Areas cannot fish on a sector trip, under a NE multispecies DAS, or under the provisions of the Small Vessel, Handgear A, and Handgear B categories during the period of participation.

The regulations at § 648.89(d) would also be corrected to state that charter/party vessels could not sell, barter, trade, or otherwise transfer for a commercial purpose, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed while fishing in the U.S. Exclusive Economic Zone (EEZ) unless they are fishing under a NE multispecies "sector trip," or fishing under a NE multispecies Handgear A, Handgear B, or Small Vessel Category C permit.

16. Applicability of Possession Prohibition for Certain Stocks

While Amendment 16 clearly lists windowpane flounder and ocean pout as zero-retention species for all commercial NE multispecies vessels, it is less clear in defining whether vessels in other fisheries could possess such species. Section 4.3.2.1 of Amendment 16 indicates that possession of these stocks is prohibited by all fisheries. However, this section is specific to the effort control measures adopted for NE multispecies common pool vessels. Therefore, the final rule implementing Amendment 16 measures did not prohibit recreational and charter/party vessels or vessels fishing in other fisheries from possessing ocean pout and windowpane flounder. Based on further consultation with Council staff, it was determined that the intent of Amendment 16 was to prohibit the retention of these species by all vessels. Therefore, this action proposes to restrict the possession of windowpane flounder and ocean pout in all fisheries, including catch by recreational anglers, charter/party vessels, and other fisheries such as the scallop fishery. The possession of Atlantic wolfish and SNE winter flounder is already correctly prohibited by recreational anglers and charter/party vessels as specified at § 648.89(c)(6) and (7) respectively.

17. Monkfish Declarations

The regulations at § 648.92(b)(1)(iii) allow a vessel fishing in the NE multispecies fishery to change its fishing activity declaration after leaving port to reflect the vessel operator's intention to also fish in the monkfish fishery on the same trip. These regulations were first implemented as part of FW 4 to the Monkfish FMP on September 21, 2007 (72 FR 53942), and pre-dated the development of Amendment 16. The applicability of the monkfish option is for a vessel fishing under a NE multispecies Category A DAS, which was the universal effort control in the NE multispecies fishing prior to the implementation of substantial revisions to sector measures under Amendment 16. However, NMFS believes that the Council's intent in Amendment 16 was not to exclude vessels from this option when fishing on a sector trip. Therefore, this action proposes to insert reference to vessels fishing on a NE multispecies sector trip to enable such vessels to also take advantage of the monkfish option.

18. Additional Corrections

In addition to the changes specified above, the following changes to the regulations are proposed to correct inaccurate references and to further clarify the intent of the Council.

In § 648.10(k)(3)(ii), N. latitude, Point G9 would be corrected to read "The intersection of the Cape Cod, MA, coastline and 70°00″ W. long." This current point incorrectly references the "South-facing shoreline of Cape Cod, MA."

Section § 648.14(k)(6)(ii)(B) would be corrected to reference the special management programs at "§ 648.85(b)(7)(iv)(E)" to replace the current inaccurate reference to "§ 648.85(b)(7)(iv)(F)."

In § 648.80(a)(2)(ii) and (a)(17)(ii), the "Approximate loran C bearings" portion of the table would be removed. The U.S. Coast Guard ceased operations of Loran-C, on February 10, 2010, which renders these coordinates useless. This will have minimum impact, as the same information is displayed in the regulations using latitude and longitude coordinates.

In § 648.80(a)(3)(v), a reference to "§ 648.87(c)" would be added to the beginning of the section, to include sector vessels.

In § 648.80(b)(3)(i), the phrase "unless otherwise restricted in § 648.86" would be added. This paragraph includes ocean pout as one of the list of species exemptions for the SNE RMA; however, Amendment 16 listed ocean pout as a zero-retention species. The Amendment 16 final rule inadvertently failed to cross-reference this prohibition in § 648.86.

In § 648.80(c)(2)(i), the reference to § 648.104(a) would be revised to read "shall be that specified by § 648.104(a)." This was the original regulatory text used to cite the regulations and was inadvertently changed in the final rule implementing Amendment 16.

In § 648.85(a)(1)(ii), this action would correct the Eastern U.S./Canada Area, N. latitude coordinates for Points USCA 7 and USCA 6 to 40° 50″ N. latitude, and Points USCA 5 and 4 to 40° 40″ N. latitude. Amendment 13 defined the Eastern U.S./Canada Area as being composed of statistical areas 561 and 562. The coordinates for statistical area 562 used to define the Eastern U.S./Canada Area were incorrectly transposed in the Amendment 13 final rule and would be rectified by this action.

Section § 648.87(b)(1)(ix) would be corrected to reference the prohibited species regulations at "§ 648.86(l)," instead of the inaccurate reference to "§ 648.87(1)." In addition, a reference to "§ 648.86(c)" would be inserted at § 648.87(b)(1)(ix) to clarify that sector vessels are held to the one-fish per trip possession limit of Atlantic halibut, as intended in Amendment 16.

In § 648.87(c)(2), a reference to "fishing regulations within the groundfish Fishery Management Plan (FMP)" would be inserted to clarify that a NE multispecies sector operations plan can only include exemptions from regulations within the groundfish FMP, as intended in Amendment 16.

In § 648.89(c)(2)(i), the reference to "private recreational vessel" would be corrected to read "charter/party vessel."

In § 648.90(a)(4), the reference to "(a)(5)" would be corrected to read "(a)(6)."

Section 648.90(a)(4)(iii)(E) would be revised to include a reference to the recreational fishery. A reference to the recreational fishery was made in the title of this paragraph, but was not included in the regulations.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The Small Business Administration size standard for small commercial fishing entities is $4 million in gross sales, while the size standard for small charter/party operators is $7 million.

Due to the nature of some of the measures proposed in this action, entities affected by the proposed action include those vessels that have currently been issued any Federal permit to fish any species within the Northeast. However, most of the entities affected by this proposed action are limited to vessels issued a limited access NE multispecies DAS permit (i.e., Category A, D, E, or F), a limited access NE multispecies Small Vessel or Handgear A permit (i.e., Category C or HA, respectively), an open access NE multispecies Category K or Handgear B (Category HB) permit, or an open access NE multispecies Charter/Party (Category I) permit. In addition, this proposed action would also affect any entity issued a Federal permit to purchase NE multispecies, a company providing dockside and roving monitoring services, and individuals acting in the capacity of a sector manager. All entities affected by this proposed rule would fall under the SBA size standard for small commercial fishing entities or charter/party operators, and therefore, there is no disproportionate impact between large and small entities and would not place small entities at a competitive disadvantage to large entities. A full description of the fishery, including the entities affected by the proposed action, is contained in Section 6.2 of the Amendment 16 FEIS.

The proposed allocation would correct/clarify the existing regulations to ensure that the current regulations accurately reflect measures adopted by the Council and approved by the Secretary of Commerce. This action would ensure that the economic benefits analyzed in previous actions would be realized, including preventing unnecessary and unintended costs associated with measures corrected by this action, and would only impose a negligible increase in the mailing and postage costs associated with compliance with VTR requirements that reflect current industry practices. For example, by revising the timing requirements of VMS declarations, this action would avoid $1,900 in unnecessary yearly VMS messaging costs that were not expected during the development of Amendment 16. In addition, this action would clarify that all trips must submit a VTR, regardless of whether fish are landed, with the exception of trips that only set fishing gear and do not fish on that trip, resulting in increasing yearly mailing costs of $5.88–$25.48 per vessel. Other measures corrected or clarified by this action would ensure that vessels are not subject to measures beyond those originally adopted in recent management actions. For example, this action would ensure that Category C and HA vessels would not be subject to RGAs and are not required to purchase selective gear to fish in particular areas, and that sector vessels are not subject to bait restrictions while fishing in the Closed Area I Hook Gear Haddock SAP.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains reporting and recordkeeping requirements and associated information collections subject to the Paperwork Reduction Act (PRA), which have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0229. Measures in this proposed rule include provisions that require revised collection-of-information requirements. Public reporting burden for these collections of information are estimated to average as follows:

1. VMS area and DAS declaration, OMB# 0648–0202, (5 min/response);
2. VMS trip-level catch reports, OMB# 0648–0212, (15 min/response);
3. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648–0202, (5 min/response);
4. VMS declaration to fish in a NE multispecies RGA, OMB# 0648–0202, (5 min/response);
5. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648–0202, (2 min/response);
6. Trip-end hail report to a dockside monitoring service provider, OMB# 0648–0202, (15 min/response);
7. Confirmation of dockside monitoring trip-end hail report, OMB# 0648–0202, (2 min/response);
8. Dockside/roving service provider data entry, OMB# 0648–0202, (3 min/response);
9. Daily VMS catch reports when fishing in the U.S./Canada Management Area and Closed Area II SAPs, OMB# 0648–0212, (15 min/response);
10. Daily VMS catch reports when fishing in the Closed Area I Hook Gear Haddock SAP, OMB# 0648–0212, (15 min/response);
11. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648–0212, (15 min/response); and
12. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648–0212 (2 min/response).
13. Letter of authorization for charter/party vessels to access the Western GOM Closure Area and the GOM Rolling Closure Areas, OMB# 0648–0202, (5 min/response);
14. Declaration of the monkfish DAS option via VMS, OMB# 0648–0202, (5 min/response);
15. Sector weekly catch report, OMB# 0648–0212, (4 hr/response);
16. VTR requirement, OMB# 0648–0212, (5 min/response); and
17. Dealer report, OMB# 0648–0229, (4 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping.

Dated: April 26, 2011.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

For the reason set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, add a definition of *set-only trip* to read as follows:

§ 648.2 Definitions.

* * * * *

Set-only trip means a fishing trip on which any federally permitted vessel deploys gear with the intention of retrieving it on a separate trip and does not haul-back or retrieve any gear capable of catching fish on the set-only trip.

* * * * *

3. In § 648.7, revise paragraph (c) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(c) *When to fill out a log report.* Except for vessels on a set-only trip, as declared through the pre-trip notification system specified in § 648.11(k), log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port. Information that may be considered unascertainable prior to entering port includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

* * * * *

4. In § 648.10, revise paragraph (k)(3)(ii) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(k) * * *

(3) * * *

(ii) *Inshore GB Stock Area 2.* The inshore GB Stock Area is defined by straight lines connecting the following points in the order stated:

INSHORE GB STOCK AREA 2

Point	N. latitude	W. longitude
G9	(1)	70°00′
G10	42°20′	70°00′
IGB1	42°20′	68°50′
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

[1] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.

[2] South-facing shoreline of Cape Cod, MA.

* * * * *

5. In § 648.14, add paragraph (k)(2)(iv); and revise paragraphs (k)(3)(i) and (k)(6)(ii)(B) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(2) * * *

(iv) Possess or land fish while setting fixed gear on a set-only trip as declared through the pre-trip notification system pursuant to § 648.11(k).

(3) * * *

(i) It is unlawful to purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

* * * * *

(6) * * *

(ii) * * *

(B) *Hook gear.* Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(E).

* * * * *

6. In § 648.80, revise paragraphs (a)(2)(ii), (a)(3)(v), (a)(3)(vi), (a)(17)(ii), (b)(3)(i), and (c)(2)(i) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) * * *

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

GB REGULATED MESH AREA

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [1]
SNE1	40°24′	65°43′ [2]

[1] The U.S.-Canada Maritime Boundary.

[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

* * * * *

(3) * * *

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(3)(v) or § 648.87(c), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS or on a sector trip, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifer") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS or on a sector trip in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed as specified in § 648.23(b).

* * * * *

(17) * * *

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK EXEMPTION AREA

Point	N. latitude	W. longitude
G6	40°55.5	66°38′
G7	40°45′	68°00′
G8	40°37′	68°00′
G9	40°30′	69°00′
NL3	40°22.7′	69°00′

GULF OF MAINE/GEORGES BANK EXEMPTION AREA—Continued

Point	N. latitude	W. longitude
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12	(1)	70°00′

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

* * * * *

(b) * * *

(3) * * *

(i) *Species exemption.* Unless otherwise restricted in § 648.86, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (caught by trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

* * * * *

(c) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and § 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

7. In § 648.81, revise the introductory text of paragraph (n) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(n) *NE Multispecies Restricted Gear Areas.* With the exception of a vessel on a sector trip, any vessel issued a limited access NE multispecies permit fishing under a NE multispecies DAS that is fishing any part of a trip in one or both of the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section must comply with all applicable restrictions specified in this paragraph (n). If such a vessel fishes inside/outside of these areas on the same trip, the most restrictive measures for the areas fished apply, including, but not limited to, gear restrictions and trip limits.

* * * * *

8. In § 648.82, revise the introductory text of paragraph (b)(5)(i), and the introductory text of paragraph (n)(1) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(b) * * *

(5) * * *

(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified at § 648.86(g). Such a vessel is subject to the possession limits specified for other regulated species and ocean pout, as specified at § 648.86. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

* * * * *

(n) * * *

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(E)(*2*). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters outside the FMP, and the common pool's share of the 2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or

underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Differential DAS Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area, pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A: Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

* * * * *

9. In § 648.83, remove paragraph (a)(3), and revise paragraph (b)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *

(1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the NE multispecies DAS program or on a sector trip may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. The weight of fillets and parts of fish, other than whole-gutted or gilled fish, shall be multiplied by 3. For the purposes of accounting for all catch by sector vessels as specified at § 648.87(b)(1)(v), the weight of all fillets and parts of fish, other than whole-gutted or gilled fish reported for at-home consumption shall be multiplied by a factor of 3.

* * * * *

10. In § 648.85, revise paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(iv)(A)(*2*), (b)(3)(x)(A), (b)(6)(iv)(J)(*4*), (b)(7)(iv)(E), and (b)(7)(vi)(B) to read as follows:

§ 648.85 Special management programs.

(a) * * *

(1) * * *

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 12	42°20′	67°40′
USCA 11	41°10′	67°40′
USCA 10	41°10′	67°20′
USCA 9	41°00′	67°20′
USCA 8	41°00′	67°00′
USCA 7	40°50′	67°00′
USCA 6	40°50′	66°50′
USCA 5	40°40′	66°50′

EASTERN U.S./CANADA AREA—Continued

Point	N. lat.	W. long.
USCA 4	40°40′	66°40′
USCA 15	40°30′	66°40′
USCA 14	40°30′	65°44.3′
USCA 13	42°20′	67°18.4′
USCA 12	42°20′	67°40′

* * * * *

(2) * * *

(ii) *Adjustments to TACs.* Any overages of the GB cod, GB haddock, and GB yellowtail flounder TACs specified for either the common pool or individual sectors pursuant to this paragraph (a)(2) that occur in a given fishing year shall be subtracted from the respective TAC in the following fishing year and may be subject to the overall groundfish AM provisions as specified in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

* * * * *

(3) * * *

(iv) * * *

(A) * * *

(2) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies DAS and sector vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, by prohibiting such vessels and all other vessels not issued a limited access NE multispecies permit from entering or being in this area and from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area during the closure period.

* * * * *

(b) * * *

(3) * * *

(x) * * *

(A) *Approved gear.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, NE multispecies vessels fishing with trawl gear must use a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section, or the Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*3*) of this section (all three nets may be on board the fishing vessel simultaneously). When this SAP is only open to target haddock, NE multispecies

vessels must use a haddock separator trawl, a Ruhle trawl, or hook gear. Gear other than the haddock separator trawl, the flounder trawl, or the Ruhle trawl may be on board the vessel during a trip to the Eastern U.S./Canada Area outside of the CA II Yellowtail Flounder/Haddock SAP, provided the gear is stowed according to the regulations at § 648.23(b).

* * * * *

(6) * * *

(iv) * * *

(J) * * *

(*4*) *Mesh size.* An eligible vessel fishing in the Regular B DAS Program within the GB Cod Stock Area as defined in paragraph (b)(6)(v)(B) of this section pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

* * * * *

(7) * * *

(iv) * * *

(E) *Gear restrictions.* A vessel declared into, and fishing in, the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified in paragraphs (b)(7)(v)(A) and (vi)(B) of this section.

* * * * *

(vi) * * *

(B) *Gear restrictions.* A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

* * * * *

11. In § 648.86, revise paragraph (m)(1) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(m) * * *

(1) *Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period, based upon the time the vessel lands following the end of the previous trip. For example, if a vessel lands 1,600 lb (725.7 kg) of GOM cod at 6 p.m. on Tuesday, that vessel cannot land any more regulated species or ocean pout until at least 6 p.m. on the following Wednesday.

* * * * *

12. In § 648.87, revise the introductory text to paragraph (c)(2), and revise paragraphs (b)(1)(ii), (b)(1)(vi)(B), (b)(1)(ix), (b)(5)(i)(A)(*1*), and (b)(5)(ii)(B)(*2*) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires, pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks allocated to sectors pursuant to paragraph (b)(1)(i)(A) of this section that are caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceeds the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

* * * * *

(vi) * * *

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

* * * * *

(ix) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

* * * * *

(5) * * *

(i) * * *

(A) * * *

(1) *Trip-start hail report.* The vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor provider, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

* * * * *

(ii) * * *

(B) * * *

(*2*) *Offloads to a truck.* A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information submitted (i.e., no blocked cells) provided by the sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by species in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the sector manager or third-party service provider, as appropriate. The tote tagging requirements specified in this paragraph (b)(5)(ii)(B)(2), are not required, provided the following three requirements are met:

(*i*) The roving monitor that observed the offload at the dock will also be the dockside monitor at the truck offload to the dealer;

(*ii*) The roving monitor will follow the truck, in line of sight, from the remote offload to the dealer offload where the weighing occurs; and,

(*iii*) The truck is loaded with only the catch from the one trip being monitored.

* * * * *

(c) * * *

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation applicable to NE multispecies vessels, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

* * * * *

13. In § 648.89, add paragraphs (c)(8) and (c)(9), and revise paragraphs (c)(2)(i), (c)(6), (c)(7), (d), and (e)(3)(iv), to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(c) * * *

(2) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 10 cod per day.

* * * * *

(c) * * *

(6) *Atlantic wolffish.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ may not possess Atlantic wolffish.

(7) *SNE/MA winter flounder.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels fishing in the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F), may not fish for, possess, or land winter flounder. Private recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from all fishing rods, and any winter flounder on board has been stored.

(8) *Windowpane flounder.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ, may not possess windowpane flounder.

(9) *Ocean pout.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ may not possess ocean pout.

* * * * *

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by recreational, charter, or party vessels permitted under this part not fishing under a DAS, on a sector trip, or under a Handgear A permit, Handgear B permit, or Small Vessel Category C permit while fishing in the EEZ.

* * * * *

(e) * * *

(3) * * *

(iv) For the GOM charter/party closed area exemption only, the vessel may not fish on a sector trip, under a NE multispecies DAS, or under the provisions of the NE multispecies Small Vessel Category or Handgear A or Handgear B permit categories, as specified at § 648.82, during the period of participation.

* * * * *

14. In § 648.90, revise the introductory text to paragraph (a)(4)(iii)(E), and revise paragraphs (a)(4)(i), (a)(4)(iii)(E)(*2*), (a)(5)(i)(A) and (a)(5)(ii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(4) * * *

(i) *ABC/ACL recommendations.* As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified

in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(6) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

* * * * *

(iii) * * *

(E) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries.* Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i)(B) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (D) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(E).

* * * * *

(*2*) *Commercial allocation.* Unless otherwise specified in this paragraph (a)(4)(iii)(E)(*2*), the ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, shall be divided between vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

* * * * *

(5) * * *

(i) * * *

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(E)(*2*) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then no AMs shall take effect for common pool vessels.

* * * * *

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part; or the catch of yellowtail flounder by the Atlantic sea scallop fishery exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

* * * * *

15. In § 648.92, revise paragraph (b)(1)(iii) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing on a sector trip or under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip after leaving port, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

* * * * *

[FR Doc. 2011–10442 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 84
Monday, May 2, 2011

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

Kenai Peninsula—Anchorage Borough Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Kenai Peninsula—Anchorage Borough Resource Advisory Committee will meet in Portage Valley, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend proposed projects.

DATES: The meeting will be held May 21, 2011, 10 a.m.

ADDRESSES: The meeting will be held at the Begich Boggs Visitor's Center, 800 Portage Lake Loop, Portage, AK 99587. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Seward Ranger District Office, 334 4th Ave, Seward, AK 99664. Please call ahead to 907–224–3374 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Travis Moseley, Designated Federal Official, c/o USDA Forest Service, PO Box 390, Seward, AK 99664, telephone (907) 288–7730.

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. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: reviewing and recommending proposed projects. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 20, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to PO Box 390, Seward, AK 99664, or by e-mail to *slatimer@fs.fed.us,* or via facsimile to 907 224–3268.

Dated: April 18, 2011.

Tim Charnon,

Designated Federal Official.

[FR Doc. 2011–9931 Filed 4–29–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting of the Hawaii Advisory Committee (Committee) to the Commission will be held on Tuesday, May 24, 2011 at the Liliha Public Library, 1515 Liliha Street, Honolulu, Hawaii 96817. The meeting is scheduled to begin at 9:30 a.m. and adjourn at approximately 12 p.m. The purpose of the meeting is to discuss the Committee's report on the administration of justice and Native Hawaiians.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by June 24, 2011. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by e-mail to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Western Regional Office at the above e-mail or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 26, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–10549 Filed 4–29–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 11 of the 2008 Panel

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before July 1, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel having durations of one to six years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted changes in these levels to be measured over time.

The 2008 panel is currently scheduled for approximately 6 years and will include 17 waves of interviewing beginning in September 2008. Approximately 65,300 households were selected for the 2008 panel, of which 45,000 households were interviewed. We estimate that each household contains 2.1 people, age 15 years or older, yielding approximately 94,500 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2012. The total annual burden for 2008 Panel SIPP interviews would be 141,750 hours in FY 2012.

The topical module for the 2008 Panel Wave 11 collects information about Retirement and Pension Plan Coverage. Wave 11 interviews will be conducted from January 1, 2012 through April 30, 2012.

A 10-minute re-interview of 3,100 people is conducted at each wave to ensure the accuracy of responses. Reinterviews require an additional 1,553 burden hours in FY 2012.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to six years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 17 times or 17 waves at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 94,500 people per wave.

Estimated Time per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 143,303. [1]

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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) methods to enhance the quality, utility, and clarity of the information to be collected; and (d) methods to minimize the burden of the collection of information on respondents, including 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: April 26, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–10485 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–07–P

[1] (94,500 × .5 hr × 3 waves + (3,100 × .167 hr × 3 waves))

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2011

The following Sunset Reviews are scheduled for initiation in June 2011 and will appear in that month's Notice

of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Tin Mill Products from Japan (A–588–854) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Pure Magnesium (Ingot) from the PRC (A–570–832) (3rd Review)	Julia Hancock, (202) 482–1394.
Helical Spring Lock Washers from the PRC (A–570–822) (3rd Review)	David Goldberger, (202) 482–4136.
Helical Spring Lock Washers from Taiwan (A–583–820) (3rd Review)	David Goldberger, (202) 482–4136.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders are scheduled for initiation in June 2011.

Suspended Investigations

No Sunset Review of suspended investigations are scheduled for initiation in June 2011.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 19, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10586 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–588–815	731–TA–461	Japan	Gray Portland Cement & Clinker (3rd Review)	Dana Mermelstein, (202) 482–1391.
A–570–899	731–TA–1091	PRC	Artist Canvas	Julia Hancock, (202) 482–1394.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an antidumping duty (AD) or countervailing duty (CVD) proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During*

Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in investigations/proceedings initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 20, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10589 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

Ball Bearing and Parts Thereof From Various Countries

Included in the list of orders for which May 2011 is the anniversary month (see below) are the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. With respect to the reporting requirements in any administrative reviews of these orders which the Department conducts as a result of requests it receives in May 2011, the Department has determined, after several years of experience with larger databases in recent reviews of these orders, that it has the technological ability to calculate antidumping margins for all transactions of subject merchandise. Therefore, the Department intends to apply its standard requirements in antidumping proceedings for respondents to report all U.S. sales of subject merchandise and all comparison-market sales of the foreign like product in any administrative reviews it conducts of the orders for the period May 1, 2010, through April 30, 2011.

Opportunity to Request a Review: Not later than the last day of May 2011,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period of review
Antidumping Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/10–4/30/11
Brazil: Iron Construction Castings, A–351–503	5/1/10–4/30/11
Canada: Citric Acid and Citrate Salt, A–122–853	5/1/10–4/30/11
France: Antifriction Bearings, Ball, A–427–801	5/1/10–4/30/11
Germany: Antifriction Bearings, Ball, A–428–801	5/1/10–4/30/11
India:	
Silicomanganese, A–533–823	5/1/10–4/30/11
Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/10–4/30/11
Indonesia: Polyethylene Retail Carrier Bags, A–560–822	4/30/10–4/30/11
Italy:	
Antifriction Bearings, Ball A–475–801	5/1/10–4/30/11
Stainless Steel Plate in Coils, A–475–822	5/1/10–4/30/11
Japan:	
Antifriction Bearings, Ball, A–588–804	5/1/10–4/30/11
Gray Portland Cement and Clinker, A–588–815	5/1/10–4/30/11
Kazakhstan: Silicomanganese, A–834–807	5/1/10–4/30/11
Republic of Korea:	
Polyester Staple Fiber, A–580–839	5/1/10–4/30/11
Stainless Steel Plate in Coils, A–580–831	5/1/10–4/30/11
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/10–4/30/11
Taiwan:	
Certain Circular Welded Carbon Steel Pipes and Tubes, A–583–008	5/1/10–4/30/11
Polyester Staple Fiber, A–583–833	5/1/10–4/30/11
Polyethylene Retail Carrier Bags, A–583–843	4/30/10–4/30/11
Stainless Steel Plate in Coils, A–583–830	5/1/10–4/30/11
The People's Republic of China:	
Certain Circular Welded Carbon Quality, Steel Line Pipe, A–570–935	5/1/10–4/30/11
Citric Acid and Citrate Salt, A–570–937	5/1/10–4/30/11
Iron Construction Castings, A–570–502	5/1/10–4/30/11
Oil Country Tubular Goods, A–570–943	11/17/09–4/30/11
Pure Magnesium, A–570–832	5/1/10–4/30/11
Turkey:	
Light-Walled Rectangular Pipe and Tube, A–489–815	5/1/10–4/30/11
Welded Carbon Steel Pipe and Tube, A–489–501	5/1/10–4/30/11
United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/10–4/30/11
Venezuela: Silicomanganese, A–307–820	5/1/10–4/30/11
Vietnam: Polyethylene Retail Carrier Bags, A–552–806	4/30/10–4/30/11
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/10–12/31/10
Brazil: Iron Construction Castings, C–351–504	1/1/10–12/31/10
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/10–12/31/10
The People's Republic of China: Citric Acid and Citrate Salt, C–570–938	1/1/10–12/31/10
Vietnam: Polyethylene Retail Carrier Bags, C–552–805	4/30/10–12/31/10

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3508 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2011. If the Department does not receive, by the last day of May 2011, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 22, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10588 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4162 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2003, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on certain cut-to-length carbon steel plate ("CTL Plate") from the People's Republic of China ("PRC"). *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 68 FR 60081 (October 21, 2003). On November 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL Plate from the PRC for the period of review ("POR") November 1, 2009, through October 31, 2010. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

On November 30, 2010, the Department received a timely request from Nucor Corporation, a domestic producer of CTL Plate, to conduct an administrative review of Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Hunan Valin"). No other party requested an administrative review. On December 28, 2010, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the "Act"), the Department published in the **Federal Register** a notice of the initiation of an antidumping duty administrative review of Hunan Valin. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010).

On January 12, 2011, Hunan Valin submitted a letter certifying that it did not have any exports or sales of subject merchandise during the POR. The Department conducted an internal U.S. Customs and Border Protection ("CBP") data query and found no evidence that Hunan Valin had any shipments of subject merchandise during the POR. In addition, on March 3, 2011, the Department made a "No Shipments Inquiry" to CBP to confirm that there were no exports of subject merchandise by Hunan Valin during the POR. The Department asked CBP to notify the Department within ten days if CBP "has contrary information and is suspending liquidation" of subject merchandise exported by Hunan Valin. *See* "Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Memorandum of Intent to Rescind Antidumping Duty Administrative Review, from Magd Zalok to Abdelali Elouaradia, dated March 25, 2011 ("Intent to Rescind Memorandum"). CBP did not reply with contrary information. The Department provided interested parties in this review until March 28, 2011, to submit comments on the Intent to Rescind Memorandum. The Department did not receive comments from any interested party on the Department's intent to rescind.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a particular exporter or producer if the Department concludes that during the POR there were no entries, exports, or sales of the subject merchandise by that exporter or producer. As noted above, the Department has found and continues to find no evidence that Hunan Valin had shipments or entries of subject merchandise during the POR and no interested party has commented on the issue. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department is rescinding the antidumping duty administrative review with respect to Hunan Valin.

Assessment

The Department will instruct CBP to assess antidumping duties at the cash

deposit rate in effect on the date of entry, for entries of CTL Plate during the period November 1, 2009, through October 31, 2010. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification to Importers

This notice serves as a final reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order ("APO")

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: April 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10572 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA406

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The SSC meeting will be held on May 24–25, 2011.

ADDRESSES: The meeting will be held at the Hampton Inn Hotel, 6530 Isla Verde Avenue, Carolina, Puerto Rico 00979.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The SSC will meet to discuss the items contained in the following agenda:

1. Overview of SSC role, responsibilities and objectives of meetings.
   a. Magnuson-Stevens Reauthorization Act (MSRA)/Annual Catch Limit (ACL) review of language—Overfishing Limit (OFL) vs. Acceptable Biological Catch (ABC) and legal implications of each.
   b. Role of SSC and how decisions/motions get treated at Council level.
2. Review of decisions/logic behind 2010 amendment.
   a. Brief Annual Catch Limit Plan Development Group (ACLG), SSC, Southeast Data, Assessment and Review (SEDAR) data evaluation meeting summaries.
   b. 2010 decisions and summary of record.
   c. Consistent rationale or need to develop record that explains why 2011 species should be treated differently than 2010 amendment.
3. Use of annual average catch for determining OFL.
4. Review of other methods for determining OFL and methods for determining ABC.
5. Recommendations to the Council for OFL for each species/species group and jurisdiction.
6. Recommendations to the Council for ABC for each species/species group and jurisdiction.

Other Business

Next Meeting

The SSC will convene on May 24 and 25, 2011, from 9:30 a.m. until 5 p.m. The meeting is open to the public, and will be conducted in English.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: April 27, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–10542 Filed 4–29–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 27, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–10641 Filed 4–28–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 6, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–10642 Filed 4–28–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 20, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–10644 Filed 4–28–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, May 13, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–10643 Filed 4–28–11; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Federal Register Notice Requesting Nominations for the Subcommittee on Data Standardization Under the Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice requesting nominations for the Subcommittee on Data Standardization Under the Technology Advisory Committee.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is calling for nominations to the Subcommittee on Data Standardization (Subcommittee) under the auspices of the Technology Advisory Committee. The Subcommittee on Data Standardization was established to develop recommendations for a standardized reference data depository representing the universe of legal and financial terms utilized in describing, defining, and valuing the various derivatives and other financial instruments which are presently and in the future may be traded on and off of regulated exchanges. The Subcommittee will report to the full Technology Advisory Committee. The creation of standardized reference points and data terms is anticipated to aid in the development of universal entity, product, and/or instrument identifiers and provide greater consistency in the collection, reporting, and management of individual transactions, underlying legal documents (including master agreements and credit support agreements), and risk exposures. Nominations are sought for highly qualified representatives from government agencies, industry, exchanges, academia, information technology, information systems, and groups representing interests or organizations involved with the development, design and use of standardized data and/or affected by the standardization of data. Individuals seeking to be nominated to the Subcommittee on Data Standardization should possess demonstrable expertise in a related field or represent a stakeholder of interest in the issue. Prospective nominees should be open to participating in an open public-private forum.

DATES: The final deadline for nominations is 14 days from the publication date of this notice.

ADDRESSES: Nominations should be sent to Andrei Kirilenko, Chief Economist, Office of the Chief Economist, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Andrei Kirilenko, (202) 418–5587; fax: (202) 418–5660; e-mail: *akirilenko@cftc.gov.*

SUPPLEMENTARY INFORMATION: The Subcommittee on Data Standardization will be ongoing and will conduct at least three sessions in the calendar year 2011. The Subcommittee may prepare a series of reports, findings, and/or recommendations to the Technology Advisory Committee. The Technology Advisory Committee will consider submitted materials and determine whether and what recommendations to make to the Commission. Subcommittee participants will not be compensated or reimbursed for travel and per diem expenses. Each nomination submission should include the proposed member's name and organizational affiliation; a brief description of the nominee's qualifications and interest in serving on the Subcommittee on Data Standardization, the organization, group, academic body, company, or government agency the nominee would represent on the subcommittee; and the curriculum vitae or resume of the nominee. Self-nominations are acceptable. The following contact information should accompany each submission: The nominee's name, address, phone number, fax number, and e-mail address if available. There are no capital costs and no operating or maintenance costs associated with this notice.

Dated: April 16, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–10556 Filed 4–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14059–000]

City of Frostburg, MD; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14059–000.

c. *Date filed:* December 21, 2010.

d. *Applicant:* City of Frostburg, Maryland.

e. *Name of Project:* Frostburg Low Head Project.

f. *Location:* The proposed Frostburg Low Head Project would be located on the City of Frostburg's raw municipal water line in Allegany County, Maryland. The land on which all the project structures is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Kevin L. Yoder, City of Frostburg, Maryland, C/O CME Management, LLC, 27 Main Street, Frostburg, MD 21532, phone (301) 689–1700.

i. *FERC Contact:* Robert Bell, (202) 502–6062, *robert.bell@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and

conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Frostburg Low Head Project would consist of: (1) A proposed powerhouse containing one proposed generating unit with an installed capacity of 75 kilowatts; and (2) appurtenant facilities. The applicant estimates the project would have an average annual generation of 240 megawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number, P–14059, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10538 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–193]

Pacific Gas and Electric Company

Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2310–193.

c. *Date Filed:* April 12, 2011.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* The west slope of the Sierra Nevada on the South Yuba River, Bear River, North Fork of the North Fork American River, and tributaries in the Sacramento River watershed in Nevada and Placer counties, California. A large portion of the project is located on the Tahoe National Forest. Portions of the project occupy lands managed by the Bureau of Land Management and the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Steve Peirano, Relicensing Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, San Francisco, CA 94177–0001, (415) 973–4481, or e-mail *slp2@pge.com.*

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074 or *alan.mitchnick@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The project consists of 10 developments: Spaulding No. 3; Spaulding No. 1 and No. 2; Drum No. 1 and No. 2; Dutch Flat No. 1; Halsey; Wise; Newcastle; Deer Creek; Alta; and Wise No. 2. In the 10 developments, there are 29 reservoirs with a combined gross storage capacity of 154,388 acre-feet of water; 6 major water conduits; 12 powerhouses with a combined authorized installed capacity of 192.5 megawatts; 7 transmission lines; and appurtenant facilities and structures, including recreation facilities.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	June 2011.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	August 2011.
Commission issues Draft EIS	February 2012.
Comments on Draft EIS	March 2012.
Modified Terms and Conditions	May 2012.
Commission Issues Final EIS	September 2012.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10537 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2266–102]

Nevada Irrigation District; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2266–102.

c. *Date Filed:* April 15, 2011.

d. *Applicant:* Nevada Irrigation District.

e. *Name of Project:* Yuba-Bear Project.

f. *Location:* The Yuba-Bear Project is located on the west slope of the Sierra Nevada on the Middle Yuba River, Canyon Creek, Fall Creek, Rucker Creek, and Bear River, in Nevada, Placer and Sierra Counties, California. A large portion of the project is located on the Tahoe National Forest. Some of the project is located on federally-owned land managed by the Bureau of Land Management as part of the Sierra Resource Management Area.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ron Nelson, General Manager, Nevada Irrigation District, 1036 West Main Street, Grass Valley, CA 95945, (530) 271–6824 or e-mail *nelson@nid.dst.ca.us*.

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074 or *alan.mitchnick@ferc.gov*.

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The project consists of four developments—Bowman, Dutch Flat, Chicago Park, and Rollins—which, in total, include: 13 main dams with a combined gross storage capacity of 207,865 acre-feet of water; four water conduits; five diversion dams; four powerhouses with a combined installed capacity of 79.32 megawatts; one 9.0-mile-long, 60-kilovolt transmission line; and appurtenant facilities and structures, including recreation facilities.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	June 2011.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	August 2011.
Commission issues Draft EIS	February 2012.
Comments on Draft EIS	March 2012.
Modified Terms and Conditions	May 2012.
Commission Issues Final EIS	September 2012.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10536 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1992–003]

Fire Mountain Lodge; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Existing Minor License.

b. *Project No.:* 1992–003.

c. *Date filed:* April 25, 2008.

d. *Applicant:* Mr. Ken Willis.

e. *Name of Project:* Fire Mountain Lodge.

f. *Location:* On Fern Spring in Tehama County, California. The project is located primarily on privately owned land except for 1.07 acres of the dam and reservoir which is located on U.S. Forest Service land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ken Willis, Fire Mountain Lodge, 43500 Highway 36, Mill Creek, CA 96060, (530) 258–1952.

i. *FERC Contact:* Matt Buhyoff, (202) 502–6824 or *matt.buhyoff@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Fire Mountain Lodge project consists of: (1) A 265-foot-long earth and concrete filled dam; (2) a 0.24-acre reservoir; (3) a 38 inch intake tower; (4) a 1540-foot-long penstock; (5) a powerhouse with an installed capacity of 60-kilowatts; a (6) a 4000 foot-long transmission line and; (7) appurtenant facilities. The power generated by the project is utilized for commercial and residential purposes, solely for the owners of Fire Mountain Lodge, a self-provider of electricity.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: April 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10508 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–74–000.

Applicants: Macho Springs Power I, LLC, Element Power US, LLC.

Description: Application of Macho Springs Power I, LLC, et al. for Authorization of Disposition of Jursidictional Facilities and Requests for Confidential Treatment and Expedited Consideration.

Filed Date: 04/25/2011.

Accession Number: 20110425–5248.

Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: EC11–75–000.

Applicants: Arroyo DP Holding LP, Delta Power Company, LLC, Vineland Energy, LLC, RC Delta Holdings, LLC.

Description: Joint Application of Arroyo DP Holding LP, Delta Power Company, LLC Vineland Energy, LLC and RC Delta Holdings LLC for Authorization for Indirect Disposition of Jurisdictional Facilities and Request for Expedited Treatment.

Filed Date: 04/25/2011.

Accession Number: 20110425–5254.

Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–78–000.
Applicants: KES Kingsburg, L.P.
Description: Self-Certification of EWG of KES Kingsburg, L.P.
Filed Date: 04/25/2011.
Accession Number: 20110425–5180.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3122–001.
Applicants: AES Placerita, Incorporated.
Description: Notice of Non-Material Change in Status of AES Placerita, Incorporated.
Filed Date: 04/25/2011.
Accession Number: 20110425–5247.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–2745–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance filing per Order in ER11–2745–000 to resubmit the Schedule A Image to be effective 12/20/2010.
Filed Date: 04/25/2011.
Accession Number: 20110425–5169.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–2750–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance filing per Order in ER11–2750–000 to resubmit the Schedule A Image to be effective 12/28/2010.
Filed Date: 04/25/2011.
Accession Number: 20110425–5170.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3069–001.
Applicants: Viridian Energy, Inc.
Description: Viridian Energy, Inc. submits tariff filing per 35.17(b): Market Based Rate Tariff to be effective 3/14/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5035.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Docket Numbers: ER11–3098–001.
Applicants: Viridian Energy PA, LLC.
Description: Viridian Energy PA, LLC submits tariff filing per 35.17(b): Market Based Rate Tariff to be effective 3/15/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5039.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Docket Numbers: ER11–3141–001.
Applicants: Viridian Energy NY LLC.
Description: Viridian Energy NY LLC submits tariff filing per 35.17(b): Market Based Rate Tariff to be effective 3/18/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5045.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Docket Numbers: ER11–3432–000.
Applicants: Torofino Physical Trading LLC.
Description: Torofino Physical Trading LLC submits tariff filing per 35.12: FERC Electric Tariff No. 1 to be effective 6/24/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Docket Numbers: ER11–3424–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.13(a)(2)(iii): 2011–4–25_275–NSP_MSHL_Trans_Facs_Agmt to be effective 1/1/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5161.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3425–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin River Power Company Depreciation Study and Change in Depreciation Rates for Wholesale Production Service.
Filed Date: 04/25/2011.
Accession Number: 20110425–5163.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3426–000.
Applicants: Fowler Ridge IV Wind Farm LLC.
Description: Notice of Succession of Fowler Ridge IV Wind Farm LLC.
Filed Date: 04/25/2011.
Accession Number: 20110425–5165.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3428–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Letter Agreement for CPCN for Calico Solar Phase 2 Reliability Network Upgrades to be effective 4/21/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5184.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3429–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35: Amendment of Southern's Tariff Vol. No. 4 in Compliance Under Docket No. ER09–88 to be effective 4/25/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5194.
Comment Date: 5 pm Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3430–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Second WestConnect Participation Agreement to be effective 6/1/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5200.
Comment Date: 5:00 pm Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3431–000.
Applicants: New Mexico Green Initiatives, LLC.
Description: New Mexico Green Initiatives, LLC submits tariff filing per 35.12: NM Green Initiatives MBR Application to be effective 4/26/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5201.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3432–000.
Applicants: Torofino Physical Trading LLC.
Description: Torofino Physical Trading LLC submits tariff filing per 35.12: FERC Electric Tariff No. 1 to be effective 6/24/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–1–000.
Applicants: Astoria Generating Company, L.P., Boston Generating LLC, Fore River Development, LLC, Mystic I, LLC, Mystic Development, LLC.
Description: Quarterly Land Acquisition Report of Astoria Generating Company, L.P.
Filed Date: 04/25/2011.
Accession Number: 20110425–5135.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10523 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3329–003.
Applicants: Round Rock Energy LP.
Description: Round Rock Energy LP submits tariff filing per 35: Round Rock Energy, LP FERC Electric Tariff Schedule No. 1 to be effective 4/5/2011.
Filed Date: 04/06/2011.
Accession Number: 20110406–5150.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–2492–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per Order in Docket No. ER11–2492 to be effective 4/26/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5133.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Docket Numbers: ER11–3427–000.
Applicants: Unitil Power Corp.
Description: Unitil Power submits Rate Schedule FERC No. 1, the Amended Unitil System Agreement, Appendix 1, Section D.
Filed Date: 04/22/2011.
Accession Number: 20110425–0203.
Comment Date: 5 p.m. Eastern Time on Friday, May 13, 2011.

Docket Numbers: ER11–3433–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Rate Schedule No. 119 of Florida Power Corporation to be effective 1/1/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5092.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Docket Numbers: ER11–3434–000.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits tariff filing per 35: WVPA—Section 3—Rate Schedules—Formulary Rate Tariff Volume No. 1 to be effective 4/26/2011.
Filed Date: 04/26/2011.
Accession Number: 20110426–5107.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 17, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 26, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10524 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–76–000.
Applicants: Howard Wind LLC.
Description: Self-Certification of EG or FC of Howard Wind LLC.
Filed Date: 04/20/2011.
Accession Number: 20110420–5091.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 11, 2011.

Docket Numbers: EG11–77–000.
Applicants: Highland North LLC.
Description: Self-Certification of Highland North LLC.
Filed Date: 04/20/2011.
Accession Number: 20110420–5121.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 11, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1994–001.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35: Compliance Filing, City of Wamego, KS, Rate Schedule WTU–012011 to be effective 1/1/2011.
Filed Date: 04/22/2011.
Accession Number: 20110422–5111.
Comment Date: 5:00 pm Eastern Time on Friday, May 13, 2011.

Docket Numbers: ER11–3420–000.
Applicants: Gridway Energy Corp.
Description: Gridway Energy Corp. submits tariff filing per 35.12: Application for Market Based Rate Authorization to be effective 4/26/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5017.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3421–000.
Applicants: Midwest Independent Transmission System, MidAmerican Energy Company.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: MidAmericanCornbeltAuburn to be effective 6/1/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5018.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3422–000.
Applicants: Midwest Independent Transmission System, MidAmerican Energy Company.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: MidAmericanCornbeltHudson to be effective 6/1/2011.
Filed Date: 04/25/2011.
Accession Number: 20110425–5019.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Docket Numbers: ER11–3423–000.
Applicants: Fowler Ridge II Wind Farm LLC.
Description: Fowler Ridge II Wind Farm LLC submits tariff filing per 35.13(a)(2)(iii: Compliance Filing, Docket No. ER09–1650–001 and OA09–32–001 to be effective 12/31/9998.
Filed Date: 04/25/2011.
Accession Number: 20110425–5045.
Comment Date: 5 p.m. Eastern Time on Monday, May 16, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–1–000.
Applicants: Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Power Company.
Description: Land Acquisition/Site Control Demonstration Report of Southern Companies.
Filed Date: 04/22/2011.
Accession Number: 20110422–5121.
Comment Date: 5 p.m. Eastern Time on Friday, May 13, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–230–000.
Applicants: St. Elizabeth Medical Center.
Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of St. Elizabeth Medical Center.
Filed Date: 04/20/2011.
Accession Number: 20110420–5059.
Comment Date: None Applicable.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10518 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14111–000; 14112–000; 14113–000]

Qualified Hydro 26, LLC; Lock+ Hydro Friends Fund VII; Western Minnesota Municipal Power Agency; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 15, 2011, Qualified Hydro 26, LLC (Qualified Hydro), Lock+ Hydro Friends Fund VII (Hydro Friends) and Western Minnesota Municipal Power Agency (WMMPA) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Mississippi River Lock and Dam #11 structure, located on the Mississippi River near the Township of Dubuque, Dubuque County, Iowa. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

Qualified Hydro's Mississippi Lock and Dam #11 Project No. 14111 would consist of: (1) A 400-foot-long by 350-foot-wide intake channel; (2) a 600-foot-long by 350-foot-wide tailrace channel; (3) a new 750-foot-long by 6-foot-diameter buried steel penstock; (4) a new 250-foot by 325-foot concrete powerhouse containing six new turbine-generators and associated switchgear, controls and ancillary systems; the turbine-generator units have individual unit capacities of 3.0 megawatts (MW) and a combined capacity of 18 MW; (5) a new concrete 40-foot by 50-foot control building constructed on the east side of the powerhouse; (6) a 80-foot-long by 60-foot-wide, 20 megavolt-amperes (MVA) substation; (7) a 20,000-foot-long transmission line extending east from the substation to an interconnection point with an existing transmission line on the Illinois side of the river; and (8) appurtenant facilities. The proposed operating voltage would be between 115 and 161 kilovolt (kV). The project would have annual energy production of 90 gigawatt-hours per year (GWh/yr), utilize Corps-designated flows from the Mississippi Lock and Dam #11 structure, and operate as directed by the Corps.

Applicant Contact: Mr. Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

Hydro Friends' proposed Lock and Dam #11 Hydropower Project No. 14112 would consist of: (1) Two 109-foot-wide by 40-foot-high lock frame modules—one installed in the inactive auxiliary lock itself and the other east of the movable section of the dam; each consisting of 10 hydropower turbines rated at 900 kilowatts (kW) and giving the project a total rated capacity of 18 MW; (2) two new 150-foot-long by 110-foot-wide tailrace channels; (3) a new 50-foot-long by 25-foot-wide switchyard; (4) a 2-mile-long, 115- kV transmission line extending from the switchyard to an existing nearby transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 120 GWh/yr, and utilize Corps-designated flows from the Mississippi Lock and Dam #11 structure.

Applicant Contact: Mr. Wayne F. Krouse, Chairman, Hydro Green Energy, LLC, 5090 Richmond Avenue, #390, Houston, TX 77056; (877) 556–6566 x709.

WMMPA's Mississippi Lock and Dam #11 Project No. 1411 would consist of: (1) A 318-foot-long by 300-foot-wide intake channel; (2) a 265-foot-long by 300-foot-wide tailrace channel; (3) a new 190-foot-long by 260-foot-wide by 40-foot-high concrete powerhouse containing six new pit type axial flow turbine-generators and associated transformers and switchgear; the turbine-generator units would have individual unit capacities of 4.6 MW and a combined capacity of 27.6 MW; (4) a new 9.4-mile-long, 69 kV transmission line extending from the switchyard near the proposed powerhouse to an interconnection point with an existing substation on the Wisconsin side of the river; and (5) appurtenant facilities. The project would have annual energy production of 190 GWh/yr, utilize Corps designated flows from the Mississippi Lock and Dam #11 structure, and operate as directed by the Corps.

Applicant Contact: Mr. Raymond J. Wahle, P.E., Missouri River Energy Services 3724 W. Avera Drive, Sioux Falls, SD 57109; (605) 330–6963.

FERC Contact: Tyrone A. Williams, *tyrone.williams@ferc.gov* (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14111, P–14112, or P–14113–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10540 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–104–000]

Public Service Company of Colorado; Notice of Filing

Take notice that on April 21, 2011, Public Service Company of Colorado, (PSCo) filed pursuant to section 11 of its Statement of Operating Conditions to revise its Fuel Reimbursement Percentage applicable to firm and interruptible gas transportation services 1.71 percent to 1.23 percent, effective January 1, 2011, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 4, 2011.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10534 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–101–000]

UGI Central Penn Gas, Inc.; Notice of Petition for Rate Approval

Take notice that on April 8, 2011, UGI Central Penn Gas, Inc. (CPG) filed a petition pursuant to section 284.123(b)(1)(ii) of the Commission's regulations a rate election for interruptible transportation service. CPG states the rate election consists of the applicable interruptible component of its currently effective Large Volume Daily Delivery Service rate contained in Rate Schedule L on file with the Pennsylvania Public Utility Commission. In addition, CPG submits a revised Statement of Operating Conditions and General Terms and Conditions, as more fully described in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday, April 22, 2011.

Dated: April 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10509 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14108–000]

Western Minnesota Municipal Power Agency; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 8, 2011, Western Minnesota Municipal Power Agency (WMMPA) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Mississippi River Lock and Dam #15 structure located on the Mississippi River, near the Township of Davenport, in Scott County, Iowa. The Mississippi Lock and Dam No. 15 is owned by the United States government and operated by the U.S. Army Corps of Engineers. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

WMMPA's proposed Mississippi Lock and Dam #15 Project No. 14108 would consist of: (1) A 350-foot-long by 300-foot-wide intake channel; (2) a 250-foot-long by 300-foot-wide tailrace channel; (3) a new 190-foot-long by 280-foot-wide by 60-foot-high concrete powerhouse; (4) six new pit-type axial flow turbine-generators units with a combined capacity of 33.8 megawatts; (5) a new 9,700-foot-long, 69-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 230 gigawatt-hours.

Applicant Contact: Mr. Raymond J. Wahle, P.E., Missouri River Energy Services, 3724 W. Avera Drive, Sioux Falls, SD 57109; (605) 330–6963.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at 7fnl;*http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14108–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10539 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13997–000]

Richard A. Glover, Jr.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 10, 2011, Richard A. Glover, Jr. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the East Branch Dam Hydroelectric Project to be located on the East Branch of the Clarion River in Jones Township, Elk County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing U.S. Army Corps of Engineers' East Branch Dam and would consist of the following: (1) One turbine and generator unit rated at 500 kilowatts; (2) a new powerhouse; (3) a 100-foot-long pipe between the outlet works and the powerhouse; (4) a 50-foot-long discharge pipe; (5) a 50-foot-long transmission line; and (6) appurtenant facilities. The estimated annual generation of the East Branch Dam Hydroelectric Project would be 377 megawatt-hours.

Applicant Contact: Richard A. Glover, Jr., 6834 Grant Road, Ridgeway, PA 15853; phone: (814) 772–4721.

FERC Contact: Brandi Sangunett (202) 502–8393.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13997–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 25, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10507 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–191–000]

Transwestern Pipeline Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on April 14, 2011 Transwestern Pipeline Company, LLC (Transwestern), 711 Louisiana Street, Suite 900, Houston, Texas 77002, filed in Docket No. CP11–191–000, a Prior Notice request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities located in Apache County, Arizona. Specifically, Transwestern proposes to abandon by removal the existing three 4,000 HP reciprocating gas engines, compressors, and ancillary facilities (Project Facilities) at its Compressor Station 4. The Project Facilities will be either offered for sale or removed for scrap. This proposed abandonment will not have any adverse effect on services provided and will not impact Transwestern's customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Kelly Allen, Manager, Certificates and Reporting, Transwestern Pipeline Company, LLC, 711 Louisiana Street, Suite 900, Houston, Texas, 77002, or call (281) 714–2056, or fax (281) 714–2181, or by e-mail: *Kelly.allen@energytransfer.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214

of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Dated: April 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10535 Filed 4–29–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2009–1011; FRL–9301–3]

Adequacy Status of the Greensboro/Winston-Salem/Highpoint North Carolina 1997 Annual $PM_{2.5}$ Maintenance Plan Motor Vehicle Emissions Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public of its finding that the direct fine particulate ($PM_{2.5}$) and nitrogen oxides (NO_X) motor vehicle emissions budgets (MVEBs) in the Greensboro/Winston-Salem/Highpoint, North Carolina area (hereafter referred to as "the Triad Area") maintenance plan for the 1997 annual $PM_{2.5}$ standard, submitted on December 18, 2009, and supplemented on December 22, 2010, by the North Carolina Department of Environment and Natural Resources (NCDENR) are adequate for transportation conformity purposes. The Triad Area is comprised of Guilford and Davidson Counties in their entirety. On March 2, 1999, the District of Columbia Circuit Court ruled that submitted state implementation plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of EPA's finding, the Triad Area must use the $PM_{2.5}$ and NO_X MVEBs from the submitted maintenance plan for the Area for future conformity determinations.

DATES: The adequacy finding for the $PM_{2.5}$ and NO_X MVEBs are effective May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Dianna B. Smith, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Smith can also be reached by telephone at (404) 562–9207, or via electronic mail at *smith.dianna@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions").

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of findings that EPA has already made. EPA Region 4 sent a letter to NCDENR on February 2, 2011, stating that the 2011 and 2021 sub-area $PM_{2.5}$ and NO_x MVEBs in the 1997 $PM_{2.5}$ maintenance plan for the Triad Area, dated December 18, 2009, and supplemented on December 22, 2010, are adequate. EPA posted the availability of the Triad MVEBs on EPA's Web site on November 23, 2010, as part of the adequacy process, for the purpose of soliciting comments. The comment period ran from November 23 through December 23, 2010. EPA's findings have also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/index.htm,* (once there, click "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions"). The adequate $PM_{2.5}$ and NO_X MVEBs are provided in the following table:

TRIAD, NORTH CAROLINA ANNUAL $PM_{2.5}$ MVEBS

[Kilograms/year]

	2011	2021
Guilford County Sub-area MVEB		
NO_X	11,133,605	6,309,650
$PM_{2.5}$	421,841	421,841
Davidson County Sub-area MVEB		
NO_X	4,086,413	2,148,938
$PM_{2.5}$	153,313	153,313

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule, 40 Code of Federal Regulations (CFR) Part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS).

The criteria by which EPA determines whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA has described the process for determining the adequacy of submitted SIP budgets in a May 14, 1999, memorandum entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled "Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEB adequate, the Agency may later disapprove the SIP.

Within 24 months from the effective date of this notice, the transportation

partners will need to demonstrate conformity to the new MVEB if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See 73 FR 4419 (January 24, 2008).

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

Dated: April 18, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–10564 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OAR–2009–1010; FRL–9301–2]

Adequacy Status of the Hickory-Morganton-Lenoir, North Carolina 1997 Annual $PM_{2.5}$ Maintenance Plan Motor Vehicle Emissions Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: In this notice, EPA is notifying the public of its finding that the nitrogen oxides (NO_X) motor vehicle emissions budgets (MVEBs) in the Hickory-Morganton-Lenoir, North Carolina area (hereafter referred to as the "Hickory Area") maintenance plan for the 1997 annual $PM_{2.5}$ standard, submitted on December 18, 2009, and supplemented on December 22, 2010, by the North Carolina Department of Environment and Natural Resources (NCDENR) are adequate for transportation conformity purposes. EPA is also making an insignificance finding for direct fine particulate ($PM_{2.5}$) through the transportation conformity adequacy process for the Hickory Area. The Hickory Area is comprised of the entire county of Catawba in North Carolina. On March 2, 1999, the District of Columbia Circuit Court ruled that submitted state implementation plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of EPA's finding, the Hickory Area must use the NO_X MVEBs from the submitted maintenance plan and supplement for the Hickory Area for future conformity determinations. Additionally, as a result of this finding, the Hickory Area is not required to perform a regional emissions analysis for direct $PM_{2.5}$ in future $PM_{2.5}$ transportation conformity determinations for the 1997 annual $PM_{2.5}$ standard.

DATES: The adequacy finding for the NO_X MVEBs and the insignificance finding for direct $PM_{2.5}$ are effective May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Dianna B. Smith, Environmental Scientist, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Smith can also be reached by telephone at (404) 562–9207, or via electronic mail at *smith.dianna@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions").

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of findings that EPA has already made. EPA Region 4 sent a letter to NCDENR on February 3, 2011, stating that the 2011 and 2021 NO_X MVEBs in the 1997 $PM_{2.5}$ maintenance plan for Hickory, dated December 18, 2009, and supplemented on December 22, 2010, are adequate. The letter also states that direct $PM_{2.5}$ is insignificant for the Hickory Area, therefore no regional emissions analysis is required. EPA posted the availability of the Hickory Area NO_X MVEBs and insignificance demonstration on EPA's Web site on November 23, 2010, as part of the adequacy process, for the purpose of soliciting comments. The comment period ran from November 23, through December 23, 2010. EPA's findings have also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/index.htm,* (once there, click "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions"). The adequate NO_X MVEBs are provided in the following table:

HICKORY AREA NO_X MVEB

[Kilograms/year]

	2011	2021
Catawba County	3,996,601	2,236,028

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule, 40 Code of Federal Regulations (CFR) Part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS).

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). Additionally, the criteria by which EPA determines whether a particular pollutant/precursor is an insignificant contributor to the air quality problem in an area can be found at 40 CFR 93.109(m). Insignificance findings are based on a number of factors, including the percentage of motor vehicle emissions in context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the allowance of insignificance findings can be found in the July 1, 2004, revision to the transportation conformity rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection entitled "B. Areas With Insignificant Motor Vehicle Emissions." Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEB adequate or makes an insignificance finding through the adequacy process, the Agency may later disapprove the SIP.

Transportation partners should note this insignificance finding in future transportation conformity determinations. While this insignificance finding waives the requirements for regional emissions analyses for direct $PM_{2.5}$ for the Hickory Area for the 1997 $PM_{2.5}$ NAAQS, as mentioned above, it does not waive other conformity requirements for the 1997 $PM_{2.5}$ NAAQS for the Hickory Area, nor does it waive transportation conformity requirements for other pollutants/precursors for which the Area may be designated nonattainment or redesignated to attainment with a maintenance plan.

EPA has described the process for determining the adequacy of submitted SIP MVEBs in a May 14, 1999, memorandum entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's July 1, 2004, final rulemaking entitled "Transportation Conformity Rule Amendments for the New 8-hour

Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004).

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new NO_X MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). *See* 73 FR 4419 (January 24, 2008).

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

Dated: April 18, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–10570 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0971; FRL–9200–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Aerosol Coatings

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on September 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments may be submitted on or before July 1, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0971 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW.; *Mail Code:* 28221T, Washington, DC 20460.
- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 am to 4:30 pm, Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0971. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about EPA public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: J. Kaye Whitfield, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code E143–03, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–2509; *fax number:* (919) 541–3470; *e-mail address: whitfield.kaye@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0971 which is available either electronically at *http://www.regulations.gov,* or in-person viewing at the Air Docket in the EPA Docket Center (EPA/DC), Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone for the Reading Room is 202–566–1744, and the telephone for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information particularly interests EPA?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To what information collection activity or ICR does this apply?

Affected Entities: Entities potentially affected by this action are manufacturers, distributors, and importers of aerosol coatings. These affected entities fall within the North American Industry Classification System (NAICS) Code 32551, "Paint and Coating Manufacturing" and NAICS Code 325998 "All Other Miscellaneous Chemical Production and Preparation Manufacturing".

Title: National Volatile Organic Compound (VOC) Emission Standards for Aerosol Coatings (40 CFR Part 59, Subpart E).

ICR number: EPA ICR Number 2289.02, OMB Control Number 2060–0617.

ICR status: This ICR is currently scheduled to expire on September 30, 2011. 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, are 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:

The EPA is required, under section 183(e) of the CAA, to regulate volatile organic compounds emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Aerosol coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart E. The reports required under the standards enable EPA to identify coating formulations manufactured, imported or distributed in the United States, and to determine the product-weighted reactivity. The ICR addresses the burden for activities conducted in three years increments after promulgation of the national volatile organic compound (VOC) emission standards for aerosol coatings. The regulated entities read instructions to determine how they were affected by the rule. New and existing regulated entities submit an initial notification. Regulated entities are required to submit notifications of changes in the products or company information and to maintain records. In addition, regulated entities are required to submit triennial reports of formulation data and VOC usage.

Burden Statement:

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 199 hours per respondent over the course of the 3 year triennial reporting period. 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; 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.

The bottom line respondent burden hours and cost are calculated by summing all costs for the reporting activities and the total costs for the recordkeeping activities over the course of the three year triennial reporting period. The annual average burden and costs for the first 3 years are 12,100 hours and $857,331. The annual average burden equals the sum of the burden hours in Years 1 (12,189), 2(8359), and 3 (15,818), divided by 3. The average costs equals the sum of the average costs in Years 1 (862,764), 2(578,545), and 3 (1,130,685), divided by 3.

The average burden hours per respondent equals the total average burden (12,100) divided by the average number of respondents (61), or about 199 hours per respondent. The total average cost per respondent equals the total average cost ($857,331) divided by the total respondents (61), or about $14,000.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 61.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: One or less per year.

Estimated total annual burden hours: 199 hours, averaged over 3 years. This estimate includes triennial reporting requirements.

Estimated total annual costs: $860,000. This includes the estimated average annual cost including triennial reporting, an estimated burden cost of $ 0, and an estimated cost of $ 0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There are no changes being made to the estimates in this ICR from what EPA estimated in the currently approved ICR.

What is the next step in the process for this icr?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: April 20, 2011.

Steve Fruh,

Acting Director, Sector Policies and Programs Division.

[FR Doc. 2011–10609 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0478, FRL–9300–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Fuels and Fuel Additives: Gasoline Volatility (Renewal)

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 1, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0478, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code: 28221T, 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: James W. Caldwell, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; e-mail address: *caldwell.jim@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 November 30, 2010 (75 FR 74044), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. 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–OAR–2007–0478, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation 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 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://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 *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Regulation of Fuels and Fuel Additives: Gasoline Volatility (Renewal).

ICR numbers: EPA ICR No. 1367.09, OMB Control No. 2060–0178.

ICR Status: This ICR is scheduled to expire on May 31, 2011. 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 are 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: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP is subject to a Federal standard of 7.8 psi or 9.0 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi.

Gasoline that contains 9 volume percent to 10 volume percent ethanol is subject to a standard that is 1.0 psi greater. As an aid to industry compliance and EPA enforcement, the Product Transfer Document (PTD), which is prepared by the producer or importer and which accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol in the 9 to 10 percent range with gasoline which does not contain ethanol in that range. Such mixing would likely result in a gasoline which is in violation of its RVP standard. Also, a party wishing a testing exemption for research on gasoline that is not in compliance with the applicable volatility standard, must submit certain information to EPA. EPA has proposed additional PTD requirements for gasoline containing ethanol at 75 FR 68044 (November 4, 2010). Those requirements will be addressed in a separate ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average less than one minute. 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: Parties which produce or import gasoline containing ethanol, and parties seeking a testing exemption.

Estimated Number of Respondents: 2,000.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 12,330.

Estimated Total Annual Cost: $1,356,320, includes $20 in annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 1,667 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects EPA's updating of burden estimates. The decrease is due to an increase in computer-generated product transfer documents.

Dated: April 25, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–10425 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9300–9]

In the Matter of the Taylor Lumber and Treating Superfund Site, Sheridan, Oregon, Amendment to Agreement and Covenant Not To Sue, Pacific Wood Preserving of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: This Amendment to Agreement and Covenant Not to Sue ("Amendment") amends the 2002 Agreement and Covenant Not To Sue, Docket CERCLA–10–2002–0034 ("Original Agreement"), entered into by and between the United States on behalf of the U.S. Environmental Protection Agency ("EPA") and Pacific Wood Preserving of Oregon ("PWPO"). In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"), notice is hereby given of the proposed Agreement between the EPA and PWPO, subject to the final review and approval of the EPA and the U.S. Department of Justice.

The 2002 Original Agreement with PWPO provided a covenant not to sue for response costs at the Taylor Lumber and Treating Site, which PWPO was acquiring, in exchange for several obligations related to site operation and a commitment not to use certain hazardous products, including pentachlorophenol, at the Site. This Amendment removes the restriction on pentachlorophenol use and extends PWPO's commitment to collect and treat groundwater and maintain the asphalt cap until January 31, 2022, or for as long as PWPO owns or operates on the Property, whichever is later. This Amendment includes additional commitments including submittal of annual environmental audit reports; implementation of institutional controls; payment of EPA future oversight costs; and, a revised Statement of Work for future work to be performed by PWPO.

DATES: Comments must be received on or before May 16, 2011.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 office, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Sharon Eng, Paralegal, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; 206–553–0705. Comments should reference the Taylor Lumber and Treating Superfund Site in Sheridan, Oregon, EPA Docket No. CERCLA–10–2002–0034 and should be addressed to Jennifer Byrne, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Jennifer Byrne, Office of Regional Counsel, Mail Stop: ORC–158, Environmental Protection Agency, 1200 Sixth Avenue, Suite 900, Seattle, WA, 98101; *telephone number:* 206–553–0050; *fax number:* 206–553–0163; *e-mail address: byrne.jennifer@epa.gov.*

Dated: April 25, 2011.

Daniel D. Opalski,

Director, Office of Environmental Cleanup.

[FR Doc. 2011–10567 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Deaprtment of the Army, Corps of Engineers

[EPA–HQ–OW–2011–0409; FRL–9300–6]

EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act

AGENCY: Environmental Protection Agency (EPA); and U.S. Army Corps of Engineers, Department of the Army, Department of Defense.

ACTION: Notice of availability and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) are publishing for public comment proposed guidance that describes how the agencies will identify waters protected by the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act or CWA or Act) and implement the Supreme Court's decisions on this topic (*i.e., Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers (SWANCC)* (531 U.S. 159 (2001)) and *Rapanos* v. *United States* (547 U.S. 715 (2006)) *(Rapanos)).* The agencies believe that under this proposed guidance the number of waters identified as protected by the Clean Water Act will increase compared to current practice and this improvement will aid in protecting the Nation's public health and aquatic resources.

The proposed guidance is consistent with the principles established by the Supreme Court cases and is supported by the agencies' scientific understanding of how waterbodies and watersheds function.

In addition, the agencies believe that when the revised guidance is finalized and goes into effect, it will improve CWA program predictability and clarity regarding the scope of "waters of the United States" protected under the Act and that this improvement will have benefits for both the government and regulated parties. When finalized, this guidance would supersede previously issued guidance on this matter. This guidance will apply to all CWA programs, including section 303 water quality standards, section 311 oil spill prevention and response, section 401 water quality certification, section 402 National Pollutant Discharge Elimination System permits, and section 404 permits for discharges of dredged or fill material. The agencies seek public comment on all aspects of the proposed guidance, including interpretations and scientific underpinnings.

In addition to this guidance, the agencies expect to propose revisions of existing regulations to further clarify which waters are subject to CWA jurisdiction, consistent with the Supreme Court's decisions. Public comment on any such revisions will be requested at the time they are proposed.

DATES: Comments must be received on or before July 1, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0409 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: owdocket@epa.gov*. Include EPA–HQ–OW–2011–0409 in the subject line of the message.

• *Mail:* Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2011–0409.

• *Hand Delivery/Courier:* Deliver your comments to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2011–0409. Such deliveries are accepted only during the Docket's normal hours of operation, which are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The telephone number for the Water Docket is 202–566–2426.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2011–0409. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,*including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Avoid the use of special characters and any form of encryption, and ensure that electronic files are free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Some information, however, is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Downing, Office of Water (4502–T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; telephone number 202–566–1783; e-mail address: *CWAwaters@epa.gov.* Mr. David Olson, Regulatory Community of Practice (CECW–CO–R), U.S. Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314; telephone number 202–761–4922; email address: *david.b.olson@usace.army.mil.*

SUPPLEMENTARY INFORMATION: EPA and the Corps are seeking public comment on proposed joint agency guidance regarding identification of waters protected by the Clean Water Act. The agencies intention is that the final joint guidance will supersede the "Joint Memorandum" providing clarifying guidance on *SWANCC,* dated Jan. 15, 2003 (68 FR 1991, 1995), and "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos* v. *United States & Carabell* v. *United States,*" dated December 2, 2008, and available at *http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm.* Until that final guidance is issued, both the 2003 and 2008 CWA jurisdiction guidance remain in effect.

Congress enacted the Clean Water Act (CWA) "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1251(a)). One of the mechanisms adopted by Congress to achieve that purpose is a prohibition on the discharge of any pollutants into "navigable waters" except in compliance with other specified sections of the CWA (33 U.S.C. 1311(a) and 1362(12)(A)). In most cases, this means compliance with a permit issued pursuant to CWA section 402 (33 U.S.C. 1342) or section 404 (33 U.S.C. 1344). The CWA provides that "[t]he term 'navigable waters' means the waters of the United States, including the territorial seas" (33 U.S.C. 1362(7)). EPA and the Corps have further defined the term "waters of the United States" in regulations (40 CFR 230.3(s) and 33 CFR 328.3(a); substantively similar regulatory definitions appear at 40 CFR 110.1, 112.2, 116.3, 117.1, 122.2, 232.2, 300.5, part 300 App. E, 302.3 and 401.11).

The U.S. Supreme Court has addressed the scope of waters of the United States protected by the CWA in three cases, two of which are specifically addressed by the draft guidance. In *SWANCC,* the Court addressed the question of CWA jurisdiction over isolated ponds, and concluded that CWA jurisdiction could not be based solely on the presence of migratory birds. In *Rapanos,* the Court addressed CWA protections for wetlands adjacent to tributaries, and issued five opinions with no single opinion commanding a majority of the Court. Neither *SWANCC* nor the opinions in *Rapanos* invalidated any of the regulatory provisions defining "waters of the United States." The Court also addressed the question of CWA jurisdiction in an earlier case, *Riverside Bayview Homes.* While not specifically addressed in the current guidance, this case informed the Court's decisions in the latter two cases.

The agencies believe it is advisable to replace existing guidance documents interpreting *SWANCC* and *Rapanos* in order to implement the CWA in a manner that is consistent with those opinions, reflects the best available science, and recognizes recent field implementation experience. By reflecting such developments, the proposed guidance made available today for public comment is expected, once it is finalized after considering all comments received, to provide clearer direction to field staff in implementing the Court decisions and reduce uncertainty in the regulated community.

EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act

Dated: April 25, 2011.

Nancy K. Stoner,

Acting Assistant Administrator for Water Environmental Protection Agency.

Dated: April 26, 2011.

Jo Ellen Darcy,

Assistant Secretary of the Army (Civil Works), Department of the Army.

[FR Doc. 2011–10565 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9300–8]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT represents diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The purpose of this meeting is to: (1) Discuss NACEPT's second advice letter on EPA workforce issues, and (2) continue developing recommendations on the need for innovative technologies to identify, measure, and reduce environmental risks faced by vulnerable populations. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ofacmo/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a two-day public meeting on Thursday, May 19, 2011, from 8:30 a.m. to 6 p.m. and Friday, May 20, 2011, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn Washington Hotel, 815 14th Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* (202) 564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Megan Moreau at (202) 564–5320 or *moreau.megan@epa.gov* by Friday, May 13, 2011. The meeting is open to the public, with limited seating on a first-come, first-served basis. Members of the public wishing to attend should contact Megan Moreau at (202) 564–5320 or *moreau.megan@epa.gov* by May 13, 2011.

Meeting Access: For information on access or services for individuals with disabilities, please contact Megan Moreau at (202) 564–5320 or *moreau.megan@epa.gov*. To request accommodation of a disability, please contact Megan, preferably 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 21, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–10563 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9301–7]

Notice of Two Proposed Agreements, a CERCLA Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser Related to The Former Caribbean Petroleum Refining, LP Facility, Bayamon, Puerto Rico, and a Proposed RCRA Compliance and Prospective Purchaser Agreement Related to Gasoline Service Stations' Underground Storage Tanks Currently Owned by Caribbean Petroleum Corporation at Locations Throughout the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: This Notice alerts the public to two proposed administrative settlements for which public comment is requested. In one, Puma Energy, Caribe LLC ("Puma") and the U.S. Environmental Protection Agency ("EPA") propose to enter into an agreement and order on consent for a removal action by a bona fide prospective purchaser concerning the former Caribbean Petroleum Refining, LP ("CPR") facility located in Carr #28, KM. 2, Luchetti Industrial Park, Bayamon, in the Commonwealth of Puerto Rico, Docket Number CERCLA–02–2011–2003 (referred to as the "CERCLA Agreement") in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601–9675. In the other proposed agreement (referred to as the "RCRA UST Agreement"), Puma, the United States on behalf of EPA, and the Commonwealth of Puerto Rico on behalf of the Puerto Rico Environmental Quality Board propose to enter into an underground storage tank ("UST") compliance and prospective purchaser agreement, Index Number RCRA–02–2011–7504, in accordance with Subtitle I of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6991–6991m, concerning issues related to UST systems at one hundred and forty-seven (147) gasoline service stations currently owned or leased by Caribbean Petroleum Corporation ("CPC") and located throughout the Commonwealth of Puerto Rico. Pursuant to a sale authorized by the United States Bankruptcy Court for the District of Delaware, Puma has been approved to purchase the former CPR facility and the CPC service stations in a sale scheduled to occur in early May 2011. Puma has agreed to perform certain cleanup actions at the former CPR facility in the proposed CERCLA Agreement. In addition, with regard to the service stations, Puma has agreed in the proposed RCRA UST Agreement to assume responsibilities for the UST systems and required cleanup work and to make certain improvements at the service stations that are not required by law. The proposed CERCLA Agreement includes a covenant by the United States not to sue Puma pursuant to Sections 106 and 107(a) of CERCLA for existing contamination at the former CPR facility. The proposed RCRA UST Agreement includes a covenant by the United States not to sue Puma pursuant to Section 9006 of RCRA, 42 U.S.C. 6991e, for violations of the Commonwealth of Puerto Rico Underground Storage Tank Control Regulations, Puerto Rico Administrative Regulation Number 4362, that exist at the one hundred and forty-seven (147) service stations as of the date of Puma's acquisition or that arise within ninety days of the date of acquisition by Puma. The Commonwealth of Puerto Rico is also providing Puma with a covenant not to sue in the proposed RCRA UST Agreement. The covenants in both Agreements are subject to specified conditions. For seven (7) days following the date of publication of this notice, the Agency will receive written comments relating to the two proposed Agreements. The Agency will consider all comments received and may modify or withdraw its consent to either or both of the Agreements if comments received disclose facts or considerations which indicate that the Agreements are inappropriate, improper, or inadequate. Because of strict deadlines in the bankruptcy proceeding involving the corporations which presently own the CPR facility and own or have lease rights at the service stations, the deadline for receipt of public comments cannot be extended.

DATES: Comments must be submitted on or before May 9, 2011.

ADDRESSES: The proposed Agreements can be viewed online at *http://www.epa.gov/region2/agreements_with_*

prospective_purchaser_puma_energy_caribe.html. They are also available for public inspection at the U.S. Environmental Protection Agency Caribbean Office, Office of Regional Counsel, Centro Europa Building, 1492 Ponce de Leon Avenue, Mezzanine Level, Santurce, Puerto Rico 00907–4127, and at the U.S. Environmental Protection Agency, 290 Broadway, 18th Floor Records Center, New York, New York 10007–1866. A copy of the proposed CERCLA Agreement may be obtained from Beverly Kolenberg, Assistant Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–3167, and the RCRA UST Agreement may be obtained from Rudolph Perez, Assistant Regional Counsel, at the same address, (212) 637–3220. Comments concerning the CERCLA Agreement should reference the CERCLA Agreement, EPA Docket No. CERCLA–02–2011–2003, and should be sent by e-mail to *kolenberg.beverly@epa.gov* or by overnight mail to Beverly Kolenberg, Assistant Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866. Comments concerning the RCRA UST Agreement should reference the RCRA UST Agreement, Index Number RCRA–02–2011–7504, and should be sent by 2MY3.e-mail to *perez.rudolph@epa.gov* or by overnight mail addressed to Rudolph Perez, Assistant Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Beverly Kolenberg, Assistant Regional Counsel at the address, e-mail or telephone number stated above.

Dated: April 21, 2011.

George Pavlou,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 2011–10707 Filed 4–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communication Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 1, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via e-mail *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1145.

Title: Structure and Practices of the Video Relay Service Program, CG Docket No. 10–51.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 14 respondents; 1,421 responses.

Estimated Time per Response: 1 minute (.017 hours) to 25 hours.

Frequency of Response: Annual, monthly, on occasion, one-time, and semi-annually reporting requirements; recordkeeping and third party disclosure requirements.

Obligation To Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at Section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 4,482 hours.

Total Annual Cost: $35,600.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 6, 2011, in document FCC 11–54, the Commission released a *Report and Order* adopting final rules designed to eliminate the waste, fraud and abuse that has plagued the VRS program and had threatened its ability to continue serving Americans who use it and its long-term viability. The *Report and Order* contains potential information collection requirements with respect to the following seven requirements, all of which aims to ensure the sustainability and integrity of the TRS program and the TRS Fund. Though the *Report and Order* emphasizes VRS, many of the requirements also apply to other or all forms of TRS—which includes the adoption of the interim rule, several new information collection requirements, and all the proposed information collection requirements, *except* the "*Transparency and the Disclosure of Provider Financial and Call Data*" requirement.

(a) *Provider Certification Under Penalty of Perjury.* The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a TRS provider shall certify, under penalty of perjury, that: (1) Minutes submitted to the Interstate TRS Fund (Fund) administrator for compensation were handled in compliance with section 225 of the Act and the Commission's rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates or methodologies are true and correct.

(b) *Requiring Providers To Submit Information About New and Existing Call Centers.* VRS providers shall submit a written statement to the Commission and the TRS Fund administrator containing the locations

of all of their call centers that handle VRS calls, including call centers located outside the United States, twice a year, on April 1st and October 1st. In addition to the street address of each call center, the rules require that these statements contain (1) the number of individual CAs and CA managers employed at each call center; and (2) the name and contact information (phone number and e-mail address) for the managers at each call center. (2) VRS providers shall notify the Commission and the TRS Fund administrator in writing at least 30 days prior to any change to their call centers' locations, including the opening, closing, or relocation of any center.

(c) *Data Filed With the Fund Administrator To Support Payment Claims.* VRS providers shall provide the following data associated with each VRS call for which a VRS provider seeks compensation in its filing with the Fund Administrator: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated. (2) All VRS and IP Relay providers shall submit speed of answer compliance data to the Fund administrator.

(d) *Automated Call Data Collection.* TRS providers shall use an automated record keeping system to capture the following data when seeking compensation from the Fund: (1) the call record ID sequence; (2) CA ID number; (3) session start and end times, at a minimum to the nearest second; (4) conversation start and end times, at a minimum to the nearest second; (5) incoming telephone number (if call originates with a telephone) and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.

(e) *Record Retention.* Internet-based TRS providers shall retain the following data that is used to support payment claims submitted to the Fund administrator for a minimum of five years, in an electronic format: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.

(f) *Third-Party Agreements.* VRS providers shall maintain copies of all third-party contracts or agreements so that copies of these agreements will be available to the Commission and the TRS Fund administrator upon request. Such contracts or agreements shall provide detailed information about the nature of the services to be provided by the subcontractor.

(2) VRS providers shall describe all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, in the providers' annual submissions to the TRS Fund administrator.

(g) *Whistleblower Protection.* TRS providers shall provide information about these TRS whistleblower protections, including the right to notify the Commission's Office of Inspector General or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to their employees in writing (*e.g.* in employee handbooks, policies and procedures manuals, or bulletin board postings—either online or in hard copy) must also explicitly include these TRS whistleblower protections in those written materials.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–10343 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 31, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. *Comments are requested concerning:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 1, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0850.

Title: Quick Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form Number: FCC Form 605.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 130,000 respondents; 130,000 responses.

Estimated Time per Response: 26.4 minutes (.44 hours).

Frequency of Response: On occasion and five and ten-year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 57,200 hours.

Total Annual Cost: $2,676,700.

Privacy Act Impact Assessment: Yes. Records may include information about individuals or households, *e.g.,* personally-identifiable information (PII), and the use(s) and disclosure of this information is governed by the requirements of a system of records notice (SORN), FCC/WTB–1, "Wireless Services Licensing Records." There are no additional impacts under the Privacy Act.

Nature and Extent of Confidentiality: To protect the privacy of its applicants, the FCC will redact the telephone number(s) of the applicants and the birth date of the Commercial Radio Operator applicants.

Needs and Uses: The Commission will submit this collection to the Office of Management and Budget (OMB) during this comment period as an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements).

The Commission is amending the FCC Form 605 Schedule D to rearrange the layout of Question 2 for Vanity Call Sign Change, to further clarify the filing instructions, and to define the term "in-law". The Commission is requesting an adjustment reduction in the number of respondents/responses from 175,000 to 130,000. There is an increase in the annual cost to the respondent due to an increase in the average filing fee required to accompany applications. The total annual cost increased by $138,000.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10475 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 22, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. *Comments are requested concerning:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 1, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director, (202) 418–0217. For additional information, contact [insert name, phone number and Internet address of OMD PRA analyst].

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1064.

Title: Regulatory Fee Assessment True-Ups.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit organizations.

Number of Respondents and Responses: 280 respondents; 280 responses.

Estimated Time per Response: 15 minutes (0.25 hours).

Frequency of Response: Annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Communications Law of 1934, as amended, 47 U.S.C. 4(i)–4(j), 8, 9, 303(r).

Total Annual Burden: 70 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality; however, respondents may request that materials or information submitted to the Commission be withheld from public inspection under 47 CFR Section 0.459 of FCC rules.

Needs and Uses: Section 9 of the Communications Act of 1934, as amended, 47 CFR Section 9, mandates that the Commission collect annual regulatory fees from its regulatees. To facilitate this effort, the Commission publishes various Public Notices and Fact Sheets each year that (1) announce when fees payments are due; (2) provide the current schedule of fee amounts for all service categories; and (3) provide guidance for making fee payments to the Commission.

The Commission mails fee assessment notifications to broadcast licensees and commercial mobile radio service (CMRS) licensees on an annual basis. (Note that beginning in Fiscal Year (FY) 2004, the Commission mailed fee assessment notifications to cable television operators. The Commission stopped this practice in FY 2007

because the method was ineffective and the data sent out on the notifications were unreliable. In OMB 3060–0855, Telecommunications Reporting Worksheet and Related Collections, FCC Form 499–A, FCC499–Q, the Commission has required regulatees to provide e-mail address and revenue amount as the fee assessment basis. The Commission plans to use these e-mail addresses collected in OMB 3060–0855 to transmit the fee assessment notifications in the future.

With these fee assessment notifications, we also provide regulatees with a "true-up" (*i.e.,* which is to fit, place or shape accurately), opportunity to contact the FCC to update or otherwise correct their assessed fee amounts well before the actual due date for payment of regulatory fees. Providing a "true-up" opportunity is necessary because the data sources that were used to generate the fee assessments may not be complete or accurate.

The Commission offers several ways for regulatees to "true-up" their assessed fee amount. Regulatees may (1) call the Commission's Financial Operations Help Desk; (2) return their amended assessment notification or otherwise send written correspondence to a designated Commission mailing address; and/or (3) use a Commission-authorized Web site at http://*www.fcc.fees.com* <*http://www.fcc.fees.com*/> to key-in corrections to their assessment information.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10491 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 31, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. *Comments are requested concerning:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 1, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0508.

Title: Part 1 and Part 22 Reporting and Recordkeeping Requirements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and state, local or tribal government.

Number of Respondents and Responses: 16,013 respondents; 16,013 responses.

Estimated Time per Response: .25 hours–10 hours

Frequency of Response: On occasion, quarterly, and semi-annual reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151(i), 154(j), 303, 308, 309 and 310.

Total Annual Burden: 5,974 hours.

Total Annual Cost: $518,800.

Privacy Act Impact Assessment: Yes. The Commission has a System of Records, FCC/WTB–1, "Wireless Services Licensing Record," which covers the personally-identifiable information (PII) that individual applicants may include in their submissions for licenses or grants of equipment authorization.

Nature and Extent of Confidentiality: There is a need for confidentiality with respect to filers who are individuals in this collection. Pursuant to section 208(b) of the E–Government Act of 2002, 44 U.S.C. 3501, in conformance with the Privacy Act of 1974, 5 U.S.C. 552(a), the Commission's Wireless Telecommunications Bureau (Bureau) instructs licensees to use the FCC's Universal Licensing System (ULS), Antenna Structure Registration (ASR), Commission Registration System (CORES), and related systems and subsystems to submit information. CORES is used to obtain a FCC Registration Number (FRN) and password, after which one must register all current call sign and ASR numbers associated with a FRN within the Bureau's system of records (ULS database). Although ULS stores all information pertaining to the individual licensee via the FRN, confidential information is accessible only by persons or entities that hold the password for each account and the Bureau's licensing staff. Upon the request for a FRN, the individual licensee is consenting to make publicly available, via the ULS database, all information that is not confidential in nature.

Needs and Uses: The Commission is requesting OMB approval for a revision of this information collection (IC). The Commission has significantly reduced the burden in this information collection because we have streamlined and eliminated outdated rule sections; eliminated rule requirements that are covered under other OMB control numbers, and eliminated rule sections that were part of this collection but are not information collections, but instead are policies the Commission published in the public interest. Finally, any duplicate information collections were also removed from this IC.

The information collected pursuant to rules in Part 22 of the Commission's rules is primarily used by Commission staff to determine, on a case-by-case basis, whether or not to grant licenses authorizing construction and operation of wireless telecommunications facilities to qualified applicants and licensees, who supply this information when apply for such licenses.

Additionally, the information is sometimes used by Commission staff to develop statistics about the demand for various wireless telecommunications licenses and about the performance of the licensing process itself, and on occasion for rule enforcement purposes.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10474 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 11–745]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Tuesday, May 17, 2011, 9:30 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 11–745 released April 26, 2011. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 17, 2011, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Tuesday, May 17, 2011, 9:30 a.m.*

1. Announcements and Recent News.
2. Approval of Transcript—Meeting of March 9, 2011.
3. Report of the North American Numbering Plan Administrator (NANPA).
4. Report of the National Thousands Block Pooling Administrator (PA).
5. Report of the Numbering Oversight Working Group (NOWG).
6. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent.
7. Report of the Billing and Collection Working Group (B&C WG).
8. Report of the North American Portability Management LLC (NAPM LLC).
9. Implementation of FCC Order on LNPA Selection Process.
10. Report of the Local Number Portability Administration (LNPA) Working Group.
11. Status of the Industry Numbering Committee (INC) activities.
12. Report of the Future of Numbering Working Group (FoN WG).
13. Summary of Action Items.
14. Public Comments and Participation (5 minutes per speaker).
15. Other Business.

Adjourn no later than 5 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Deborah Blue,

Program Analyst, Wireline Competition Bureau.

[FR Doc. 2011–10606 Filed 4–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities; Submission for OMB Review; Joint Comment Request

AGENCIES: Federal Deposit Insurance Corporation (FDIC) and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC and the OTS (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On February 8, 2011, the agencies requested public comment for 60 days on their proposal to require savings associations currently filing data through the Branch Office Survey System (BOS) with the OTS to convert to filing data through the Summary of Deposits Survey (SOD) with the FDIC (76 FR 7087). The BOS and the SOD are currently approved collections of information. One comment letter was received on the proposal. After considering the comment received on the proposal, the agencies hereby give notice of their plan to proceed with the reporting changes proposed and will submit the proposal to OMB for review and approval.

DATES: Comments must be submitted on or before June 1, 2011.

ADDRESSES: Interested parties are invited to submit written comments to either or both of the agencies. All

comments, which should refer to the OMB control number(s), will be shared between the agencies.

FDIC: You may submit comments, which should refer to "Summary of Deposits Survey, 3064–0061," by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov.* Include "Summary of Deposits Survey, 3064–0061" in the subject line of the message.
- *Mail:* Gary A. Kuiper, (202) 898–3877, Counsel, Attn: Comments, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by "1550–0004 (Branch Office Survey System)," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include "1550–0004 (Branch Office Survey System)" in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0004 (Branch Office Survey System)."
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0004 (Branch Office Survey System)."

Instructions: All submissions received must include the agency name and OMB Control Number (1550–0004) for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact either of the agency clearance officers whose names appear below.

In addition, copies of the reporting forms and instructions for the SOD can be obtained at the FDIC Web site (*http://www2.fdic.gov/sod/*). Copies of the reporting forms and instructions for the BOS can be obtained at the OTS Web site (*http://www.ots.treas.gov/?p=BranchOfficeSurvey*).

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to standardize the yearly collection of branch information among all FDIC-insured entities. To accomplish this goal, the agencies are proposing to cease collection of branching and deposit data from OTS-regulated savings associations through the BOS and require this data be filed through the SOD. The SOD is currently the data collection facility used by all other FDIC-insured entities. The SOD and the BOS are currently approved collections of information for each agency.

1. *Report Title:* Summary of Deposits Survey (SOD).

Form Number: 8020/05.

Frequency of Response: Annually.

Affected Public: Business or other for-profit.

FDIC

OMB Number: 3064–0061.

Current:

Estimated Number of Respondents: 6,000 insured commercial banks and state-chartered savings banks.

Estimated Time per Response: 3 burden hours.

Estimated Total Annual Burden: 18,000 burden hours.

Proposed:

Estimated Number of Respondents: 6,535 insured commercial banks, state-chartered savings banks, and savings associations.

Estimated Time per Response: 3 burden hours.

Estimated Total Annual Burden: 19,605 burden hours.

The current annual burden for the SOD is estimated to be 18,000 hours. Approximately 6,000 institutions spend an average of three hours to prepare the SOD. It is estimated that some institutions with only two or three branches will take 15 minutes to complete the survey while larger banks usually have the branch information in their system for easy retrieval to complete the SOD form.

As discussed in more detail later in this notice, there are differences in the panel of institutions required to report data through the SOD and those required to report data through the BOS. In summary, single-office institutions are not required to file the SOD, but are required to file the BOS. OTS estimates there are approximately 180 single-office savings associations that are currently required to file data through the BOS but would not be required to file data through the SOD.

Another difference in the panel of institutions required to file through the BOS compared to through the SOD are trust-only institutions. All trust-only savings associations are exempt from filing data through the BOS. However, trust-only institutions with more than one office location would be required to file data through the SOD. There is one trust-only savings association with more than one office location and, hence, this

institution would be required to file through the SOD. Given these changes in the panel of required filers, the proposed burden estimates above for filing through the SOD reflect a net reduction of 180 savings associations from the total 715 OTS-regulated savings associations required to file through the BOS.

2. *Report Title:* Branch Office Survey System (BOS).

Form Number: OTS 248 (for savings associations).

Frequency of Response: Annually.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0004.

Current:

Estimated Number of Respondents: 715 savings associations.

Estimated Time per Response: 3 burden hours.

Estimated Total Annual Burden: 2,145 burden hours.

Proposed:

Estimated Number of Respondents: Not applicable.

Estimated Time per Response: Not applicable.

Estimated Total Annual Burden: Not applicable.

The burden estimates above for filing through the BOS reflect a reduction for the 16 trust-only savings associations that would not be required to file through the BOS from the total population of 731 OTS-regulated savings associations.

General Description of Reports

These information collections are mandatory. The FDIC is authorized to collect these data under section 9 (Eighth) of the Federal Deposit Insurance Act (12 U.S.C. 1819), which gives the FDIC the power to require information and reports from banks to carry out its statutory responsibilities regarding bank supervision. The survey has been conducted on a yearly basis since 1972.

OTS is authorized to collect this data under Sections 3(b)(2) and 4(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1462a(b)(2) and 1463(a)(2)).

All data collected through the BOS and the SOD submissions are available to the public.

Abstract

Institutions submit SOD and BOS data to the agencies annually for the agencies' use in monitoring branching activity, reviewing changes in levels of deposits at branches, and in evaluating changes in market share of deposits by location. SOD and BOS submissions also provide branch deposit data necessary for evaluating institutions' corporate applications, for identifying areas of focus for on-site and off-site examinations, and for monetary and other public policy purposes. In addition, SOD data are used to measure the host state loan-to-deposit ratios used to determine compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, which generally prohibits a bank from establishing or acquiring a branch or branches outside its home state primarily for the purpose of deposit production.

Effect of Recent Legislation

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203 (the Dodd-Frank Act) was enacted into law on July 21, 2010. Title III of the Dodd-Frank Act abolishes the OTS, provides for its integration with the Office of the Comptroller of the Currency (OCC) effective as of July 21, 2011 (the "transfer date"), and transfers its functions to the OCC, the Board of Governors of the Federal Reserve System (Board), and the FDIC.

Under Title III of the Dodd-Frank Act, all functions of the OTS relating to federal savings associations and rulemaking authority for all savings associations are transferred to the OCC. All functions of the OTS relating to state-chartered savings associations (other than rulemaking) are transferred to the FDIC. All functions of the OTS relating to supervision of savings and loan holding companies (including rulemaking) are transferred to the Board.

After careful review, the agencies believe having common financial reports and reporting processes among all FDIC-insured institutions is more efficient and will lead to more uniform comparisons of financial condition, performance, and trends. For these reasons, the OTS is proposing to eliminate the BOS data collection process used by OTS-regulated savings associations and require these entities to file this information using the SOD processes and systems. This proposal would standardize the reporting routines and processes required of all FDIC-insured entities for branch office data through the SOD.

Current Actions

On February 8, 2011, the agencies requested public comment (76 FR 7087) on their proposal to implement changes to savings associations' branch office reporting requirements effective June 30, 2011. These changes are intended to provide a consistent data collection needed for reasons of safety and soundness or other public purposes. The proposed changes would require OTS-regulated savings associations to cease filing through the BOS and commence filing through the SOD, thus standardizing the yearly collection of branch office information, including deposit data, between OTS-regulated savings associations and all other FDIC-insured entities.

The agencies collectively received one comment from a bankers' association. The bankers' association did not object to the proposed change taking effect in 2011, but indicated that the "FDIC and OTS should be flexible with institutions who have limited resources and/or complex reports." In particular, the commenter mentioned that thrifts had a longer filing period to file the BOS data than the FDIC gives SOD filers. In response to this concern, the FDIC will grant, for the 2011 SOD cycle only, an additional fifteen days for thrifts to submit their SOD data to the FDIC. All thrifts will be expected to file the 2011 SOD no later than August 15, 2011. In future years, a July 31 deadline will apply to all filers. In summary, after considering the comment received on the proposal, the agencies plan to proceed with the reporting changes proposed, with the provision for an additional fifteen days for thrifts to file the SOD in 2011 only, and will submit the proposal to OMB for review and approval. Thus, savings associations would commence filing the SOD as of the June 30, 2011, report date.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared between the agencies. All comments will become a matter of public record.

Dated at Washington, DC, this 26th day of April 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: April 26, 2011.

Vicki Hawkins-Jones,

Acting Deputy Chief Counsel, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–10592 Filed 4–29–11; 8:45 am]

BILLING CODE 6714–01–P; 6720–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission

DATE AND TIME: Thursday, May 5, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of the Minutes for the Meeting of April 7, 2011.

Proposed Final Audit Report on the Service Employees International Union.

Committee on Political Education (SEIU COPE) (A09–28).

Audit Division Recommendation Memorandum on Freedom's Defense Fund (FDF) (A09–21).

Policy regarding Disclosure of Documents and Information in the Enforcement Process.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–10767 Filed 4–28–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 17, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Brian P. Short,* St. Paul, Minnesota; Carolyn P. Short, Flourtown, Pennsylvania; and Marianne D. Short, St. Paul, Minnesota; individually and as trustees of fourteen Short family trusts, and Kevin J. Short, Mahtomedi, Minnesota; Elizabeth J. Short, University Heights, Ohio; Colleen V. Short, Edina, Minnesota, on behalf of one or more of seventeen Short family trusts to join the Short Family Group; to retain voting shares of 215 Holding Company, Minneapolis, Minnesota, and thereby indirectly retain voting shares of First Farmers & Merchants National Bank, Luverne, Minnesota; First Farmers & Merchants National Bank, Fairmont, Minnesota; First Farmers & Merchants State Bank, Brownsdale, Minnesota; First Farmers & Merchants State Bank, Grand Meadow, Minnesota; First Farmers & Merchants National Bank, Le Sueur, Minnesota; and White Rock Bank, Cannon Falls, Minnesota.

Board of Governors of the Federal Reserve System, April 27, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–10530 Filed 4–29–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 May 27, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Piedmont Community Bank Holdings, Inc.,* Raleigh, North Carolina; to acquire at least 66 percent of the voting shares of Crescent Financial Corporation, and thereby indirectly acquire voting shares of Crescent State Bank, both in Cary, North Carolina.

B. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Teche Holding Company, MRP, L.L.C., Patrick Little, L.L.C., and Ross Little, Jr., L.L.C.,* all of New Iberia, Louisiana; to become bank holding companies by acquiring 100 percent of the voting shares of Teche Holding Company, and thereby acquire shares of Teche Federal Bank, all of New Iberia, Louisiana, upon its conversion to a bank.

Board of Governors of the Federal Reserve System, April 27, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–10531 Filed 4–29–11; 8:45 am]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Amendment to System of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of Proposed New Routine Use in OGE/GOVT–1 System of Records.

SUMMARY: The U.S. Office of Government Ethics (OGE) proposes to add a new Routine Use to OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. This action is necessary to comply with the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). OGE last published OGE/GOVT–1 in 68 FR 3097–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003).

DATES: This action will be effective without further notice on June 1, 2011 unless comments received before this date would result in a contrary determination.

ADDRESSES: You may submit comments to OGE on this Privacy Act Notice by any of the following methods:

E-mail: usoge@oge.gov (Include reference to "Privacy Act New Routine Use Comment" in the subject line of the message).

Fax: 202–482–9237, Attention: Elaine Newton, Privacy Officer.

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Elaine Newton, Privacy Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Newton at the Office of Government Ethics; telephone: 202–482–9265; TTY: 800–877–8339; FAX: 202–482–9237; E-mail: *enewton@oge.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552(a), this document provides public notice that the OGE is proposing to adopt a new Routine Use (l.) in OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. This addition will not affect any Privacy Act rights afforded individuals who are the subject of such records. The new Routine Use is being proposed to provide relevant and necessary information to Federal Government Web sites and to any person in support of the Ethics in Government Act of 1978, 5 U.S.C. app. 110; the conflicts of interest criminal statutes, 18 U.S.C. 202–209; the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635; Memorandum on Transparency and Open Government, 74 FR 4685 (Jan. 26, 2009); and in support of this Administration's core principles of the business of government, transparency, participation, collaboration and innovation.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Management and Budget.

Routine Use (l.)

(l.) to disclose on the OGE Web site and to otherwise disclose to any person, including other departments and agencies, any written ethics agreements filed with the Office of Government Ethics, pursuant to 5 CFR 2634.803, by an individual nominated by the President to a position requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report.

Approved: April 25, 2011.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. 2011–10628 Filed 4–29–11; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Funding Opportunity Announcement DD11–005, Initial Review

Correction: This notice was published in the **Federal Register** on April 11, 2011, Volume 76, Number 69, Page 19995. The time for the aforementioned meeting has been changed to the following:

Time: 11 a.m.–5 p.m.

Contact Person for More Information: Brenda Colley Gilbert, Ph.D., M.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE., Mailstop K92, Atlanta, Georgia 30333, *Telephone:* (770) 488–6295.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 26, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–10546 Filed 4–29–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 15984–15985, dated March 22, 2011) is amended to reflect the reorganization of the National Center on Birth Defects and Developmental Disabilities, Office of Noncommunicable Diseases, Injury and Environmental Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete item (7) of the functional statement for the Office of the Director (CUB 1), National Center on Birth Defects and Developmental Disabilities (CUB) and insert the following: (7) serves as primary liaison between NCBDDD and the CDC Office of the Associate Director for Communications and its associated research and practice.

Following the title and functional statement for the Division of Human Development and Disability (CUBC), insert the following:

Office of the Director (CUBC1). (1) Provides leadership and guidance on strategic planning and implementation, program priority setting, and policy development, to advance the mission of the division, NCBDDD, and CDC; (2) develops goals, objectives, and budget; monitors progress and allocation of resources, and reports accomplishments, future directions, and resource requirements; (3) facilitates scientific, policy and program collaboration among divisions and centers, and between CDC and other federal/non-federal partners; (4) promotes advancement of science throughout the division, supports program evaluation, and ensures that research meets the highest standards in the field; (5) provides medical expertise

and consultation to planning, projects, policies and program activities; (6) advises the NCBDDD Office of the Director on matters relating to human development and disability and coordinates division responses to requests for technical assistance or information on activities supported by the division; (7) develops and produces communications tools and public affairs strategies to meet the needs of division programs and mission; and (8) represents the division at official professional and scientific meetings, both within and outside of CDC.

Child Development and Disability Branch (CUBCB). (1) Collaborates with and provides technical assistance, consultation, and training to local, state, federal, and international agencies, universities, public and private organizations on optimal child development, disability, and health promotion of children with or at risk of disabilities; (2) promotes development of data standards and standardized procedures for data management and program effectiveness and costs for systems supporting optimal child development, and disability activities; (3) coordinates and collaborates on recommendations for policy development at the federal and state levels and with the private sector to promote social participation and optimal child development, including those with or at risk for disabilities; (4) provides scientific leadership and technical assistance in the development, application, improvement and evaluation of public health activities, systems, and interventions supporting optimal child development, including those with or at risk for disabilities; (5) conducts research to expand the knowledge base related to optimal early development and health of children with or at risk of disabilities, and investigates costs and effectiveness of intervention programs and systems; (6) supports the development and utilization of activities necessary for health promotion and prevention of secondary conditions in children of all ages who have or are at risk for disabilities and their families; (7) supports and enhances public health capacity, including surveillance and data sharing, for promoting optimal health and development of infants and children with or at risk for disabilities and their families across the lifespan; (8) develops and disseminates information from surveillance and epidemiologic research, health promotion and disease prevention strategies, and policies related to public health aspects of typical and atypical child development; and (9) provides leadership in health promotion and child development for infants and children with or at risk for delays or disabilities and their families.

Disability and Health Branch (CUBCC). (1) Collaborates with and provides technical assistance, consultation, and training to local, state, federal, and international agencies, universities and governmental and non-governmental organizations on disability and health related issues; (2) collaborates with local, state, federal, and international agencies, and appropriate governmental and non-governmental organizations to develop, review, and implement policies that advance the health of people with disabilities across the lifespan; (3) provides scientific leadership in the development, application, extension, and improvement of health surveillance and tracking systems related to disability and health; (4) conducts and supports both qualitative and quantitative research to expand the knowledge base related to disability and health across the lifespan; (5) supports the development and utilization of secondary condition prevention activities for people with specific or categorical disabilities; (6) supports and coordinates state public health capacity for promoting the health of people with disabilities; (7) disseminates information from surveillance and health services research, epidemiological research, health promotion and disease prevention strategies, and policies related to disability and health; (8) establishes collaborative partnerships with public and private organizations of national and international stature to promote the health of people with disabilities; (9) collaborates with funded nongovernmental agencies to disseminate best practices, identify areas of need, facilitate development and distribution of educational materials, and provide informational resources to states and affected populations and their caregivers; and (10) provides leadership in health promotion and disease prevention across the lifespan for individuals with disabilities.

Dated: April 10, 2011.

James D. Seligman,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10504 Filed 4–29–11; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 15984–15985, dated March 22, 2011) is amended to reflect the reorganization of the National Center for Immunization and Respiratory Diseases, Office of Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in its entirety the function statements for the National Center for Immunization and Respiratory Disease (CVG) and the Office of the Director (CVG1) and insert the following:

National Center for Immunization and Respiratory Diseases (CVG). The National Center for Immunization and Respiratory Diseases (NCIRD) prevents disease, disability, and death through immunization and by control of respiratory and related diseases. In carrying out its mission, NCIRD: (1) Provides leadership, expertise, and service in laboratory and epidemiological sciences, and in immunization program delivery; (2) conducts applied research on disease prevention and control; (3) translates research findings into public health policies and practices; (4) provides diagnostic and reference laboratory services to relevant partners; (5) conducts surveillance and research to determine disease distribution, determinants, and burden nationally and internationally; (6) responds to disease outbreaks domestically and abroad; (7) ensures that public health decisions are made objectively and based upon the highest quality of scientific data; (8) provides technical expertise, education, and training to domestic and international partners; (9) provides leadership to internal and external partners for establishing and maintaining immunization, and other prevention and control programs; (10) develops, implements, and evaluates domestic and international public health policies; (11) communicates information to increase awareness,

knowledge, and understanding of public health issues domestically and internationally, and to promote effective immunization programs; (12) aligns the national center focus with the overall strategic goals of CDC; and (13) implements, coordinates, and evaluates programs across NCIRD, Office of Infectious Diseases (OID), and CDC to optimize public health impact.

Office of the Director (CVG1). (1) Provides leadership, expertise, and service in laboratory and epidemiological sciences and in immunization program delivery; (2) provides diagnostic and reference laboratory services to relevant partnerships; (3) works with OID to ensure spending plans, budget planning, and budget execution are in line with the overall infectious disease strategies and priorities; (4) ensures that the NCIRD strategy is executed by the divisions and aligned with overall CDC goals; (5) co-develops execution strategies for the center with the division directors; (6) provides program and science quality oversight; (7) builds leadership at the division and branch levels; (8) evaluates the strategies, focus, and prioritization of the division research, program, and budget activities; (9) identifies and coordinates synergies between center and relevant partners; (10) ensures that policy development is consistent and appropriate; (11) facilitates research and program activities by providing leadership support; (12) proposes resource priorities throughout the budget cycle; (13) ensures scientific quality, ethics, and regulatory compliance; (14) fosters an integrated approach to research, program, and policy activities; (15) liaises with HHS and other domestic and international immunization and respiratory disease partners as well as with NCIRD divisions; (16) coordinates center's emergency response activities related to immunization issues and complex acute respiratory infectious disease emergencies; (17) applies communication science, media principles, and web design to support NCIRD and CDC's efforts to reduce morbidity and mortality caused by vaccine-preventable and respiratory diseases; ensuring that communication distributed by the center is timely, accurate, clear and relevant to intended audiences; (18) provides guidance for key scientific and laboratory services in the functional areas of extramural research (research and non-research), human studies oversight and review, regulatory affairs; activities in the area of space planning, advising, coordination and evaluation, safety management and coordination, and shared services in controlled correspondence, and programmatic services in the area of workforce and career development; (19) provides and coordinates center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, the Vaccine Management Improvement Project and other administrative services; and (20) manages the coordination of workforce development and succession planning activities and provide human capital management, planning and training consultation services.

Office of Informatics (CVG12). (1) Manages all IT project costs, schedules, performances, and risks; (2) provides expertise in leading application development techniques in information science and technology to affect the best use of resources; (3) performs technical evaluation and/or integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with OID strategy; (4) provides access to quality data in support of programmatic data analysis; (5) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Security Officer; (6) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (7) ensures adherence to CDC enterprise architecture guidelines and standards; (8) consults with users to determine IT needs and to develop strategic and action plans; and (9) participates in the evolution, identification, development, or adoption of appropriate informatics standards in conjunction with the OID.

Office of Policy (CVG13). (1) Serves as liaison with CDC/OD and other Centers/Institutes/Offices (CIO) policy offices, other government agencies, and external partners on policy, program, legislative, and budgetary issues related to NCIRD; (2) leads annual NCIRD budget formulation and development of appropriations materials; (3) provides expertise and guidance for strategic planning and performance measurement; (4) oversees and coordinates NCIRD accountability activities, including Government Accountability Office and Inspector General studies, audits and reviews; (5) coordinates NCIRD OMB Paperwork Reduction Act clearances for non-immunization waiver activities; (6) conducts legislative monitoring and analysis; (7) provides NCIRD with leadership and advice in the management of Congressional and governmental relations; (8) serves as liaison to the CDC Office of Women's Health Committee and the CDC/ATSDR Minority Initiatives Coordinating Committee; (9) supports the NCIRD divisions with developing appropriate policy capacity; and (10) manages cross-cutting policy issues within NCIRD and, as appropriate, with other CIO and OD offices within CDC.

Office of Laboratory Science (CVG14). (1) Provides leadership, expertise and service in laboratory science; (2) represents NCIRD's interests in cross-cutting laboratory services in OID which include, but are not limited to, laboratory information systems, quality management systems and bioinformatics; (3) ensures a safe working environment in NCIRD laboratories; (4) collaborates effectively with other centers and offices in carrying out its functions; and (5) manages CDC's intellectual property (e.g., patents, trademarks, copyrights) and promotes the transfer of new technology from CDC research to the private sector to facilitate and enhance the development of diagnostic products, vaccines, and products to improve occupational safety.

Office of Health Communications Science (CVG15). (1) Support NCIRD's mission through the planning, development, implementation and evaluation of science-based health communication activities and programs; (2) applies communication science, media principles, and web design to support NCIRD and CDC's efforts to reduce morbidity and mortality caused by vaccine-preventable and respiratory diseases; (3) ensures that communication distributed by the center is timely, accurate, clear and relevant to intended audiences; (4) conducts projects that translate scientific and medical information into messages for a variety of audiences using an array of media/formats; (5) improves understanding of vaccine benefits and risks among partners, health care providers and public audiences; (6) improves understanding among specialized audiences such as policy-makers, public health officials nationally and internally of the center's work; (7) supports public health partners via technical assistance and other methods; (8) demonstrates best practices in writing using plain language and health literacy principles, creating culturally appropriate materials; and (9) coordinates CDC's pandemic influenza communication preparedness activities.

Office of Administrative Services (CVG16). (1) Provides direct and daily management and execution of domestic

travel processing for federal employees, Commissioned Corps and all CDC-invited guests; (2) provides direct management and execution of the administrative aspects of human resources across NCIRD, including training, and administration of policies and guidelines developed by Office of Human Resources, Atlanta Operations Center, Department of Health and Human Services, CDC Ethics Office, Financial Management Office, Office of Commissioned Corps Personnel, Center for Global Health, Office of Personnel Management, and Procurement and Grants Office; (3) provides direct management and execution of the coordination of office facilities, and supplies technical guidance and expertise regarding occupancy and facilities management to emergency situations; (4) provides direct and daily management and execution of the distribution, accountability and maintenance of CDC property and equipment; (5) provides direct management and execution of procurement requisitions, and contracts and performs administrative tasks related to initiating, processing and maintaining interagency agreements; (6) provides direct management and execution of the creation, organization, access, maintenance and disposition of CDC records, and of the establishment of policies and procedures coordinating a NCIRD response to Freedom of Information Act requests; and (7) provides direct management and execution of the coordination of logistics for Federal government committee meetings and NCIRD conferences.

Office of Science and Integrated Programs (CVG17). (1) Links strategies and priorities of the primarily programmatic-focused NCIRD divisions with those of primarily disease-based divisions; (2) facilitates development and ongoing implementation of integrated infectious respiratory disease (including influenza) surveillance, research, and prevention and control activities across the divisions, both domestically and globally, including supporting implementation of NCIRD's respiratory diseases strategic prevention priorities; (3) interfaces with other CDC CIOs working in the area of respiratory diseases; (4) coordinates and facilitates the center's overall respiratory and vaccine preventable disease scientific/research agenda; (5) assumes responsibility for the protection of human research subjects, scientific review, clearance of manuscripts and other written materials; (6) provides planning and coordination of overall surveillance strategies, preparedness, response, and prevention effectiveness related to a center-wide public health scientific agenda and in quantifying how programs and activities promote cost-effective and high impact prevention strategies with respect to immunization and other vaccine preventable disease programs; (7) provides leadership (agency and center-wide) for vaccine preventable and respiratory disease surveillance to include guidance and coordination of NCIRD surveillance activities and systems, as well as leadership on issues related to internal and external integration of CDC surveillance activities; (8) coordinates, facilitates and integrates domestic and international respiratory and vaccine preventable disease surveillance activities through existing methods while developing new approaches, tools and analyses for these activities; (9) fosters a multidisciplinary approach to epidemiology, statistics, informatics, laboratory methods and evaluation; (10) facilitates cross-cutting health services research and economic analyses in the area of vaccine preventable and respiratory diseases and immunization programs and their impact on and relationships to health insurance reform; (11) provides leadership in developing a center-wide prevention effectiveness priority agenda and facilitates the development and ongoing implementation of integrated modeling activities; (12) provides leadership in facilitating the development and implementation of the center's overarching influenza surveillance, research, and prevention strategy (pandemic and seasonal); and (13) provides leadership across the divisions with respect to linking preparedness and response elements to the overall influenza prevention and control strategy, and interfaces with other parts of CDC with respect to this strategy.

Dated: April 19, 2011.

James D. Seligman,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10503 Filed 4–29–11; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 15984–15985, dated March 22, 2011) is amended to reflect the reorganization of the Laboratory Science, Policy, and Practice Program Office, Office of Surveillance, Epidemiology and Laboratory Services, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete item (1) of the functional statement for Division of Laboratory Policy and Practice (CPGB), Laboratory Science, Policy, and Practice Program Office (CPG), and insert the following:

(1) Ensures coordination and liaison with the Office of Safety, Health and Environment (OSHE) on laboratory biosafety issues as part of the larger Quality Management Systems for laboratories.

Delete item (1) of the functional statement for Technology Management Branch (CPGBB) and insert the following:

(1) Coordinates with OSHE and other federal partners on cross-cutting safety issues.

Delete items (2), (3) and (4) of the functional statement for Technology Management Branch (CPGBB) and renumber the remaining items accordingly.

Dated: April 15, 2011.

Carlton Duncan,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10402 Filed 4–29–11; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report.

OMB No.: 0970–0106.

Description: The LIHEAP statute and regulations require LIHEAP grantees to report certain information to HHS concerning funds forwarded and funds subject to reallotment. The 1994 reauthorization of the LIHEAP statute, the Human Service Amendments of 1994 (Pub. L. 103–252), requires that the

Carryover and Reallotment Report for one fiscal year be submitted to HHS by the grantee before the allotment for the next fiscal year may be awarded. The Administration for Children and Families is requesting no changes in the collection of data with the Carryover and Reallotment Report, a form for the collection of data, and the Simplified Instructions for Timely Obligations of LIHEAP Funds and Reporting Funds for Carryover and Reallotment. The form clarifies the information being requested and ensures the submission of all the required information. The form facilitates our response to numerous queries each year concerning the amounts of obligated funds. Use of the form is voluntary. Grantees have the option to use another format.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Carryover and Reallotment Report	192	1	3	576

Estimated Total Annual Burden Hours: 576.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–10458 Filed 4–29–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0293]

Draft Guidance for Industry and FDA Staff: Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled "Draft Guidance for Industry and FDA Staff: Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling." The recommendations in this guidance are intended to improve the safety and effectiveness of devices with processing or reprocessing labeling. This draft guidance is not final; nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see § 10.115 (21 CFR 10.115(g)(5))), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by August 1, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Draft Guidance for Industry and FDA Staff: Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send a fax request to 301–847–8149 to receive a hard copy. Alternatively, you may submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to the office that you are ordering from to assist in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Steven Turtil, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1570, Silver Spring, MD 20993–0002, 301–796–6305; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, there has been a significant advance in knowledge and technology involved in reprocessing reusable medical devices. Additionally, there has been an evolution towards more complex reusable medical device designs that are more difficult to clean and disinfect or sterilize. The revision of this guidance, originally published in 1996, reflects scientific advances in this area. Under FDA labeling regulations (part 801 (21 CFR part 801)), a device must have adequate directions for use, which include instructions on preparing a device for use. Instructions on how to

reprocess (i.e., clean and disinfect or sterilize) a reusable device are critical to ensuring a reusable device is appropriately prepared for its next use.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on processing and reprocessing labeling for medical devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability is available for all CDRH guidance documents at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm,* and for CBER guidance documents at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive "Draft Guidance for Industry and FDA Staff: Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling," you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1748 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E are approved under OMB control number 0910–0120; the collections of information in part 801 are approved under OMB control number 0910–0485; and the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–10516 Filed 4–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0294]

Reprocessing of Reusable Medical Devices; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: "Reprocessing of Reusable Medical Devices Workshop." The purpose of the workshop is to discuss factors affecting the reprocessing of reusable medical devices and FDA's plans to address the identified issues. This workshop is part of an ongoing FDA effort to address patient exposure to inadequately reprocessed reusable medical devices with the overall goal to reduce the risk of infection. The topics to be discussed are: Factors affecting reprocessing quality, device design as it relates to reprocessing reusable medical devices, reprocessing methodologies, validation methodologies, and healthcare facility best practices.

Date and Time: The public workshop will be held on June 8, 2011, from 8:30 a.m. to 5:30 p.m. and June 9, 2011, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held in the Great Room at the FDA White Oak Conference Center, Bldg. 31, Rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD 20993.

Contact Person: Carol Krueger, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5437, Silver Spring, MD 20993, 301–796–3241, FAX: 301–847–8510, or e-mail: *Carol.Krueger@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Registration is free and on a first-come, first-served basis. Persons interested in attending this workshop must register online by 5 p.m. on June 1, 2011. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, on-site registration on the day of the public workshop will be provided beginning at 7:30 a.m. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. If you need special accommodations due to a disability, please contact Susan Monahan (e-mail: *Susan.Monahan@fda.hhs.gov* or phone: 301–796–5661) no later than June 1, 2011.

This workshop will also be Web cast. Persons interested in participating by Web cast must register online by 5 p.m. on June 1, 2011. Early registration is recommended because Web cast connections are limited. Organizations are requested to register all participants, but view using one connection per location. Web cast participants will be sent connection requirements.

To register for the public workshop, please visit the following Web site: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (or go to the FDA Medical Devices News & Events—Workshops & Conferences calendar and select this public workshop from the posted events list). Please provide complete contact information for each attendee, including: Name, title, affiliation, address, email, telephone and FAX number. For those without Internet access, please call the contact person to register. Registrants will receive confirmation once they have been accepted. You will be notified if you are on a waitlist.

This workshop includes a public comment session. During online registration you may indicate if you wish to make an oral presentation during a public comment session at the public workshop, and which topic you wish to address in your presentation. FDA has included general topics for comment in this document. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin. All requests to make oral presentations, as well as presentation materials, must be sent to the contact person by June 1, 2011.

SUPPLEMENTARY INFORMATION:

I. Background

Various types of medical devices used in healthcare settings, from surgical suction tips to complex endoscopes, are designed and labeled for use on multiple patients. The workshop will focus on medical devices that are intended for reuse after reprocessing, rather than third-party reprocessing of single-use-only medical devices.

Thousands of reusable medical devices requiring reprocessing are used every day in diagnosing and treating patients. FDA has received a number of reports of patient exposure to inadequately reprocessed medical devices and subsequent healthcare-associated infections (HAIs). Several reports contained evidence suggesting that inadequate reprocessing may have been a contributing factor in microbial transmission and subsequent infection. A definitive causal relationship between reusable device reprocessing and any patient infection is difficult to establish, because inadequate reprocessing is not often investigated as a cause when an HAI is diagnosed. Ensuring adequate reprocessing of reusable medical devices could reduce the incidence of HAIs associated with the use of a reprocessed medical device. This will decrease the public health burden of HAIs in terms of morbidity, mortality and cost.

The adequate reprocessing of reusable medical devices is a critically important factor in protecting patient safety. Inadequate reprocessing between patients can result in the retention of blood, tissue, and other biological debris (soil) in reusable medical devices. This soil can allow microbes to survive the high level disinfection or sterilization process, potentially resulting in HAIs or other adverse patient outcomes. FDA receives reports of problems in all steps of medical device reprocessing [1], including cleaning, disinfecting and sterilizing. Manufacturers, healthcare facilities, healthcare professionals, and the FDA all have a role in reducing the risk of inadequately reprocessed medical devices.

Because of the critical importance of adequate reprocessing of medical devices, the FDA has launched an initiative to focus on improvements in device design, reprocessing procedures and validation methodologies, and healthcare facility quality assurance practices. To help address these issues, the FDA has engaged partners at the Centers for Disease Control and Prevention (CDC), the Centers for Medicaid and Medicare Services (CMS), the Veterans Health Administration (VHA), and The Joint Commission (JC), who bring valuable expertise in disease control and healthcare practices to this initiative.

[1] A more comprehensive description of reprocessing steps is available in FDA's draft guidance "Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling" at *http://www.fda.gov/reprocessingreusabledevices.*

II. Topics for Discussion at the Public Workshop

The public workshop will be organized to discuss the following topic areas:

1. What are the nature, scope, and impact of reusable medical device reprocessing problems that have been observed? What are the causes of these problems?
2. What factors or criteria to facilitate reprocessing should be considered when designing reusable medical devices? How can the design process be improved to better incorporate cleanability as a design endpoint?
3. What factors or criteria should be considered when developing reprocessing instructions and validation protocols for devices to be used in various healthcare environments (e.g., hospital, ambulatory surgical center, physician's office), based on the draft guidance document "Processing/Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling" at *http://www.fda.gov/reprocessingreusabledevices.*
4. What factors or criteria should be considered by a healthcare facility when developing reusable device reprocessing procedures and quality assurance processes?
5. How should problems with reusable medical device reprocessing be identified, reported, and acted upon by industry and users?

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select this public workshop from the posted events list), approximately 45 days after the public workshop.

Dated April 26, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–10532 Filed 4–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2011

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2011 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements.

Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)	
Calendar Year 2011	
Lower 48 States	$2,034
Alaska	2,269

Outpatient Per Visit Rate (Excluding Medicare)	
Calendar Year 2011	
Lower 48 States	294
Alaska	490

Outpatient Per Visit Rate (Medicare)	
Calendar Year 2011	
Lower 48 States	256
Alaska	447

Medicare Part B Inpatient Ancillary Per Diem Rate	
Calendar Year 2011	
Lower 48 States	443
Alaska	756

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2011 Rates

Consistent with previous annual rate revisions, the Calendar Year 2011 rates will be effective for services provided on/or after January 1, 2011 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: March 7, 2011.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2011–10623 Filed 4–29–11; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

New Proposed Collection; Comment Request; Neuropsychosocial Measures Formative Research Methodology Studies for the National Children's Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Neuro-developmental and Psycho-Social Measures Formative Research Studies for the National Children's Study (NCS).

Type of Information Collection Request: Generic Clearance.

Need and Use of Information Collection: The Children's Health Act of 2000 (Public Law 106–310) states:

(a) PURPOSE.—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) IN GENERAL.—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) REQUIREMENT.—The study under subsection (b) shall—

(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial environmental influences on children's well-being;

(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children's Health Act, the results of formative research will be used to maximize the efficiency (measured by scientific robustness, participant and infrastructure burden, and cost) of tools to assess language, behavior, and neurodevelopment, psychosocial stress, and health literacy and thereby inform data collection methodologies for the National Children's Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain an OMB generic clearance to conduct formative research featuring neuro-developmental and psycho-social measures.

The NCS has obtained an OMB generic clearance to conduct survey and instrument design and administration, focus groups, cognitive interviews, and health and social service provider feedback information collection surrounding outreach, recruitment, and retention (0925–0590; requesting renewal). Under separate notice, the NCS is also requesting an OMB generic clearance to conduct formative research featuring biospecimen and physical measures, environmental, and study logistic information collection. These separate and distinct generic clearances are requested to facilitate the efficiency of submission and review of these projects as required by the OMB Office of Information and Regulatory Affairs.

Background

The National Children's Study is a prospective, national longitudinal study of the interaction between environment, genetics on child health and development. The Study defines "environment" broadly, taking a number of natural and man-made environmental, biological, genetic, and psychosocial factors into account. By studying children through their different phases of growth and development, researchers will be better able to understand the role these factors have on health and disease. Findings from the Study will be made available as the research progresses, making potential benefits known to the public as soon as possible. The National Children's Study is led by a consortium of federal partners: the U.S. Department of Health and Human Services (including the Eunice Kennedy Shriver National Institute of Child Health and Human Development and the National Institute of Environmental Health Sciences of the National Institutes of Health and the Centers for Disease Control and Prevention), and the U.S. Environmental Protection Agency.

To conduct the detailed preparation needed for a study of this size and complexity, the NCS was designed to include a preliminary pilot study known as the Vanguard Study. The purpose of the Vanguard Study is to assess the feasibility, acceptability, and cost of the recruitment strategy, study procedures, and outcome assessments that are to be used in the NCS Main Study. The Vanguard Study begins prior to the NCS Main Study and will run in parallel with the Main Study. At every phase of the NCS, the multiple methodological studies conducted during the Vanguard phase will inform the implementation and analysis plan for the Main Study.

In this submission, NCS is requesting an OMB generic clearance for formative research activities relating to the collection of neuro-developmental and psycho-social measures. The results from these formative research projects will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study neuro-developmental and psycho-social measures in a manner that minimizes public information collection burden compared to burden anticipated if these projects were incorporated directly into either the NCS Vanguard or Main Study.

The NCS has obtained generic clearance for formative research activities pertaining to outreach, recruitment and retention (0925–0590).

Under separate notice, the NCS also requests an OMB generic clearance for formative research featuring biospecimen and physical measures, environmental, and study logistic information collection. Separate and distinct generic clearances are requested to facilitate the efficiency of submission and review of these projects as required by the OMB Office of Information and Regulatory Affairs.

Frequency of Response: Annual [As needed on an on-going and concurrent basis].

Affected Public: Members of the public, researchers, practitioners, and other health professionals.

Type of Respondents: Women of child-bearing age, infants, children, fathers, community leaders, members, and organizations, health care facilities and professionals, public health, environmental, social and cognitive science professional organizations and practitioners, hospital administrators, cultural and faith-based centers, and schools and child care organizations. These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study.

Annual reporting burden: See Table 1. The annualized cost to respondents is estimated at: $540,000 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, ENVIRONMENTAL SCIENCE

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adult Psychosocial Stress	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Child Developmental Measures	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Health Disparities	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Small, focused survey and instrument design and administration.	NCS participants	4,000	2	1	8,000
	Members of NCS target population (not NCS participants).	4,000	2	1	8,000
	Health and Social Service Providers	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Focus groups	NCS participants	2,000	1	1	2,000
	Members of NCS target population (not NCS participants).	2,000	1	1	2,000
	Health and Social Service Providers	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Cognitive Interviews	NCS Participants	500	1	2	1,000
	Members Of NCS Target Population (Not NCS Participants).	500	1	2	1,000
Total		45,000			54,000

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Sarah L. Glavin, Deputy Director, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive, Room 2A18, Bethesda, Maryland 20892, or call non-toll free number (301) 496–1877 or e-mail your request, including your address to *glavins@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: April 20, 2011.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2011–10500 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Loan Repayment Program Applications.

Date: May 18–19, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate loan repayment program.

Place: National Institutes of Health, NEI, 5635 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *kenshalod@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10476 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

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 Modeling and Analysis of Biological Systems Study Section, May 26, 2011, 8 a.m. to May 27, 2011, 4 a.m., Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on April 12, 2011, 76 FR 20359.

The meeting will be one day only, May 26, 2011, 8 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10497 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory General Medical Sciences Council.

Date: May 19–20, 2011.

Closed: May 19, 2011, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: May 20, 2011, 8 a.m. to Adjournment

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 25, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10480 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 16, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by

the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Andrew P. Mariani, PhD, Executive Secretary, National Advisory Eye Council, National Eye Institute, National Institutes of Health, 301–451–2020, *amp@nei.nih.gov.*

Any person interested may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10478 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Center for Research Resources Special Emphasis Panel; STRB.

Date: May 26, 2011.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office Of Review, National Center For Research Resources, 6701 Democracy Blvd. Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, 301–435–0806, *nelsonbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: April 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10471 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

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. App.), 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: May 19, 2011.

Time: 12 p.m.to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Frank S. DeSilva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–1009, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10469 Filed 4–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project—RECOVERY: Increasing Adoption of Patient Centered Behavioral Health Research by Primary and Behavioral Health Providers and Systems—NEW

SAMHSA's Center for Behavioral Health Statistics and Quality (CBHSQ) will conduct a study to evaluate the impact of different strategies for disseminating and promoting the adoption of patient-centered health research results among behavioral health and primary care providers and organizations that are responsible for delivering behavioral health services. Data collected by this study will allow CBHSQ to document and examine the impact of two dissemination strategies on the decision to adopt patient-centered health research; specifically, motivational interviewing and trauma-focused cognitive behavioral therapy. These data will also allow for an examination of contextual factors, both organizational and individual, that influence this decision to adopt an evidence-based behavioral health intervention. Ultimately, data collected by this study will inform those who hope to improve the effectiveness of dissemination strategies aimed at increasing the adoption of patient-centered behavioral health interventions by identifying facilitators and barriers to the adoption process.

Data collection activities involve the administration of five separate surveys (a baseline survey, a followup survey, and three dissemination evaluation surveys) to individuals typically involved in the decisionmaking process

pertaining to the adoption of new behavioral interventions at 40 community health organizations and 40 community behavioral health organizations across the United States. Enrolled organizations will submit their responses for all surveys via Qualtrics, a third-party, online Web-based survey platform.

The estimated burden for data collection is 940 hours across a total of 400 participants. Using median hourly wage estimates reported by the Bureau of Labor Statistics, May 2009 National Occupational Employment and Wage Estimates, and a loading rate of 25%, the estimated total cost to respondents is $63,057.04. A breakdown of these estimates is presented in Table 1 below.

TABLE 1—ESTIMATED BURDEN FOR DATA COLLECTION

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total hour burden
Health Center Directors:				
Baseline Survey, Director Version	100	1	0.50	50
Followup Survey, Director Version	100	2	0.50	100
Dissemination Evaluation Survey of the Packets	100	1	0.17	17
Dissemination Evaluation Survey of the Training Webinar	50	1	0.17	8.5
Dissemination Evaluation Survey of the Coaching Webinar	50	1	0.17	8.5
Director Subtotal	100			184
Health Center Administrators:				
Baseline Survey, Staff Version	100	1	0.50	50
Followup Survey, Staff Version	100	2	0.50	100
TA Evaluation Survey of the Packets	100	1	0.17	17
TA Evaluation Survey of the Training Webinar	50	1	0.17	8.5
TA Evaluation Survey of the Coaching Webinar	50	1	0.17	8.5
Administrator Subtotal	100			184
Practitioners:				
Baseline Survey, Staff Version	300	1	0.50	150
Followup Survey, Staff Version	300	2	0.50	300
TA Evaluation Survey of the Packets	300	1	0.17	51
TA Evaluation Survey of the Training Webinar	150	1	0.17	25.5
TA Evaluation Survey of the Coaching Webinar	150	1	0.17	25.5
Practitioner Subtotal	300			552
Total	500			920

Written comments and recommendations concerning the proposed information collection should be sent by June 1, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: April 20, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–10519 Filed 4–29–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public

Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs", as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center—Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (Formerly: Dynacare Kasper Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 66–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,)

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121,858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: April 22, 2011.

Jeanellen Kallevang,

Director, Division of Management Services, SAMHSA.

[FR Doc. 2011–10438 Filed 4–29–11; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: DHS Individual Complaint of Employment Discrimination

AGENCY: Department of Homeland Security, DHS.

ACTION: 60-Day Notice and request for comments; Extension without Change, 1610–0001.

SUMMARY: The Department of Homeland Security, DHS, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until July 1, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS, Attn.: Denise Moore, *denise.moore@dhs.gov*, 202–254–8230.

SUPPLEMENTARY INFORMATION: The recordkeeping provisions are designed to ensure that a current employee, former employee, or applicant for employment claiming to be aggrieved or that person's attorney provide a signed statement that is sufficiently precise to identify the aggrieved individual and the agency and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted. The complaint form is used for original allegations of discrimination but also for amendments to underlying complaints of discrimination. The form also determines whether the person is willing to participate in mediation or other available types of alternative dispute resolution (ADR) to resolve their complaint; Congress has enacted legislation to encourage the use of ADR in the federal sector and the form ensures that such an option is considered at this preliminary stage of the EEO complaint process.

It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, protected genetic information, sexual orientation, or status as a parent, and to promote the full realization of equal employment opportunity (EEO) through a continuing affirmative program in each agency.

Persons who claim to have been subjected to these types of discrimination, or to retaliation for opposing these types of discrimination or for participating in any stage of administrative or judicial proceedings relating to them, can seek a remedy under Title VII of the Civil Rights Act (Title VII) (42 U.S.C. 2000e *et seq.*) (race, color, religion, sex, national origin), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*) (age), the Equal Pay Act (29 U.S.C. 206(d)) (sex), the Rehabilitation Act (29 U.S.C. 791 *et seq.*) (disability), the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*) (genetic information), and Executive Order 11478 (as amended by Executive Orders 13087 and 13152) (sexual orientation or status as a parent).

The Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) adjudicates discrimination complaints filed by current and former DHS employees, as well as applicants for employment to DHS. The complaint adjudication process for statutory rights is outlined in the Equal Employment Opportunity Commission (EEOC) regulations found at Title 29, Code of Federal Regulations Part 1614 and EEO Management Directive 110. For complaints regarding sexual orientation or status as a parent, DHS follows the same procedures as for statutory rights, to the extent permitted by law.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security, DHS.

Title: DHS Individual Complaint of Employment Discrimination.

OMB Number: 1610–0001.

Frequency: Annually.

Affected Public: Federal Government.

Number of Respondents: 1200.

Estimated Time per Respondent: 0.5 hours (30 minutes).

Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $30,246.00.

Dated: April 21, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–10319 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: BioWatch Filter Holder Log

AGENCY: Department of Homeland Security, DHS.

ACTION: 60-Day Notice and request for comments; Extension with change, 1601–0006.

SUMMARY: The Department of Homeland Security, DHS, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until July 1, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS, DHS Attn.: Daniel Yereb, *djy1@dhs.gov,* 703–647–8052.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of Health Affairs/OCMO Early Detection Division will collect information from BioWatch jurisdictions. The BioWatch Program operates aerosol collector equipment in approximately 30 U.S. jurisdictions to monitor for the presence of organisms that may be related to the deliberate release of a select subset of biological threat agents. Information is collected in writing by a representative of a BioWatch jurisdiction (either an employee, or a contractor) assigned responsibility for installing and removing filters from aerosol collection devices and transportation to local laboratories for sample analysis. A standard filter log form is completed for each sample and is archived by the BioWatch jurisdiction for a period of one year. The BioWatch Program reimburses participating jurisdictions for the cost of collection and laboratory analysis activities, including the preparation of the filter log form and other documentation. The creation of a written record for each sample is required to support law enforcement activities, including criminal prosecution in the case of a deliberate release of a biological agent.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security, DHS.

Title: BioWatch Filter Holder Log.

OMB Number: 1601–0006.

Frequency: Daily.

Affected Public: State, Local, and Tribal Governments.

Number of Respondents: 522.

Estimated Time per Respondent: 0.0167 hours (1 minute).

Total Burden Hours: 3,173 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $144,770.00.

Dated: April 21, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–10302 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCG–2011–0183]

National Offshore Safety Advisory Committee

AGENCY: United States Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet on May 19, 2011 in New Orleans, Louisiana. The meeting will be open to the public.

DATES: NOSAC will meet Thursday, May 19, 2011 from 9 a.m. to 3 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at Wyndham Riverfront Hotel, Bacchus room, 701 Convention Center Boulevard, New Orleans, Louisiana 70130.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Kevin Pekarek as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Agenda" section below. Comments must be submitted in writing no later than May 4, 2011 and must be identified by USCG–2011–0183 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Kevin.Y.Pekarek2@uscg.mil.* Include the docket number in the subject line of the message.
- *Fax:* (202) 372–1926.
- *Mail:* Commander P.W. Clark, Designated Federal Officer of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW., Stop 7126, Washington, DC 20593–0001 or Mr. Kevin Pekarek, Assistant Designated Federal Officer of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW., Stop 7126, Washington, DC 20593–0001.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read documents or comments related to this Notice, go to *http://www.regulations.gov.*

A public comment period will be held during the meeting on May 19, 2011 from 2:40 p.m. to 2:55 p.m., and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander P.W. Clark, Designated Federal Officer of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100

Second Street, SW., Stop 7126, Washington, DC 20593–0001 or Mr. Kevin Pekarek, Assistant Designated Federal Officer of NOSAC, Commandant (CG–5222), U.S. Coast Guard, 2100 Second Street, SW., Stop 7126, Washington, DC 20593–0001; telephone (202) 372–1386, fax (202) 372–1926.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Offshore Safety Advisory Committee (NOSAC) provides advice to the Secretary of Homeland Security, and the Commandant of the Coast Guard on matters pertaining to and related to safety of operations and other matters affecting the oil and gas offshore industry.

Agenda

The NOSAC will meet, review and discuss reports and recommendations received from the Medical Evacuation of Injured Divers subcommittee and the Standards for Offshore Supply Vessels greater than 6,000 GT ITC. The Committee will then use this information to formulate recommendations to the agency.

A complete agenda is as follows:

(1) Roll call of committee members and determination of a quorum.
(2) Approval of minutes from the February 9, 2011 meeting.
(3) Committee Administration.
a. Introduction of new members.
b. Recommendations for Chairman and Vice Chairman.
c. Discussion of Committee By-Laws.
d. DFO announcements.
(4) Presentation and discussion of reports and recommendations from the subcommittees on:
a. Medical Evacuation of Injured Divers.
b. Standards for Offshore Supply Vessels greater than 6,000 GT ITC.
(5) Establishment of a subcommittee to work on the task of reviewing the various recommendations from the Mississippi Canyon Block 252 marine casualty reports.
(6) Establishment of a sub-committee to evaluate current CG requirements for an Offshore Installation Manager and to make recommendations on same.
(7) Update from other interagency organizations; Bureau of Ocean Energy Management Regulation and Enforcement and OSHA.
(8) Discussion on the CG's efforts to develop a policy related to the implementation of the new Advanced Notice of Arrival regulations for the Outer Continental Shelf.
(9) Discussion on the CG's collection of information effort relating to Section 703 of the Coast Guard Authorization Act—Improvements to Reduce Human Error and Near Miss Incidents.
(10) Updates on International Maritime Organization (IMO) activities of interest to the Outer Continental Shelf (OCS) community.
(11) Presentation on the Q4000 Marine Casualty and associated "near miss."
(12) Period for public comment.
(13) Adjournment of meeting.

A copy of each report is available at the *https://www.fido.gov* Web site or by contacting Kevin Y. Pekarek. Use "code 68" to identify NOSAC when accessing this material. Once you have accessed the Committee page, click on the meetings tab and then the "View" button for the meeting dated May 19, 2011 to access the information for this meeting. Minutes will be available 90 days after this meeting. Both minutes and documents applicable for this meeting can also be found at an alternative site using the following web address: *https://homeport.uscg.mil* and *use these key strokes:* Missions>Port and Waterways>Safety Advisory Committee>NOSAC and then use the event key.

The meeting will be recorded by a court reporter. A transcript of the meeting and any material presented at the meeting will be made available through the *https://www.fido.gov* Web site.

The committee will review the information presented on each issue, deliberate on any recommendations presented in the subcommittees' reports, and formulate recommendations for the Department's consideration.

The committee will also receive tasking from CDR Patrick Clark, Designated Federal Officer, on evaluating the various recommendations from the Mississippi Canyon Block 252 marine casualty reports and evaluating current CG requirements for an Offshore Installation Manager and to make recommendations on same.

Dated: April 25, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2011–10515 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0338]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet on May 20, 2011, in Washington, District of Columbia. The meeting will be open to the public.

DATES: GLPAC will meet on Friday, May 20, 2011, from 9 a.m. to 4 p.m. Please note the meeting may close early if the committee completes its business. Written material and requests to make oral presentations or to have a copy of your material distributed to each member of the committee should reach us on or before May 16, 2011.

ADDRESSES: The meeting will be held at Coast Guard Headquarters, 2100 2nd Street Southwest, Washington, District of Columbia 20593, in conference room 51309. All visitors to Coast Guard Headquarters will have to pre-register to be admitted to the building. Please provide your name, telephone number and organization by close of business on May 16, 2011, to the contact person listed in **FOR FURTHER INFORMATION CONTACT** below. Additionally, all visitors to Coast Guard Headquarters must produce valid photo identification for access to the facility.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. David Dean as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Agenda" section below. Comments must be submitted in writing no later than May 16, 2011, and must be identified by [USCG–2011–0338] and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: David.J.Dean@uscg.mil.* Include the docket number in the subject line of the message.
- *Fax:* (202)372–1909.
- *Mail:* Commandant (Cg-5522,) Attn: GLPAC ADFO, US Coast Guard, 2100 2nd St., SW., Stop 7580, Washington, DC 20593–7580.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov.*

A public comment period will be held during the meeting on May 20, 2011, from 10 a.m. to 11 a.m., and speakers

are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. David Dean, GLPAC Assistant Designated Federal Officer (ADFO), Commandant (CG–5522), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Stop 7580, Washington, DC 20593–7580; telephone 202–372–1533, fax 202–372–1909, or e-mail at *David.J.Dean@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). It was established under the authority of 46 U.S.C. 9307, and advises the Secretary of Homeland Security and the Coast Guard on Great Lakes pilot registration, operating requirements, training policies, and pilotage rates and other matters relating to Great Lakes pilotage.

GLPAC expects to meet twice per year but may also meet at other times at the call of the Secretary. Further information about GLPAC is available by searching on "Great Lakes Pilotage Advisory Committee" at *http://www.fido.gov/facadatabase/*.

Agenda

The GLPAC will meet to review, discuss and formulate recommendations on the following issues:

Old Business:

Discussion of bridge hour analysis that reflects the actual pilotage time on task including bridge hours, standby time, travel time and delay/detention time using historical traffic records.

New Business:

Review of bridge hour calculations, a measure of pilotage hours and a key factor in determining pilotage rates;

Review of the methodology used to determine annual pilotage rates;

Implementation of a 2010 GLPAC recommendation to modify the methodology for reviewing pilotage rates every fifth year so that it can be applied on a partial basis to recognize major expenses incurred between fifth year reviews;

Discussion of the future role of the Great Lakes Pilotage Electronic Management System, as well as the current uses of the software for dispatching and billing.

Dated: April 26, 2011.

Dana A. Goward,

Director Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2011–10512 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0142]

Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) as an alternative voluntary advisory group for Prince William Sound, Alaska. This certification allows the PWSRCAC to monitor the activities of terminal facilities and crude oil tankers under the Prince William Sound Program established by statute.

DATES: This recertification is effective for the period from March 1st, 2011 through February 29, 2012.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Franklin, Seventeenth Coast Guard District (dpi); Telephone (907)463–2821, e-mail *Michael.R.Franklin@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C. 2732(o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (*see* 56 FR 54757; October 22, 1991) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the USCG (*see* 57 FR 8582; March 11, 1992). The Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G–M) on March 19, 1992 (letter #5402).

On July 7, 1993, the USCG published a policy statement, 58 FR 36504, to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (G–M), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the USCG published a policy statement, 67 FR 58440, that changed the recertification procedures such that applicants are required to provide the USCG with comprehensive information every three years (triennially). For each of the two years between the triennial application procedure, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is not solicited prior to recertification during streamlined years, only during the triennial comprehensive review.

The Alyeska Pipeline Service Company pays the PWSRCAC $2.9 million annually in the form of a long-term contract. In return for this funding, the PWSRCAC must annually show that it "fosters the goals and purposes" of OPA 90 and is "broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound." The PWSRCAC is an independent, nonprofit organization founded in 1989. Though it receives Federal oversight like many independent, non-profit organizations, it is not a Federal agency. The PWSRCAC is a local organization that predates the passage of OPA 90. The existence of the PWSRCAC was specifically recognized in OPA 90 where it is defined as an "alternate voluntary advisory group."

Alyeska funds the PWSRCAC, and the Coast Guard makes sure the PWSRCAC operates in a fashion that is broadly consistent with OPA 90.

Discussion of Comments

On January 7th, 2011 the USCG published a Notice of Availability; request for comments for recertification of Prince William Sound Regional Citizens' Advisory Council in the **Federal Register** (76 FR 1187). We received 65 letters commenting on the proposed action. No public meeting was requested, and none was held. Of the 65 letters received, all 65 had positive comments. These letters consistently cited PWSRCAC's broad representation of the respective community's interests, appropriate actions to keep the public informed, improvements to both spill response preparation and spill prevention, and oil spill industry

monitoring efforts that combat complacency—as intended by the Act.

Recertification

By letter dated March 24, 2011, the Commander, Seventeenth Coast Guard District, certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on February 29, 2012.

Dated: April 17, 2011.

Christopher C. Colvin,

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

[FR Doc. 2011–10513 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5354–N–03]

HUD Multifamily Rental Project Closing Documents: Notice Announcing Final Approved Documents and Assignment of OMB Control Number

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the multifamily rental project closing documents have completed the notice and comment processes and review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act, and that OMB has assigned a control number to the documents. The final versions of the documents can be found on HUD's Web site at *http://www.hud.gov/offices/hsg/mfh/mfhclosingdocuments.cfm.* Additionally, this notice highlights some of the changes made by HUD to the documents based upon its review of the comments submitted in response to a December 22, 2010 notice.

FOR FURTHER INFORMATION CONTACT: John J. Daly, Associate General Counsel for Insured Housing, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9226, Washington, DC 20410–0500; telephone number 202–708–1274 (this is not a toll-free number). Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 2010 (75 FR 3544) and consistent with the Paperwork Reduction Act of 1995, HUD published for public comment, for a period of 60 days, a notice advising that HUD was updating and revising a set of closing documents used in Federal Housing Administration (FHA) multifamily rental projects. The 60-day notice, started anew the process for updating the multifamily rental project closing documents, and obtaining approval of these documents under the Paperwork Reduction Act, a process that had originally commenced on August 2, 2004. On December 22, 2010 (75 FR 80517), HUD published a 30-day notice to complete the public comment process required by the Paperwork Reduction Act of 1995. As discussed in the previously published notices, HUD provided detailed comments on the changes made to the documents between 2004 and their publication in January 2010. HUD provided a detailed summary of the comments and HUD's responses to these comments in the January 21, 2010, notice accompanying the documents which were open for 60 days of comment in accordance with PRA requirements. At the time of the first issuance of proposed updated closing documents in 2004, HUD was not accepting comments electronically through a publicly available website, and consequently, the public did not have a readily and easily available mechanism to review public comments submitted in response to the August 2, 2004, notice. Therefore, the changes to the 2004 documents were discussed in detail to compensate for the lack of a publicly available website where all public comments could be viewed.

For the January 21, 2010, notice, however, all the public comments submitted on the proposed updated closing documents were available for review on *http://www.regulations.gov*, which included proposed mark-ups of several of the closing documents. Nevertheless, HUD provided a discussion of the more significant changes made to the documents in the notice that HUD published on December 22, 2010, as its final notice for comment under the Paperwork Reduction Act. In addition to providing a summary of the changes made, HUD posted both clean versions of the closing documents and documents in redline/strikeout format on its website, so that industry participants and interested members of the public could see all changes made in response to the January 21, 2010, notice.

This notice published today announces that HUD has completed the notice and comment processes required by the Paperwork Reduction Act, and that OMB has completed its review and has assigned an OMB control number, 2502–0598, to the documents. HUD did make additional changes to the documents in response to comments submitted on the December 22, 2010, notice. Therefore, in addition to announcing the completion of the process required by the Paperwork Reduction Act and the assignment of the OMB control number, HUD highlights some of the additional changes made to the multifamily closing documents (documents) in response to public comment as provided below.

Comments on the Documents Posted in December 2010 in Conjunction With 30-Day Notice

In response to the December 22, 2010, notice, HUD received comments from ten commenters. Commenters included individual lenders, associations representing lenders, a nonprofit community development organization, a nonprofit representing housing providers and administrators of federally assisted rental housing, a city attorney representing a city serving as a low income housing tax credit allocating agency, and private practice attorneys. Several commenters provided detailed comments about several issues in the documents. All comments were carefully considered by HUD prior to presentation to OMB for final approval and assignment of a control number under the Paperwork Reduction Act.

In this notice, HUD is highlighting certain changes which are representative of the types of changes made in response to these comments. The final text of the documents and the redlined changes from the documents posted in December 2010 in conjunction with publication of the December 22, 2010, notice are available at *http://www.hud.gov/offices/hsg/mfh/mfhclosingdocuments.cfm.*

II. Status of Changes to Documents

In response to comments that were received on the December 2010 notice, HUD made a number of revisions to the documents. Consequently, HUD has now modified all closing documents published on this date in response to public comments that were submitted during the 2010 and 2011 review process. The changes to these documents include both technical editorial changes and some more substantive changes. In this notice, HUD is not providing a detailed summary of the changes made in response to the final set of public comments. Rather, the following section of this notice addresses some of the more significant issues raised by the commenters in response to the December 22, 2010,

notice and the closing documents posted on HUD's Web site in conjunction with the December notice. Further, HUD is not repeating responses to proposed changes or issues that were addressed in the January 2010 notice or the December 2010 notice. The final versions of the documents and the redlined versions which detail specific changes to the documents posted in December revisions are available on the HUD Web site.

III. Selected Policy Determinations

Some of the changes made to the documents address similar comments submitted by the commenters and therefore the changes discussed below are representative of HUD's response to several of the commenters:

Program Obligations

In the January 2010 notice, HUD announced its decision to eliminate use of the term "directives" in the documents, and substitute the term "program obligations." HUD noted in the January 2010 notice that this term better captures what was intended by use of the term "Directives," namely, to advise parties to the closing documents of the additional requirements, beyond those included in the documents themselves, to which they are expected to adhere. The advantage of this language is that it identifies the specific, longstanding, and familiar types of requirements (those in statutes, regulations, handbooks, notices, and mortgagee letters) to which the parties must adhere. To provide an additional level of assurance to commenters who expressed concern over the possibility that they would be required to comply with any future provision that HUD might issue in any manner, the definition also explicitly stated that notice and comment rulemaking would be followed for any requirements that would be subject to such procedures. In essence, HUD made explicit that it would follow the applicable procedures, as directed by statute or regulation, which govern issuance of a document such as mortgagee letters or other types of direct notices that would be used to announce new binding requirements, policies, processes, forms, or standards to which parties to the closing documents must comply. The explicit statement to use these procedures was designed to address concerns raised about adherence to future directives by the commenters, including concerns about conflicts with existing requirements, retroactive application of new requirements, or lack of time to prepare for transition to new requirements.

In the December 22, 2010 proposed revisions to the documents, HUD retained the definition of "program obligations" used in the January 2010 documents. Further, in the text of the notice accompanying the documents, HUD noted that in response to commenters' concerns that HUD appeared to have unfettered discretion to make material changes, without notice or sufficient notice, that will have an economic effect on the viability of the project, the definition of "program obligations" explicitly recognized that notice and comment rulemaking is followed for significant substantive requirements. In fact, changes to the regulations accompanying the documents were proposed on November 12, 2010, and citations to the regulations were included in the documents posted in connection with the December 2010 notice. This practice is continued in this set of documents as well. For example, in using the term "Principals" in the security instrument, HUD has referenced 24 CFR 200.215. Thus, any Security Instrument will always reference the current applicable regulation.

In recognition, however, of concerns reiterated by comments that HUD appeared to have unfettered discretion to make future material changes to policies that would be applied to existing borrowers and may have an adverse economic effect on the operation of a project, HUD has clarified the definition of what constitutes "program obligations," as shown in the following revised definition of program obligations in the Security Instrument:

> Program Obligations means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Security Instrument rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official Web site: (http://www.hud.gov/offices/adm/hudclips/index.cfm, or a successor location to that site.

HUD did not include a materiality standard because, if adopted, it would invite individual disputes about the application of certain provisions in the documents that may have a material effect on one borrower but not on another. Instead, HUD has included language in the revised definition clarifying that notice and comment rulemaking procedures be used for significant substantive requirements and that changes to HUD handbooks, guides, notices and mortgagee letters shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in the relevant loan document as opposed to adding or deleting provisions from such document. This revised language incorporates current administrative law litigation standards.

Reallocation of Responsibilities and Liabilities

The Lender's Certificate

The Lender's Certificate lists the certifications made by the lender to HUD regarding the responsibilities the lender has completed in performing the due diligence necessary to complete final underwriting of the project.

Commenters expressed concern that the revised form of Lender's Certificate changed the basic liability structure of the insurance contract, and that it shifted substantial risk from FHA to the lender. The liability structure developed in the group of documents should be recognized as establishing a delicate balance between delegation of authority to the lender in underwriting and construction management with new flexibility to address the problems of managing troubled projects. Therefore, the documents, including the Lender's Certificate, now reflect an accompanying reallocation of responsibility between the parties to the transaction.

Nevertheless, HUD has adopted several changes that address lenders' concerns. For example, commenters stated that they were apprehensive that they would be unable to comply with certain requirements in Sections 30 and 31 of the Lender's Certificate. Namely, commenters were concerned that they would have to absolutely certify that the borrower possessed all necessary governmental certificates, permits, licenses, qualifications and approvals of governmental authorities to own and operate the mortgaged property, to carry out all of the transactions required by the loan documents, and to comply with applicable federal statutes and regulations of HUD in effect on the date of the firm commitment. The commenters contend that typically, in commercial lending transactions, such

issues would be addressed in representations and warranties made by the borrower. Further, they submit that, in HUD transactions to date, it had been the responsibility of the borrower (and borrower's counsel) to provide evidence of compliance; nor could the lender certify that, as of the date of initial closing, the borrower held certain government approvals to operate the property since these approvals are not issued until the time of final endorsement of the Note.

However, under the new underwriting changes and liability structure established in the documents, HUD is limiting its role and giving lenders more ability to address any problems that arise in management of the property that contribute to a financial decline. These changes are made in the expectation that lenders will undertake increased due diligence to assure sound underwriting in insured multifamily projects.

HUD recognizes that this expands the role for the lender in HUD-insured transactions, although these are familiar roles in commercial lending transactions. Accordingly, HUD has modified the Lender's Certificate to make its requirements "based upon reasonable due diligence", that the lender "has made reasonable inquiry" or is certifying "to the best of lender's knowledge." HUD has relaxed the requirements in Section 30 to provide that the lender will simply *confirm* in writing before final endorsement of the Note that the borrower has obtained the necessary permits and met the listed requirements. HUD will also include in its multifamily handbooks expanded guidance on what constitutes a prohibited "identity of interest" as may exist among the parties to the loan at initial endorsement or that may arise during the loan term.

Guide for Opinion of Borrower's Counsel

The Guide is the legal opinion that the borrower's attorney gives to the lender prior to closing to provide the lender with protection that the borrower is legally formed, has the authority to enter into the mortgage, and can execute the closing documents. The lender requests this opinion because the lender will frequently depend on the borrower and its counsel to provide them with accurate and complete information on many aspects of the law in the applicable jurisdiction, as well as the borrower's legal status.

HUD received several comments regarding the details of the Guide for Opinion of Borrower's Counsel, and has made several technical adjustments in response to these comments. For example, in response to a commenter's concerns that in some jurisdictions participants are unable to obtain a certificate of good standing for trusts, HUD has revised the requirements to obtain "good standing" certificates to provide alternatives in the documents that are appropriate for the jurisdiction and the entity and allow the participating entities to certify their legal status.

HUD has also limited required certifications, narrowing the conflicts test for law firms to "attorneys who devote substantive attention to the transaction." The conflicts test is further revised to limit the test to participating attorney's knowledge of other firm attorneys' financial interest and conflicts in the project, the property, or the borrower. These changes should broaden the number of firms that are eligible to provide this legal opinion, and ultimately lower the cost to the borrower. HUD has also changed its requirements for the permitted signatories of the Opinion of Borrower's Counsel to reflect current practice in many firms that the opinion be signed on behalf of the firm issuing the Opinion rather than by an individual counsel.

Certification of Borrower

The Borrower's Certification is the document comparable to the Borrower's Affidavit in commercial lending transactions. In this document, the borrower reaffirms certain information provided to the lender, and represents to both the lender and the title insurance company that is insuring the property that the borrower is aware of facts related to the property.

HUD also addresses liability concerns in the Borrower's Certification. The final version of the document modifies proposed language that commenters contend could have been interpreted as requiring certifications by all entities that could be categorized as "the borrower." Under the revised Borrower's Certification, the borrower is only required to attest to pending litigation and claims with respect to those entities most likely to be held responsible—the general partner, managing member, or similar person or entity. The parties responsible for signing will be specified in more detail in a definition of "Principal" that will be developed in the forthcoming revisions to The Multifamily Accelerated Processing (MAP) Guide.[1]

Treatment of Reserves and Escrows

A commenter expressed concern that the investment restrictions for reserves and escrows under the proposed documents represented a departure from current policy and would interfere with the business relationship between lender and borrower, and could also restrict liquidity of the reserves. Commenters suggested that requirements that escrows be deposited only in accounts fully insured by the United States of America would create administrative costs and difficulties. Also, the relatively low limit on insured accounts would require breaking up certain reserves or escrows into multiple insured accounts. The commenters further contend that restricting the ability of the lender to draw on letters of credit created operational issues and could increase risk to the lender and HUD. In addition, they submitted that a requirement to attach copies of letters of credit to Escrow Agreements was unworkable and unnecessary because the lender must cover the project obligation if a letter of credit were dishonored.

HUD has taken a comprehensive approach to the issue of mortgagee and mortgagor financial responsibilities in the management of reserves and escrows which is reflected in the documents and in the handbook for multifamily programs which provides further detail on the program obligations.[2] HUD has modified the language in the final Security Instrument and the Escrows according to the following general principles. Deposits for reserves, residual receipts, and escrow accounts are, in general, to be held in accounts in institutions which are insured by a federally chartered entity, such as the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). If funds deposited in a reserve or escrow account exceed the maximum insurance level, such as the current $250,000 maximum for FDIC insured accounts, funds in those accounts may exceed the

[1] Guides of the FHA of the Department of Housing and Urban Development are available on the Department's Web site: *http://www.hud.gov/offices/adm/handbks_forms/index.cfm.*

[2] HUD plans to revise and detail these policies when modifications are made to existing HUD Handbooks. Current guidance that HUD plans to revise includes FHA Handbook 4350.1,—Multifamily Asset Management and Project Servicing, and FHA Handbook 4350.4—Insured Multifamily Mortgagee Servicing and Field Office Guide. The FHA Guides are available on the website of the Department of Housing and Urban Development: *http://www.hud.gov/offices/adm/handbks_forms/index.cfm.*

insurance level if they are deposited in Ginnie Mae [3] rated institutions.

Currently, for HUD multifamily project loans that are in Ginnie Mae pools, escrow funds, for example, are required to be in "Ginnie Mae rated" institutions. Ginnie Mae presently requires that issuers and entities holding custodian accounts must meet minimal ratings requirements.[4] The Ginnie Mae and FHA guidebooks also establish requirements for the types of acceptable investments in which escrow funds can be held.[5] These include certificates of deposits, U.S. Treasury bills, notes, bonds and other obligations of the U.S. Government and other assets, including tax exempt bonds, and AAA-rated and prerefunded bonds. The handbooks further require that disposition of all earnings, including interest earnings, if any, be credited or applied as established in regulations and handbooks.[6]

HUD will include similar deposit requirements in its revised multifamily program guidance, and will also require that banks issuing letters of credit will meet applicable Ginnie Mae standards plus other criteria to be set forth in program obligations. HUD does not wish to rely on the lender's financial ability to cover obligations secured by a letter of credit. These new standards are designed to strengthen the financial soundness of the multifamily programs. Lenders should note that they have the ability to offset these requirements. For example, in the documents, HUD has included authority for the lender to charge the borrower a fee, in accordance with program obligations, to cover the lender's increased responsibilities in managing reserve and escrow accounts. HUD's current guidance recognizes that "reasonable and necessary expenses" can be recovered, and anticipates that, in the future, the lender and borrower will negotiate appropriate fees for administration of reserves and escrows.

Requirements of Principals To Sign the Regulatory Agreement

The Regulatory Agreement sets forth requirements that an owner must meet over the term of the HUD loan. In light of the consequences that certain insufficiently regulated actions have had on the housing finance markets in recent years, and that public funds are at risk, HUD proposed in the January 2010 documents that principals should be personally responsible for paying damages for certain "bad boy" acts as exceptions to the nonrecourse provisions of the Note. Accordingly, such provisions were included in the January and December 2010 versions of the closing documents issued for public comment.

HUD retained provisions establishing that acts of fraud and misconduct that put the FHA insurance fund at risk will be pursued through contract rights made explicit in these documents and other remedies available to the federal government. HUD believes that the "bad boy" provisions referred to by commenters merely provide more certain legal mechanisms for enforcing HUD's statutory, regulatory, and program requirements without overburdening those owners that conform to HUD requirements.

Commenters expressed concern that even with changes made in December 2010 to the Regulatory Agreement, it remained difficult to identify the particular individuals who would be responsible for signing the Regulatory Agreement or would be liable for the "bad boy" acts. HUD recognizes that, for example, requiring volunteer officers and trustees of nonprofit mortgagors, as well as individual investors in tax credit projects to sign the documents presented practical issues. Accordingly, in the final documents, HUD has included a definition of principals based on the regulations—24 CFR 200.215. Additionally, HUD is providing further specificity in the revised documents—and in its multifamily guidebooks so the "signing principals," both on behalf of the borrower and for those principals who must accept personal liability for the "bad boy" acts, will be identified by HUD in the firm commitment and at the time of closing. In addition, principals required to sign the documents are, in general, attesting only "to the best of their knowledge," and primarily to their own statements and representations.

Changes to the Regulatory Agreement Clarifying Capital Contributions

In the December 2010 version of the documents, HUD included language distinguishing funds related to the mortgaged property and funds separate and apart from the mortgaged property. A commenter suggested that further clarification would be useful to detail exclusion of capital contributions not eligible to be expensed to the mortgaged property. To address the request for clarification, HUD has included language that defines such contributions as equity or capital contributions required under the Firm Commitment or otherwise advanced for the purpose and as part of the mortgaged property.[7]

Transition. Commenters expressed a desire for HUD to coordinate the effective date for these documents with training and updated program guidance. HUD agrees with these comments and carefully considered them in determining an effective date. HUD intends to provide updated guidance and schedule training in advance of any closings that require use of the new closing documents. Additionally, to the extent that any administrative requirements in HUD handbooks, guidance, housing notices, or mortgagee letters are inconsistent with any provisions in the revised closing documents, the provisions in the revised closing documents will prevail.

Use of the final approved closing documents and application of the revised regulations corresponding to the updated closing documents, published elsewhere in today's **Federal Register**, shall be mandatory with respect to multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011. The regulations provide that if the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the revised regulations and updated closing documents due to the reasonable expectations of the mortgagor that the transaction would close under the regulations and closing documents in effect prior to September 1, 2011, the regulations and closing documents in effect prior to September 1, 2011 will apply.

As noted previously in this notice published today, changes to the documents from the December 22, 2010, version of these documents are displayed in redline/strikeout format posted on HUD's Web page. Clean versions of the documents, with the applicable OMB control number, are also provided on HUD's Web site.

[3] The Government National Mortgage Association, known as Ginnie Mae, is a wholly owned federal corporation within the U.S. Department of Housing and Urban Development.

[4] For example, Ginnie Mae currently uses the following rating requirements: Thompson Bankwatch—C or better, Moody's—P–3 or better (short term bank deposits), or Standard & Poor's—A–3 or better (short-term CD). (Ginnie Mae Handbook 5500.3 Rev. 1 10.01.09 p16–7).

[5] The Ginnie Mae Guides are available on Ginnie Mae's Web site. *http://www.ginniemae.gov/help/guides.asp?Section=Resources.* The FHA Guides are available on the website of the Department of Housing and Urban Development: *http://www.hud.gov/offices/adm/handbks_forms/index.cfm.*

[6] FHA Handbook 4350.1,—Multifamily Asset Management and Project Servicing, and FHA Handbook 4350.4—Insured Multifamily Mortgagee Servicing and Field Office Guide.

[7] Sec. 12(a) of the Regulatory Agreement.

Dated: April 26, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner.

[FR Doc. 2011–10445 Filed 4–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N277; 40136–1265–0000–S3]

Cabo Rojo National Wildlife Refuge, Cabo Rojo, Puerto Rico; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Cabo Rojo National Wildlife Refuge (NWR) for public review and comment. In the Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 1, 2011.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Laura Housh, Regional Planner, Okefenokee NWR, 2700 Suwannee Canal Road, Folkston, GA 31537. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under "Draft Documents."

FOR FURTHER INFORMATION CONTACT: Ms. Laura Housh, at 912/496–6273 (telephone) or *laura_housh@fws.gov* (e-mail); or Mr. Oscar Díaz, at 787/851–7258, extension 312 (telephone), or *oscar_diaz@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Cabo Rojo NWR. We started the process through a notice of intent in the **Federal Register** on March 12, 2007 (72 FR 11047). For more about the refuge, its purposes, and our CCP process, please see that notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

The refuge lies along a coastal plain and has a few gently rolling hills overlooking the southwestern tip of Puerto Rico. The establishment of the refuge was justified for the potential value that the habitat held for migratory birds and also for its value in providing habitat for resident birds, particularly doves and pigeons. The area is one of the few blocks of land in southwestern Puerto Rico west of the Guánica Commonwealth Forest remaining in public ownership. The native vegetation is classified as subtropical dry forest under the Holdridge classification of world life zones. At least 245 plant species and 145 bird species have been identified on the refuge.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative C as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A (Current Management, No Action)

Under this alternative, we would continue to restore and maintain existing sub-tropical dryland forests, salt lagoons, and grassland habitats. Active habitat wetland management would be implemented by continuing water level manipulations for management of the saltwater lagoons through a special use permit with a commercial salt production company. We would continue to accommodate environmental education and interpretation programs and wildlife observation and photography. The friends group, Caborrojeños, would continue to partner with us in providing limited visitor services. The law enforcement program for the protection of wildlife and visitors would continue at current levels.

Alternative B (Resource Emphasis)

Under this alternative, we would provide greater management of habitats and associated plant communities for the benefit of wildlife.

Activities that would be expanded or introduced under this alternative would include: Managing endangered plant populations and reducing the occurrence of exotic species; exploring opportunities and alternatives to assume direct control of managing water levels in the saltwater lagoons; establishing and managing a larger nursery to increase reforestation of native tree species in upland areas; restoring additional freshwater and saltwater ponds to increase avian habitat; expanding the volunteer base to increase habitat restoration activities; and proactively expanding research collaboration with universities.

Additional staff would be required to implement this alternative. Such staff would likely include a biologist, a volunteer coordinator, and additional support staff.

Alternative C (Habitat and Public Use Emphasis, Proposed)

Under this alternative, our emphasis would be on improving refuge resources for habitat and wildlife. We would provide greater support for the visitor service program, including emphasis on the following: Developing a curriculum-based environmental education program; expanding the role of the friends group to include providing staffing and interpreting services at the new visitor services center; reviewing and updating our brochures and website, including offering a Spanish version of the website; updating current kiosks and building new kiosks along the trail system; expanding the volunteer program to also provide assistance with public use activities; seeking and developing new partnerships, particularly with regard to trail maintenance; and adding additional signage to clarify refuge uses.

Additional staff required to implement Alternative C would include an additional visitor services/environmental education specialist and a volunteer coordinator. Additional infrastructure would also be required to expand activities under this alternative, including developing volunteer housing and acquiring one or more additional vehicles.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 5, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–10547 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N276; 40136–1265–0000–S3]

Laguna Cartagena National Wildlife Refuge, Lajas, Puerto Rico; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Laguna Cartagena National Wildlife Refuge (NWR) for public review and comment. In the Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 1, 2011.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Laura Housh, Regional Planner, Okefenokee NWR, 2700 Suwannee Canal Road, Folkston, GA 31537. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under "Draft Documents."

FOR FURTHER INFORMATION CONTACT: Ms. Laura Housh, at 912/496–6273 (telephone) or *laura_housh@fws.gov* (e-mail); or Mr. Oscar Diaz, at 787/851–7258, extension 312 (telephone), or *oscar_diaz@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Laguna Cartagena NWR. We started the process through a notice of intent in the **Federal Register** on May 16, 2007 (72 FR 27588). For more about the refuge, its purposes, and our CCP process, please see that notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

The establishment of the refuge was justified to rehabilitate the lagoon for resident and migratory water birds and to provide increased wildlife-dependent public use. To date, 164 species of birds have been recorded in the area, including 25 first-records for Puerto Rico.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative B as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A (Current Management, No Action)

Under this alternative, our management actions would continue to be directed towards achieving the refuge's primary purposes. These purposes include restoring and enhancing native wildlife and plants, particularly the endangered yellow-shouldered blackbird; increasing the level of environmental awareness among residents and visitors; and protecting one of the most important shorebird habitats in the Caribbean. We would continue to restore and maintain existing subtropical dryland forest, the Cartagena Lagoon, and grassland habitats. Management programs would continue to be developed and implemented with limited baseline biological information. Active habitat wetland management would be implemented by continuing water-level management of the lagoon and conducting opportunistic removal of cattails to try and create more open water. Current visitor facilities, which are somewhat limited, would be maintained, but no additional facilities would be added, except for perhaps a new information kiosk. Law enforcement of refuge regulations and for protection of wildlife and visitors would continue at current levels, which is done through sharing the resource of a single law enforcement officer who is based at Cabo Rojo National Wildlife Refuge.

Alternative B (Wildlife Diversity and Habitat Restoration, Proposed)

Under this alternative, our emphasis would be on improving refuge resources for wildlife. We would provide greater enhancement and management of all habitats and associated plant communities for the greater benefit of wildlife. We would also work to reintroduce native fish to the lagoon and actively help to support birds that are threatened, endangered, or of management interest, including West Indian whistling ducks and kestrels. Specific activities that would be expanded or introduced under this alternative would include: Actively managing endangered plant populations, increasing native vegetative planting in the uplands, reducing the occurrence of exotic species, and better managing the lagoon's water quality and open-water restoration effort. In addition, we would expand the visitor services program, including facilities.

Additional staff would be required to implement this alternative. Such staff would likely include a biologist, a

biological technician, two engineering equipment operators, a forestry technician (fire), a park ranger or environmental education specialist, a shared GIS specialist, and a shared law enforcement officer.

Alternative C (Wetland Restoration Emphasis)

Under this alternative, we would concentrate on improving the lagoon's water quality and habitat; less emphasis would be placed on upland restoration and management and general visitor services. We would provide support for the lagoon's rehabilitation and management. Priority activities (in and adjacent to the wetlands) would include invasive species management (particularly cattail clearing), water quality monitoring and management, water flow management, and creating improved wetland habitat conditions and opportunities.

Additional staff would be required to implement this alternative. Such staff would likely include a biologist, a biological technician, two engineering equipment operators, a forestry technician (fire), a park ranger or environmental education specialist, a shared GIS specialist, and a shared law enforcement officer.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 4, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–10548 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW16423]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164232, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Kodiak Oil & Gas (USA) Inc. for competitive oil and gas lease WYW164232 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164232 effective September 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–10615 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES002000.L1430000.FQ0000; FLES 041063–01]

Public Land Order No. 7765; Partial Revocation Jupiter Inlet Lighthouse Withdrawal; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: The order revokes the withdrawal established by two Executive Orders insofar as they affect 22.95 acres of land reserved on behalf of the United States Coast Guard for lighthouse purposes. The reservation is no longer needed. This order also returns administrative jurisdiction of the land to the Bureau of Land Management to continue to be managed as part of the Jupiter Inlet Lighthouse Outstanding Natural Area.

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Vicky Craft, Realty Specialist, BLM–ES Jackson Field Office, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206–3039, 601–977–5435.

SUPPLEMENTARY INFORMATION: The United States Coast Guard has determined the lighthouse reservation is no longer needed on the land described in this Order and has requested the partial revocation. The land will continue to be managed in accordance with Section 202 of the Consolidated Natural Resource Act of 2008 (43 U.S.C. 1787), which created the Jupiter Inlet Lighthouse Outstanding Natural Area, and which withdrew the land from all forms of entry, appropriation, or disposal under the public land laws, location, entry, and patent under the mining laws, and operation of the mineral leasing and geothermal leasing laws and the mineral material laws.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

The withdrawal established by Executive Order dated October 22, 1854, as amended by Executive Order No. 4254, dated June 12, 1925, and partially revoked by Public Land Order No. 7202 (61 FR 29758 (1996)), which reserved public land on Jupiter Inlet, Florida, for lighthouse purposes, is hereby partially revoked as to the following described land:

Tallahassee Meridian

T. 40 S., R. 43 E.,
Sec. 31, lot 17.

The area described contains 22.95 acres in Palm Beach County.

Dated: April 20, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–10587 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[IDI–04319]

Public Land Order No. 7764; Partial Revocation of Public Land Order No. 1479; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Public Land Order insofar as it affects 0.21 acres of National Forest System land withdrawn on behalf of the United States Forest Service for Priest Lake Recreation Areas within the Kaniksu National Forest. The order also opens the land to disposition under the Small Tracts Act.

DATE: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Laura Bingham, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3866, or Scott Bixler USDA Forest Service, Region 1, Federal Building, 200 E. Broadway Street, Missoula, Montana 59802, (406) 329–3655.

SUPPLEMENTARY INFORMATION: The revocation is needed to make the land available for disposal under the Small Tracts Act (16 U.S.C. 521c-521i).

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1479, which withdrew National Forest System lands from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and reserved them for use of the Forest Service as recreation areas, administrative and public service sites, is hereby revoked insofar as it affects the following described land:

Boise Meridian

Kaniksu National Forest

T. 60 N., R. 4 W.,
A tract of land in section 6, lot 10 and section 7, lot 2, more particularly described as Amended S.T.A. ID 252 in the Record of Survey recorded June 4, 2008, as Instrument No. 752631, Bonner County, Idaho.

The area described contains 0.21 acres in Bonner County.

2. At 9 a.m. on June 1, 2011, the land described in Paragraph 1 shall be opened to disposition under the Small Tracts Act (16 U.S.C. 521c-521i), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: April 20, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–10608 Filed 4–29–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000 L57000000.BX0000 241A; 11–08807; MO# 4500019904; TAS: 14X5017]

Notice of Temporary Closures on Public Lands in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closures.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, notice is hereby given that certain public lands near Stead, Nevada, will be temporarily closed to all public use to provide for public safety during the 2011 Reno Air Racing Association Pylon Racing Seminar and the Reno National Championship Air Races.

DATES: *Effective Dates:* Closure periods to all public use are June 15 through June 18, 2011, and September 10 through September 18, 2011.

FOR FURTHER INFORMATION CONTACT: Linda J. Kelly, (775) 885–6000, e-mail: *linda_kelly@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼, E½SE¼;
Sec.16, SW¼SW¼NE¼, NW¼, W½SE¼.

The area described contains 450 acres, more or less, in Washoe County. The closure notice and map of the closure area will be posted at the BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada and on the BLM Web site: *http://www.blm.gov/nv/st/en/fo/carson_city_field.html.* Roads leading into the public lands under the closure will be posted to notify the public of the closure. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.9–7 and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rules in the area described above:

All public use, whether motorized, on foot, or otherwise, is prohibited.

Exceptions: Closure restrictions do not apply to event officials, medical and rescue personnel, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who fails to comply with the closure orders is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months under 43 CFR 8360.0–7. Violations may also be subject to the provisions of Title 18, U.S.C. sections 3571 and 3581.

Authority: 43 CFR 8364.1.

Linda J. Kelly,

Manager, Sierra Front Field Office.

[FR Doc. 2011–10614 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–0308–6923;9082–HONO–420]

Honouliuli Special Resource Study, Honolulu, Maui, Hawaii, and Kauai Counties, HI

AGENCY: National Park Service, Interior.

ACTION: Notice of Scoping for Honouliuli Special Resource Study, Hawaii.

SUMMARY: Notice is hereby given that pursuant to provisions of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and the Council on Environmental Quality's implementing regulations (40 CFR 1502.9(c)) the National Park Service has initiated the public scoping phase for the conservation planning and environmental impact analysis process needed to identify and assess potential impacts of alternatives for resource protection and other considerations within the Honouliuli Special Resource Study area in Honolulu, Maui, Hawaii,

and Kauai Counties of Hawaii. The purpose of the scoping phase is to elicit early public comment regarding issues and concerns, preliminary alternatives, and the nature and extent of potential environmental impacts (and as appropriate, mitigation measures) which should be addressed.

Background: As authorized by the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–88- October, 2009), the National Park Service (NPS) is conducting a special resource study of the area known as Honouliuli Gulch, and associated sites. The study evaluates the Honouliuli Gulch Internment Camp and associated sites located on Oahu and five other islands located in the State of Hawaii with respect to (1) Their significance as components of World War II; (2) significance of the sites as related to the forcible internment of Japanese Americans, European Americans, and other individuals; and (3) historic resources at the sites.

In conducting the study, the NPS study team shall use criteria for potential inclusion within the National Park System as described in § 8 of Public Law 91–383 (16 U.S.C. 1a–5). The Special Resource Study will evaluate the national significance, suitability, and feasibility of including the Honouliuli Gulch and associated sites in the National Park System. Factors which the NPS study team will evaluate include: The value of the site in interpreting the themes of our nation's heritage; the integrity of the site's resources; whether the study area includes types or quality of resources not already adequately represented in the National Park System; whether long-term protection and public use of the area are feasible; and whether the area can be adequately protected and administered at a reasonable cost.

The authorizing statute directs the NPS to consult with (1) The State of Hawaii; (2) appropriate Federal agencies; (3) Native Hawaiian and local government entities; (4) private and nonprofit organizations; (5) private landowners; and (6) other interested parties. Recommendations of the NPS study team may vary for different portions of the study area. The NPS study team will also consider alternative strategies for management, protection and use of significant resources within the overall study area, including management by other public agencies or the private sector; technical or financial assistance available from established programs or special initiatives and partnerships; and cooperative management by NPS and other entities.

Public Engagement: During the study process, a range of alternatives will be developed in consultation with Federal, State and local governments and interested members of the public, groups, and organizations. The NPS study team will conduct an environmental review of the alternatives and potential consequences of resource protection considerations as part of the Honouliuli Special Resource Study. At this time, it has not been determined whether an Environmental Assessment or an Environmental Impact Statement will be prepared, however, this scoping phase will aid in the preparation of either document, and public comments will aid in making this determination. The public will have several opportunities to comment and participate throughout the study process. Additionally, the public will be afforded the opportunity to review and comment on the ensuing environmental document following its release.

For initial scoping and alternatives development, the most useful comments are those that provide the NPS with assistance in identifying issues and concerns which should be addressed, or providing important information germane to this study. All responses to this Scoping Notice will also be used to establish a mailing list of interested persons, organizations, and agencies that desire to receive further information as the environmental document is developed.

All comments regarding the Honouliuli Special Resource Study must be postmarked or transmitted no later than June 1, 2011. Interested individuals, organizations, and agencies wishing to provide written comments should respond to: National Park Service, Honouliuli Special Resource Study, 300 Ala Moana Blvd., Box 50165, Ste 6–226, Honolulu, HI 96850. Comments may also be transmitted through the Honouliuli Special Resource Study Web site (*http://www.nps.gov/pwro/honouliuli*).

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.

FOR FURTHER INFORMATION CONTACT: Periodic information updates about the study process and opportunities for the public to participate will be distributed via direct mailings, regional and local news media, and the study's Web site (noted above). The NPS study team may also be contacted via e-mail at *pwro_honouliuli@nps.gov.* Availability of the forthcoming environmental document for review and written comment will be announced by local and regional news media, the above listed Web site, and direct mailing—at this time the document is anticipated to be available during Fall, 2011.

The official responsible for the initial recommendation will be the Regional Director, Pacific West Region, National Park Service. The official responsible for amending or ratifying the recommendation and transmitting the final document to the Secretary of the Interior will be the Director of the National Park Service. The final document will identify the alternative that, in the professional judgment of the Director of the National Park Service, is the most effective and efficient method for protecting significant resources and providing for public enjoyment. The Secretary of the Interior subsequently will forward the completed study along with a recommendation regarding the Secretary's preferred management option for the area to Congress for their consideration. It is anticipated that the final study report will be available in 2012.

Dated: March 2, 2011.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2011–10591 Filed 4–29–11; 8:45 am]

BILLING CODE 4312–GN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Colorado River Basin Salinity Control Advisory Council (Council) will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will convene the meeting on Wednesday, May 25, 2011, at approximately 2 p.m. and recess at approximately 5 p.m. The Council will reconvene the meeting on Thursday, May 26, 2011, at 8:30 a.m. and adjourn the meeting at approximately 11:30 a.m. Any member of the public may file written statements with the Council

before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

ADDRESSES: The meeting will be held in the Glenwood Springs Community Center, 100 Wulfsohn Road, Glenwood Springs, Colorado. Please send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Colorado River Basin Salinity Control Advisory Council was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. The purpose of the meeting will be to discuss and take appropriate actions regarding the following: (1) The Basin States Program created by Public Law 110–246, which amended the Act; (2) responses to the Advisory Council Report; and (3) other items within the jurisdiction of the Council.

Public Disclosure

Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 7, 2011.

Brent Rhees,

Deputy Regional Director, Upper Colorado Region.

[FR Doc. 2011–10545 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The meeting will be held on Wednesday, May 18, 2011, from 8:30 a.m. to approximately 5 p.m.

ADDRESSES: The meeting will be held at the Fiesta Resort Conference Center, 2100 S. Priest Drive, Tempe, Arizona.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; e-mail at *gknowles@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee, the AMWG, a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The primary purpose of the meeting will be for the AMWG to discuss development of the Fiscal Year 2012 budget and hydrograph, as well as to receive updates on the two environmental assessments being prepared by the Bureau of Reclamation, the Long Term Experiment and Management Plan environmental impact statement, current basin hydrology and Glen Canyon Dam operational changes, and project updates from the Grand Canyon Monitoring and Research Center. The AMWG will also address other administrative and resource issues pertaining to the AMP.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/11may18.html.* Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone 801–524–3781; facsimile 801–524–3858; e-mail at *gknowles@usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

Public Disclosure of Comments

Before including your name, 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.

Dated: April 26, 2011.

Glen Knowles,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2011–10533 Filed 4–29–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Review)]

Artists' Canvas From China; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Artists' Canvas From China

AGENCY: United States International Trade Commission.

ACTION: Notice

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on artists' canvas from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified

below to the Commission;[1] to be assured of consideration, the deadline for responses is June 1, 2011. Comments on the adequacy of responses may be filed with the Commission by July 15, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date*: May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On June 1, 2006, the Department of Commerce issued an antidumping duty order on imports of artists' canvas from China (71 FR 31154). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission found a single *Domestic Like Product,* all artists' canvas, co-extensive with the scope of the investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all U.S. producers of artists' canvas, that is, the producers of bulk canvas and non-print converters. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is June 1, 2006.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–244, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

The deadline for filing such comments is July 15, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 25, 2011.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–10277 Filed 4–27–11; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Third Review)]

Gray Portland Cement and Cement Clinker From Japan; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Gray Portland Cement and Cement Clinker From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on gray portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 1, 2011. Comments on the adequacy of responses may be filed with the Commission by July 15, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On May 10, 1991, the Department of Commerce issued an antidumping duty order on imports of gray portland cement and cement clinker from Japan (56 FR 21658). Following first five-year reviews by Commerce and the Commission, effective November 15, 2000, Commerce issued a continuation of the antidumping duty order on imports of gray portland cement and cement clinker from Japan (65 FR 68979). Following second five-year reviews by Commerce and the Commission, effective June 16, 2006, Commerce issued a continuation of the antidumping duty order on imports of gray portland cement and cement clinker from Japan (71 FR 34892). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined a single *Domestic Like Product* consisting of gray portland cement and cement clinker coextensive with Commerce's scope.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–245, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of gray portland cement and cement clinker, including "grinding only" operations. The Commission also concluded in its original determination, its full first five-year review determination, and its expedited second five-year review determination that appropriate circumstances existed for a regional industry analysis. In the original investigation, the Commission considered whether the Southern California region (defined as the counties of San Luis Obispo, Kern, Inyo, Mono, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial), as proposed by the petitioners, or a larger region, the State of California, was the appropriate region. In its original determination, the Commission determined that both regions satisfied the market isolation criteria but found the more appropriate region for its analysis was Southern California; one Commissioner found the regional industry to consist of producers in the State of California. In its full first five-year review determination, the Commission found that there had been integration of the Northern and Southern regions of California and defined the region as the State of California. The Commission also determined that the record in its expedited second five-year review supported a finding of a regional industry corresponding to the region of the State of California.

For purposes of this notice, you should report information separately on each of the following *Domestic Industries:* (1) Producers of gray portland cement and cement clinker, including "grinding only" operations, located in Southern California; (2) producers of gray portland cement and cement clinker, including "grinding only" operations, located in the State of California; and (3) producers of gray portland cement and cement clinker, including "grinding only" operations, located in the United States as a whole. Additionally, this notice uses the term *Domestic Market Area* to describe the area served by each *Domestic Industry.* Consequently, for purposes of this notice there are three *Domestic Market Areas:* (1) Southern California, (2) the State of California; (3) the United States.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 15, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation

of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: Please provide the requested information separately for each *Domestic Industry,* as previously defined in this notice, and, as applicable, its corresponding *Domestic Market Area.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the *Domestic Market Area* for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total *Domestic Industry* production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports into the *Domestic Market Area* and, if known, an estimate of the percentage of total U.S. imports into the *Domestic Market Area* of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments into the *Domestic Market Area* of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers into the *Domestic Market Area* of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the *Domestic Market Area* or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced by the *Domestic Industry, Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 25, 2011.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–10280 Filed 4–29–11; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–754]

In the Matter of Certain Handbags, Luggage, Accessories, and Packaging Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation To Substitute Respondents and To Add Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 6) granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 5, 2011, based on a complaint filed by Louis Vuitton Malletier S.A. of Paris, France and Louis Vuitton U.S. Manufacturing, Inc., San Dimas, California (collectively "Louis Vuitton"), based on an Amended Complaint filed December 10, 2010, alleging violations of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handbags, luggage, accessories, and packaging thereof by reason of infringement of certain claims of U.S. Trademark Registration Nos. 297,594; 1,643,625; 1,653,663; 1,875,198; 2,773,107; 2,177,828; 2,181,753; and 1,519,828. 76 FR 585–6 (Jan. 5, 2011). The complainant named as respondents T&T Handbag Industrial Co., Ltd. of Guangzhou, China; Sanjiu Leather Co., Ltd. of Guangzhou, China; Meada Corporation (d/b/a/Diophy Internation) of El Monte, California ("Meada"); Pacpro, Inc. of El Monte, California; Jianyong Zheng (a/k/a/Jui Go Zheng, Jiu An Zheng, Jian Yong Zheng, Peter Zheng) of Arcadia, California; Alice Bei Wang (a/k/a Alice B. Wang) of Arcadia, California ("Alice B. Wang"); Trendy Creations, Inc. of Chatsworth, California; The Inspired Bagger of Dallas, Texas; House of Bags of Los Angeles, California; Ronett Trading, Inc. (d/b/a/Ronett Wholesale & Import) of New York, New York; EZ Shine Group, Inc. of New York, New York; Master of Handbags of Los Angeles, California; Choicehandbags.com, Inc. (d/b/a/Choice Handbags) of Los Angeles, California; and Rasul Enterprises, LLC (d/b/a/The Handbag Warehouse) of Dallas, Texas.

On March 24, 2011, Louis Vuitton filed a motion for leave to amend the Amended Complaint and Notice of Investigation for the following reasons: (1) To add Jiu An Zheng and Jiu Gao Zheng in place of Jianyong Zhen; (2) to add Rimen Leather Co., Ltd., Guangzhou Rimen Leather Goods Company Limited, and Guangzhou Rui Ma Leatherware Co., Ltd., in place of Sanjiu Leather Co., Ltd.; and (3) to add Monhill, Inc. and Zhixian Lu as respondents. On April 1, 2011, respondents Meada and Alice B. Wang filed a response opposing the motion. No other party filed a response.

On April 11, 2011, the ALJ issued the subject ID, granting Louis Vuitton's motion pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)). No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: April 27, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–10551 Filed 4–29–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on or about April 25, 2011, a proposed Settlement Agreement in *In re: Old AII, Inc. (f/k/a Aleris International, Inc.) et al.,* Case No. 09–10478 (BLS), was lodged pursuant to Fed. R. Bank. Proc. 9019 with the United States Bankruptcy Court for the District of Delaware.

The proposed Settlement Agreement resolves a claim asserted in this Chapter 11 bankruptcy proceeding by the United

States on behalf of the United States Environmental Protection Agency ("EPA") for reimbursement of response costs incurred or to be incurred by EPA at the Halaco Superfund Site, located in Oxnard, California, from Debtor Commonwealth Aluminum Concast, Inc. ("Commonwealth Aluminum"). The United States alleged Commonwealth Aluminum is liable under Section 107(a)(3) of the Comprehensive Environmental Response Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607(a)(3), at the Halaco Site as a generator of hazardous wastes disposed of at the Site. Under the Settlement Agreement, the United States' claim will be allowed as an unsecured claim in the amount of $2,672,800.00, to be paid as a Class 5 claim (General Unsecured Claims Other than Convenience Claims and Insured Claims) in accordance with the confirmed *First Amended Joint Plan of Reorganization of Aleris International, Inc. and Its Affiliated Debtors, as Modified* (the "Plan").

The proposed Settlement Agreement also resolves the United States' claims for civil penalties and punitive damages under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for any failure that occurred through the date of lodging of the Settlement Agreement with the Bankruptcy Court by Commonwealth Aluminum (as successor to Barmet Aluminum Corporation), without sufficient cause, to comply with a Unilateral Administrative Order for Remedial Design and Remedial Action at the Brantley Landfill Site, located in Island, McLean County, Kentucky, issued by EPA on March 31, 1995 (the "Brantley UAO"). In return for the resolution of these claims, Aleris Rolled Products, Inc. agrees to undertake on a going forward basis the obligations under the Brantley UAO.

Finally, the Settlement Agreement reflects the resolution of certain claims asserted by the United States, on behalf of EPA, against Debtors Aleris International, Inc. and Wabash Alloys, L.L.C., respectively, under the Clean Air Act, 42 U.S.C. 7401–767, and the Toxic Substances Control Act, 15 U.S.C. 2601–2697, by providing for the withdrawal of the proofs of claim asserting those claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Old AII, Inc. (f/k/a Aleris International, Inc.) et al.,* Case No. 09–10478 (BLS), D.J. Ref. 90–5–2–1–08603/2.

During the public comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–10464 Filed 4–29–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on April 01, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ODVA, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TMG Technologie and Engineering GmbH, Karlsruhe, GERMANY; Tyco Electronics Corporation, Berwyn, PA; Rosemount Inc., Chanhassen, MN; Sencon Incorporated, Bedford Park, IL; ABOUNDI Inc., Nashua, NH; FACTS, Inc., Cuyahoga Falls, OH; STS Co., Ltd., Yongin-si, Gyeonggi-do, REPUBLIC OF KOREA; MagneMotion Inc., Devens, MA; and ABT EndUstri Enerji Sistemleri Sanayi Tic. Ltd., Sti., Izmir, TURKEY, have been added as parties to this venture.

Also, Perry Slingsby Systems Ltd., North Yorkshire, UNITED KINGDOM; AC&T, Gyeonggi-do, REPUBLIC OF KOREA; F.A. Elec, Seoul, REPUBLIC OF KOREA; METRONIX Corp., Gunpo, Kyunggi-do, REPUBLIC OF KOREA; Trio Motion Technology Ltd., Gloucestershire, UNITED KINGDOM; TOKYO TRON CO., LTD.; TOKYO TRON CO., LTD., Tokyo-to, JAPAN; Alpha Wire, Elizabeth, NJ; and HanYang System, Kyunngido, REPUBLIC OF KOREA, have withdrawn as parties to this venture.

In addition, the following members have changed their names: Moeller GmbH to Eaton Industries GmbH, Bonn, GERMANY; Advanced Energy Japan K.K. to Hitachi Metals, Ltd., Tokyo, JAPAN; and Micro Innovation to Eaton Automation AG, St. Gallen, SWITZERLAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on November 15, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act December 17, 2010 (75 FR 79024).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10466 Filed 4–29–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–18]

Sun & Lake Pharmacy, Inc.; D/B/A the Medicine Shoppe; Revocation of Registration

On October 19, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Sun & Lake Pharmacy, Inc., d/b/a The Medicine Shoppe (hereinafter, Respondent) of Lakeland,

Florida. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration, BS9433828, as a retail pharmacy, and the denial of any pending applications to renew or modify the registration, on the ground that its registration is "inconsistent with the public interest." ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

More specifically, the Show Cause Order alleged that Respondent had violated both federal and state laws by distributing controlled substances to persons throughout the United States "based on purported prescriptions issued to hundreds of customers through Internet websites * * * by physicians who were not licensed to practice medicine in the states in which the customers resided." *Id.* at 2 (citations omitted). The Show Cause Order also alleged that the prescriptions violated 21 CFR 1306.04(a) because the "physicians failed to establish a valid physician-patient relationship as required by multiple state laws" and were therefore issued "for other than a legitimate medical purpose and/or outside the usual course of professional practice." *Id.* at 3 (citations omitted).

Finally, the Order alleged that Respondent filled unlawful prescriptions issued by one Robert Reppy, D.O., because Reppy "issued * * * prescriptions for controlled substances to customers throughout the United States even though he was licensed to practice medicine only in the State of Florida" and was therefore engaged in the unauthorized practice of medicine when he prescribed to persons outside of Florida. *Id.* The Order also alleged that Reppy violated Florida law by "issuing prescriptions via the Internet without a documented patient evaluation and discussion between [him] and [the] patient regarding treatment options." *Id.* (citations omitted).

On November 23, 2009, Respondent, through its counsel, requested a hearing on the allegations and the matter was placed on the docket of the DEA Administrative Law Judges (ALJs). ALJ Ex. 2. Following pre-hearing procedures, on February 24–25, 2010, an ALJ conducted a hearing in Tampa, Florida. At the hearing, the Government called witnesses to testify and introduced extensive documentary evidence; Respondent called no witnesses and introduced a single exhibit. Following the hearing, both parties submitted briefs containing their proposed findings of fact, conclusions of law and argument.

On April 8, 2010, the ALJ issued his Recommended Decision (also ALJ). As to factor one—the recommendation of the state licensing authority—the ALJ noted that there was no evidence that the State licensing authority had taken any action against Respondent's pharmacy license. ALJ at 28. The ALJ noted, however, that while state licensure is a necessary condition for holding a registration, Respondent's continued holding of its state license is not dispositive because DEA has an "independent responsibility to determine whether a registration is in the public interest." *Id.* (citations omitted). The ALJ thus concluded that Respondent's licensure status neither "weigh[s] for or against a determination" that its "continued registration * * * is consistent with the public interest." *Id.*

As to factor three—Respondent's record of conviction of offenses related to the distribution or dispensing of controlled substances—the ALJ noted that while Respondent remains the subject of a criminal investigation, it has not been "convicted of any crime." *Id.* The ALJ reasoned, however, that "the probative value" of this finding "is somewhat diminished by the myriad of considerations that are factored into a decision to initiate, pursue, and dispose of criminal proceedings by" the prosecuting authorities. *Id.* at 28. The ALJ apparently concluded that this factor neither supported nor refuted the conclusion that Respondent's continued registration is inconsistent with the public interest. *Id.* at 29.

The ALJ considered the remaining factors—its experience in dispensing controlled substances (factor two), its compliance with applicable laws relating to controlled substances (factor four), and other conduct which may threaten public health and safety (factor five)—together. *Id.* at 29–48. With regard to these factors, the ALJ noted that there were two primary issues: (1) Whether Respondent complied with its "corresponding responsibility" under 21 CFR 1306.04(a) to not knowingly fill a prescription which has not been issued for a legitimate medical purpose, and (2) whether it "was authorized to dispense controlled substances to the ultimate user who received them where they were delivered." *Id.* at 32.

As to the first issue, the ALJ explained that a "pharmacy registrant must understand the requirements attendant upon the issuance of an effective prescription under the regulations." *Id.* at 33. The ALJ further noted that under the Controlled Substances Act, "it is fundamental that a physician practitioner must have established a bona fide doctor-patient relationship in order to act 'in the usual course of professional practice' and to issue a prescription 'for a legitimate medical purpose,'" and that at the time of the conduct at issue, "the CSA generally looked to state law to determine whether a bona fide doctor patient relationship existed." *Id.* at 33–34 (citations omitted). The ALJ also explained that under agency precedent, "'an entity which voluntarily engages in commerce by shipping controlled substances to persons located in other States is properly charged with knowledge of the laws regarding both the practice of medicine and pharmacy in those States,'" and this obligation includes "'determin[ing] whether the physicians were in compliance with the States' licensure requirements and specific standards for issuing treatment recommendations and prescribing controlled substances.'" *Id.* at 38 (quoting *Bob's Pharmacy & Diabetic Supplies,* 74 FR 19599, 19601 (2009); *United Prescriptions Servs., Inc.,* 72 FR 50397, 50408 (2007)). Moreover, the ALJ also cited Agency precedent that, under the CSA, "a physician who engages in the unauthorized practice of medicine under state law is not 'a practitioner acting in the usual course of * * * professional practice,'" and that "a controlled-substance prescription issued by a physician who lacks the license or other authority required to practice medicine within a State is therefore unlawful under the CSA." *Id.* (citations omitted).

The ALJ also concluded that Respondent had ignored evidence that the prescriptions were not issued pursuant to a valid doctor-patient relationship. The ALJ noted that a DEA Diversion Investigator (DI) had provided Respondent with various documents including a Guidance Document on *Dispensing and Purchasing Controlled Substances Over the Internet,* 66 FR 21181 (2001), which explained four widely accepted elements for establishing a bona fide doctor-patient relationship (including, *inter alia,* that a medical history be taken and a physical examination be performed) and the DEA *Pharmacist's Manual.* ALJ at 34–35. The ALJ also found that Respondent's owner had expressed to the DI that it had been solicited to distribute drugs for an internet prescribing scheme but that he declined to do so because he did not believe there would be adequate doctor-patient relationships to support the prescriptions and thus he "expressed actual understanding" that "where doctor and patient are geographically isolated from each other, it increases the risk that the requisite doctor-patient relationship does not exist." *Id.* at 35.

Noting that Respondent had filled several prescriptions which were

shipped to Alabama residents and which were authorized by a Dr. Flynn, who was located in Pennsylvania, and Dr. De LaGuardia, who was located Kansas, the ALJ reasoned that "[t]he fact that the prescriptions were authorized by practitioners geographically isolated from Alabama made it unlikely that the issuing physician had the requisite doctor-patient relationship with the ultimate user"; he then found that Respondent "took no steps to resolve these red flags prior to dispensing controlled substances" and thus violated "its corresponding responsibility" under Federal law. *Id.* at 40. The ALJ further noted that Respondent "had * * * ignored similar obligations to resolve anomalies attendant upon remote doctor and patient locations prior to dispensing controlled substances prescribed by [these two doctors] to customers in states including, *inter alia,* California, Georgia, Illinois, Louisiana, Mississippi, North Carolina, and South Carolina." *Id.* at 40–41. (citing numerous State laws).

The ALJ also noted that "apart from the geographic separation between Dr. Flynn and his nationwide ultimate-user base, * * * Respondent * * * possess[ed] * * * documents that reflected that on single days, this physician issued 837, 347, 344 and 314 prescriptions, [and this] should have resulted in great concern [on its part] that this number of individuals was not being examined and treated on a daily basis by" Flynn, who was "one of [its] regular prescribing physicians." *Id.* at 44–45. Similarly, the ALJ noted that "on several days Dr. De La Guardia, another regular prescriber, issued over 100 prescriptions." *Id.* at 45. Because Respondent ignored both the geographic separation between the patients and prescribers as well as the high volume of their prescriptions, the ALJ concluded that it violated Federal and state laws related to controlled substances and "its obligations as a DEA registrant" and that this "militate[s] strongly in favor of revocation." *Id.* at 46.

The ALJ further noted that "these prescriptions were issued by physicians not licensed to practice in the states in which the customers resided" and that this issue "needed to be resolved [by Respondent] prior to the dispensing of a single controlled substance" pursuant to these prescriptions. *Id.* at 41.

Next the ALJ noted that "[t]he CSA requires that a practitioner * * * be currently authorized to handle controlled substances in 'the jurisdiction in which he practices' in order to maintain a DEA registration." *Id.* at 42 (citing 21 U.S.C. 802(21) & 823(f)). Reasoning that "state authorization of the pharmacy registrant to dispense in the state where the controlled substance is ultimately dispensed stands as a fundamental condition precedent to establishing that a prescription has been lawfully filled," the ALJ, citing numerous state laws requiring that a pharmacy be licensed in the State to deliver drugs to one of its residents, concluded that Respondent's "filling and shipping of * * * controlled substances was done in direct violation of state laws relating to controlled substances." *Id.* at 43–44.

Finally, the ALJ noted that Mr. Fosu "elected not to testify" and that Mrs. Fosu, who was also involved in Respondent's operations, had invoked the Fifth Amendment when called to testify. *Id.* at 47. Noting the Agency rule that where the Government makes out a *prima facie* case, the Respondent must accept responsibility for its misconduct, the ALJ concluded that the Fosus had failed "to accept any responsibility for any of [Respondent's] prescription filling practices" and that this "militates strongly in favor of revocation." *Id.* at 48. The ALJ thus concluded that Respondent had not rebutted the Government's *prima facie* case and recommended that Respondent's registration be revoked and any pending applications be denied. *Id.* at 48–49.

Neither party filed exceptions to the ALJ's decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the entire record in this matter, I adopt the ALJ's findings of fact and conclusions of law except as specifically noted herein. I further adopt the ALJ's recommended sanction that Respondent's registration be revoked and its pending application be denied. I make the following findings.

Findings

Respondent is a Florida corporation which owns and operates a retail pharmacy doing business under the name of The Medicine Shoppe. GX 2. Respondent, which first became registered on September 1, 2005, holds DEA Certificate of Registration BS9433828, which authorizes it to dispense controlled substances in schedules II through V as a retail pharmacy at the registered location of 1231 Lakeland Hills Blvd., Lakeland, Florida. *Id.* Respondent's registration was last renewed on February 15, 2008 and was not due to expire until February 28, 2011. *Id.* According to the registration records of the Agency, of which I take official notice, *see* 5 U.S.C. 556(e); on January 12, 2011, Respondent submitted a renewal application. I therefore find that Respondent's registration has remained in effect pending the issuance of this Decision and Final Order.[1] *See* 5 U.S.C. 558(c); 21 CFR 1301.36(i).

Kwame Fosu, who is a registered pharmacist, is the director, registered agent, and owner of Respondent. ALJ Ex. 6, at 2 (stipulated facts); GX 7. Patricia Fosu, who is Mr. Fosu's wife, Tr. 184, is also a registered pharmacist in Florida. *Id.* at 317.

Sometime in early 2005, DEA Investigators (DIs) with the Tampa Field Division started receiving a large volume of complaints about various Florida pharmacies from persons who had ordered drugs through Web sites. *Id.* at 29, 31. Using an agency database, the DIs determined that there were "a lot of small pharmacies" in the Tampa Bay area that were purchasing "large amounts of hydrocodone," (a schedule III controlled substance as it is usually dispensed to patients), including some that were purchasing "over a million dosage units" and these quantities were at least twice as great as those being purchased by large chain drugstores such as Walgreens or CVS.[2] *Id.* at 33. The DIs also noticed that the largest purchasers were usually pharmacies that had recently obtained DEA registrations. *Id.* at 35.

With this information, the Tampa DIs commenced visiting these pharmacies to determine what was going on and to educate them about DEA's position on the lawfulness of prescriptions originating through the Internet. *Id.* at 36 & 40. The Tampa Office also decided that every time they received a new application for a pharmacy registration, they would "be proactive" and visit the pharmacies and explain to them that prescriptions that were not issued based on "a doctor-patient relationship" were not legal and that, if the doctor was located in a State other than where the patient resides, "there is no way there could be a doctor-patient relationship."[3] *Id.* at 41–42.

[1] Under the Administative Procedure Act (APA), and agency "may take official notice of facts at ay stage in a proceeding-even in the final decision." *U.S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request, to an opportunity to show to the contrary." 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute the fact of which I take oficial notice by filing a properly supported motion for reconsideration within twenty days of service of this Order, which shall begin on the date it is mailed.

[2] The DI did not clarify te time period during which these purchases occurred.

[3] The DI also testified that while some of the pharmacists they encountered claimed that they were just doing mail order they were not because

Continued

Pursuant to this policy, on December 5, 2005, two DIs went to Respondent and met with Mr. Fosu.[4] The DIs gave Mr. Fosu a package of documents which included the DEA *Pharmacist's Manual,* the Agency's 2001 Guidance Document entitled *Dispensing and Purchasing Controlled Substances over the Internet*[5] along with a one page document summarizing some of the critical points of the Guidance Document, as well as documents containing Frequently Asked Questions regarding the dispensing and purchasing of controlled substances over the internet, and provisions of Florida law setting forth grounds for disciplinary action against a pharmacist's license (including where a pharmacist dispenses a drug either knowing or having reason to know that a prescription is not based upon a valid practitioner-patient relationship). GX 7. During their discussion of the use of the internet, the DI told Mr. Fosu that internet prescribing was illegal as were prescriptions that were digitally signed. Tr. 150–51, 153. Mr. Fosu told the DI "that he was aware of the internet situation because he had been approached by an individual" about filling prescriptions for an internet site, but "he had informed that individual that he wasn't interested in doing internet because he did no see the doctor-patient relationship and he didn't want to have any trouble [and] wasn't going to be doing [the] internet." Tr. 49; *see also id.* at 45.

The DI further testified that she had given Mr. Fosu her business card and that she asked him to call her if he was ever approached again by someone about filling internet prescriptions and to obtain as much information as he could to identify the person. *Id.* at 50 & 102. The DI was never subsequently contacted by Mr. Fosu. *Id.*

In late January or early February 2007, another DI, who was assigned to the Pittsburgh, Pennsylvania Resident Office, received a phone call from a pharmacy owner who reported that he had been called by a person who represented that he worked for an entity known as Coralpines and who had solicited him to fill prescriptions that were issued over the internet. *Id.* at 332 & 337. The pharmacy owner stated that the Coralpines' representative had told him that if he agreed to do so, he would be given a user name and password so that he could access a Web site and download prescriptions which he was to fill. *Id.* at 332–33. When the pharmacy owner "expressed [his] reservations" to Coralpines' representative, it wired "a significant amount of money" to him to show its "good faith." *Id.* at 333.

Thereafter, the pharmacy owner accessed Coralpines' Web site and downloaded hundred of prescriptions that it wanted his pharmacy to fill. *Id.* Upon printing out the prescriptions, which totaled about 200, the pharmacy owner noted that they were issued by "mainly three doctors" and yet were for persons located throughout the country. *Id.* More specifically, the prescribing doctors were Michael Flynn, who was located in Wallingford, Pennsylvania; Alfredo Valdivieso, who was located in Puerto Rico; and Enrique De La Guardia, who was located in Ft. Leavenworth, Kansas. *Id.* at 337–38. With the exceptions of Dr. De La Guardia, who was licensed in both Kansas and Nebraska, the other doctors were licensed only in the States where they were located. *Id.* at 338–39.

Apparently because all of the prescriptions were for controlled substances, the pharmacy owner decided not to do business with Coralpines and turned over the prescriptions to the DI. *Id.* at 333. According to the DI, the prescriptions were primarily for phentermine, diazepam, and alprazolam, all of which are schedule IV controlled substances. *Id.* at 335; *see also* 21 CFR 1308.14(c) & (e).

According to the DI, the prescription forms were divided into three sections; one section contained prescription information such as the customer's name, address, drug, quantity, date, and a physician's signature; another section contained the label that goes on the prescription vial, and the third section contained either a UPS or Fed Ex shipping label with an account number, the pharmacy's name, and the patient's name. *Id.* at 334–36.

Each prescription form also included the name of the Web site which the customer had accessed to order the drugs. *Id.* at 339–40. There were approximately 30 Web sites including pillforce.com, pillpush.com and pillroyal.com; the DI later determined that crownpills.com was also affiliated with Coralpines. *Id.* at 340–41 & 349. The DI also determined that Coralpines was located in Durban, South Africa. *Id.* at 340.

On February 15, 2007, the DI, using an undercover name, visited pillpush.com and purchased alprazolam. *Id.* at 350 & 354. In additional to providing his name and address, the DI was directed to complete a ten-question questionnaire. *Id.* at 351. The DI gave a false height and weight, and when asked why he wanted the drug, wrote "anxiety." *Id.* The DI then provided his credit card information and placed his order. *Id.*

A week later, the DI received a package containing a drug vial which contained 60 tablets of alprazolam.[6] *Id.* The vial label indicated that the prescription had been filled by Respondent and that the prescribing physician was Dr. Flynn. *Id.* at 351–52. Prior to the issuance of the prescription, the DI neither saw nor spoke with Dr. Flynn. *Id.* at 352. Nor, prior to his receiving the prescription, did he speak with anyone at Respondent. *Id.* at 354.

Thereafter, a subpoena was issued to UPS for shipping records for the account number (which was the same number as had been on the 200 prescriptions that were turned over to DEA by the western Pa. pharmacy owner) under which the alprazolam had been shipped. *Id.* at 354–55. UPS turned over the records which showed that in a one to one-and-a-half-month time period, Respondent had made 1600 shipments to persons located throughout the country. *Id.* at 355.

Using the UPS records, the DI contacted several persons who lived near Pittsburgh. *Id.* at 359. The DI (accompanied by another DI) interviewed B.F. at her residence; B.F. told them that she had ordered

in "[m]ail order, the doctor sees the patient, the patient gets the prescription [and] mails the prescription into their pharmacy * * * This [internet prescribing] was done completely different." Tr. 42.

[4] The DI had previously gone to Respondent in October but was informed that Mr. Fosu was out of the country. Tr, 43. Because the DI wanted to discuss these issues with Mr. Fosu, she decided that she would revisit Respondent when he returned. *Id.*

[5] This document had previously been pubished in the **Federal Register** at 66 FR 21181. GX 8, at 2. The Guidance Document specifically stated that "Federal law requires that '[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner action in the usual course of his professional practice.'" 66 FR at 21182 (quoting 21 CFR 1306.04(a)). The Guidance explained that "[e]very state separately imposes the same requirement under its laws" and that "[u]nder Federal and state law, for a doctor to be acting in the usual course of professional practice, there must be a bona fide doctor/patient relationship. *Id.* Continuing, the Gudance exlained that "[f]or purposes of state law, many state authorities, with the endorsement of medical societies, consider the existence of the following four elements as an indication that a legitimate doctor patient relationship has been established:"

A patient has a medical complaint;

A medical history has been taken;

A physical; examination has been performed; and

Some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed.

Id. at 21182–83.

[6] The DI subsequently testified that he received the drugs on February 23, 2007. Tr. 353. The DI also testified that the drugs were tested by a DEA laboratory and found to be alprazolam. *Id.*

alprazolam through a Web site (pillroyal.com), which was one of those known to be an affiliate of Coralpines. *Id.* at 359–60; GX 16, at 1. While B.F. related as to how she had filled out a questionnaire and provided credit card information, she also stated that she did not have to provide medical records and neither was examined by, nor spoke with a physician. Tr. 361. Shortly thereafter, B.F. received a bottle of alprazolam; its label indicated that the prescription had been filled by Respondent and listed Dr. Flynn as the prescribing physician. *Id.* at 361–62. B.F. also printed out copies of e-mail correspondence (which she gave to the DIs) which had confirmed her order and the subsequent shipment of it. GX 16, at 1–3. The DIs subsequently confirmed that the e-mail address of the sender was the same as had been used by representatives of Coralpines in contacting the pharmacy owner who had declined to fill prescriptions for it. Tr. 362–63.

The DI also interviewed C.S. *Id.* at 369. C.S. also related that he had gone to a Web site that the DIs had identified as being affiliated with Coralpines and ordered 90 tablets of diazepam "merely through" completing a questionnaire and providing credit card information. *Id.* at 370. C.S. "did not have to provide any additional records" and was neither examined by nor spoke "with a doctor." *Id.* at 371 & 373. C.S. subsequently received a prescription which had been issued by Dr. Flynn and filled by Respondent. *Id.; see also* GX 18 (copy of March 26, 2007 prescription for 90 tablets of diazepam 10 mg.).[7]

On June 12, 2007, a search warrant was executed at Respondent. During the search, the authorities seized hard copies of the controlled substance prescriptions Respondent had dispensed; Respondent's purchasing, dispensing records, and shipping documents; and various notes that related to the investigation of Coralpines. Tr. 381. Moreover, computer forensic examiners imaged the hard drives of Respondent's computers. *Id.* at 381–82.

During the search, members of the search party (including the Pittsburgh-based DI) interviewed Patricia Fosu. *Id.* at 385. Ms. Fosu stated that her husband had purchased Respondent in 2005 and that she had initially worked there on a part-time basis; however, her hours had increased in the months before the warrant was executed (which corresponds with the period in which Respondent commenced filling prescriptions for Coralpines). *Id.* at 385–86.

Ms. Fosu further stated that in November 2006, she and her husband were approached by one Gerald Wright, who identified himself as a pharmacist, and who solicited them to fill prescriptions issued by doctors who worked for Coralpines. *Id.* at 390. Wright, who practiced at CRJ Pharmacy, told the Fosus that he was personally filling prescriptions for Coralpines.[8] *Id.* According to Ms. Fosu, while she and her husband had expressed their concern to Wright that the Coralpines' physicians were not seeing the patients, Wright stated that they had nothing "to worry about because other pharmacies across the country" were also filling prescriptions that were issued "in a similar manner." *Id.* at 397.

During the interview, Ms. Fosu identified Drs. Flynn and De La Guardia as the prescribers of the prescriptions which Respondent filled for Coralpines. *Id.* at 396. While Ms. Fosu related that she had initially made a few phone calls to Dr. De La Guardia to verify that he had issued the prescriptions, she was never able to speak with Dr. Flynn, whose prescribing practices raised her concern because of the large number of prescriptions he was issuing. *Id.* Ms. Fosu further asserted that she and her husband became concerned that most of the Coralpines prescriptions were for controlled substances. *Id.* at 397–98. She further maintained that she and her husband had decided in April 2007 to stop filling prescriptions for Coralpines because they did not believe that there was "a legitimate doctor-patient relationship" between the patients and Drs. Flynn or De La Guardia. *Id.* at 398.

Ms. Fosu also related that in January 2007, she and her husband had been visited by Dr. Robert Reppy, a Tampa-area physician, who solicited Respondent to fill prescriptions that he would be writing for persons who were located throughout the United States. *Id.* at 399. Reppy "assured" the Fosus that "his patients would be flying in from all across the country to be seen by [him] at his" Tampa office. *Id.*

The Fosus agreed to fill Reppy's prescriptions and shortly thereafter started receiving faxed prescriptions which were "mainly for hydrocodone," which is a schedule III narcotic. *Id.*; *see also* 21 CFR 1308.13(e). Ms. Fosu further stated that because she and her husband "were concerned about whether [Reppy] was actually seeing these patients," they made an unannounced visit to his office. Tr. 399. Reppy assured the Fosus that "he was actually seeing these patients." *Id.* at 400.

During the course of executing the warrant, Respondent received six prescriptions via fax from Reppy's office. *Id.* The prescriptions were for patients who did not reside in Florida. *Id.* at 403. The DI did not, however, have any information linking Reppy to Coralpines and did not know if Reppy was issuing prescriptions through any other internet sites. *Id.* at 401.

Later that morning, Mr. Fosu arrived at Respondent and agreed to be interviewed. *Id.* at 413–14. Mr. Fosu related that, in the summer of 2006, he had received a phone call from a woman working for Coralpines who solicited him to fill prescriptions for it. *Id.* at 414–15. Mr. Fosu maintained that he was not comfortable with Coralpines' proposal because he "didn't believe that the doctors would actually be seeing the patients" and believed that there would not be "a legitimate doctor-patient relationship." *Id.* at 415. Mr. Fosu claimed that he had called the DEA Tampa office and was told to contact the Florida Board of Pharmacy. *Id.* at 415–16. Mr. Fosu spoke with a representative of the Board to inquire about the legality of filling prescriptions for doctors who were not in the same area as their patients. *Id.* at 416. The Board's representative told Mr. Fosu not to fill the prescriptions if they "were not based on a legitimate doctor-patient relationship." *Id.* at 416–17. Mr. Fosu then questioned the Board representative as to what constitutes a doctor-patient relationship and was advised to contact the Florida Board of Medicine for further guidance. *Id.* at 417.

During the interview, Mr. Fosu corroborated that in November 2006, he was approached by Wright, who solicited him to fill prescriptions for doctors affiliated with the Pitcairn Group.[9] *Id.* at 417. Wright told Fosu that he was filling prescriptions for Pitcairn and asked him if he was

[7] The prescription was seized from Respondent in June 2007 during the execution of a search warrant. *See* GX17.

[8] In February 2007, I ordered that CRJ Pharmacy's DEA registration be immediately suspended. *See* 72 FR 30846 (2007). Subsequently, CRJ surrendered its state license and went out of business. *Id.* at 30847

[9] While in this portion of his testimony, the DI referred to the Pitcairn Group, the evidence suggests that Pitcairn either changed its name to Coralpines, Tr. 420, was an entity that was controlled by Coralpines, or was taken over by it. GX 15, at 4 (Jan. 30, 2007 e-mail from Coralpines Support to "Kwamen and Pat" stating in part: "Pitcairn has a credit balance with Sunlake for 8k. We will deduct this of [sic] next weeks report. Thanks, Coralpines Support."); *id.* at 6 (Jan. 10, 2007 e-mail with subject line of "Pitcairn migrating to Coralpines," and stating: "My name is Justin, I will be taking over for Pitcairn as Juan has gone on leave.").

interested in doing so. *Id.* at 417–18. Fosu maintained that he questioned Wright about whether the prescriptions were based on legitimate doctor-patient relationships and that Wright had told him not worry because other pharmacies were filling prescriptions for Pitcairn. *Id.* at 418.

In the interview, Mr. Fosu maintained that during the course of his relationship with Coralpines, he had become "increasing[ly] concerned" that the prescriptions were only for controlled substances such as hydrocodone and alprazolam and that when he raised this issue with Coralpines, he was told that he would start seeing a "mix of prescriptions." *Id.* at 420. However, Coralpines continued to send him alprazolam prescriptions. *Id.* Mr. Fosu further related that he had worked for Coralpines from November 2006 through April 2007, that Coralpines paid him $20 per prescription, and that Coralpines had paid him a total of between $150,000 to $250,000 for Respondent's services.[10] *Id.* at 421. These payments came from foreign sources and according to Mr. Fosu, further raised his concern. *Id.*

Mr. Fosu also admitted that he was concerned about Dr. Reppy's prescriptions and that this had prompted the visit to Reppy's office, which had occurred approximately one month before the warrant was executed. *Id.* at 422. After the visit, Respondent continued to fill Reppy's prescriptions. *Id.* at 423. However, during his interview, Mr. Fosu announced that from that "day forward, [he] would no longer fill these prescriptions because [he] did not believe that Dr. Reppy was ever seeing these patients from out of state." *Id.*

The day after the interview, Mr. Fosu called the DI and asked him whether he should fill the hydrocodone refills which Reppy had authorized on his prescriptions. *Id.* at 428. The DI instructed Fosu "to use his best judgment as a pharmacist" and, if he did "not believe that these prescriptions were issued for a legitimate medical purpose, then [he] shouldn't be refilling the prescriptions." *Id.* The DI further explained that if Reppy "was not seeing these patients," then "there was no doctor-patient relationship" and he should not refill the prescriptions. *Id.* Mr. Fosu then told the DI that he would not refill Reppy's prescriptions. *Id.* at 428–29.

As found above, during the search, the hard drives of Respondent's computers were imaged and subsequently analyzed by the National Drug Intelligence Center. *Id.* at 423–24. According to the DI, the analysis showed that between January and the June 2007, Respondent had filled 2,400 prescriptions issued by Reppy, which were primarily for hydrocodone, and that the prescriptions had been sent to residents of 46 different States. *Id.* at 425. However, the Government did not submit any report or summary providing further detail as to Reppy's prescribing practices. Nor did the Government submit copies of any of Reppy's prescriptions.

As found above, the search party also seized numerous hard copy prescriptions that Respondent had filled which were issued by Drs. Flynn and De La Guardia. *Id.* at 447. The DI (along with other DEA employees) prepared a spreadsheet listing each doctor's prescriptions by date of issuance and drug prescribed; the spreadsheet also provided a daily total of the prescriptions. *Id.; see also* GXs 12 & 13.

The Government also submitted representative samples of the controlled substance prescriptions issued by Drs. Flynn and De La Guardia which were filled by Respondent. With respect to Dr. Flynn, the exhibits included copies of 97 controlled substance prescriptions, *see* GX 10; with respect to Dr. De La Guardia, the exhibit included copies of 94 controlled substance prescriptions. *See* GX 11. Both of these exhibits included a cover page which listed the number of prescriptions by State of the patient. GX 10, at 1; GX 11, at 1.

Upon reviewing Dr. Flynn's prescriptions, the DI found that on numerous days, Flynn had issued an extraordinary number of prescriptions. More specifically, on February 2, 2007, Flynn had issued 344 prescriptions including 235 for alprazolam, 86 for diazepam, 4 for lorazepam, and 12 for clonazepam. GX 12, at 1. Moreover, on February 19, 2007, Flynn had issued 837 prescriptions including 581 for alprazolam, 183 for diazepam, 1 for lorazepam, and 37 for clonazepam. *Id.* In addition, on February 23, Flynn issued 314 prescriptions; on February 28, 338 prescriptions; on March 26, 347 prescriptions, and on April 3, 267 prescriptions.[11] *Id.* at 1–2. In addition, on February 14 and 15, he issued 195 and 247 prescriptions respectively;[12] there were also multiple other days on which he issued between 100 and 200 prescriptions. *Id.* In each instance, the great majority of the prescriptions were for controlled substances. Between January 31 and April 5, Dr. Flynn wrote a total of 3,227 alprazolam prescriptions, 1,310 diazepam prescriptions, 415 lorazepam prescriptions, and 195 clonazepam prescriptions.[13] *Id.* at 2.

As for Dr. De La Guardia, the evidence showed that between November 30, 2006 and February 6, 2007, Respondent filled 1,366 alprazolam prescriptions, 628 diazepam prescriptions, 187 lorazepam prescriptions, 58 clonazepam prescriptions, and 64 phentermine prescriptions which he had issued. GX 14, at 2. While De La Guardia generally did not issue prescriptions at the same rate as Flynn, there were numerous days on which he wrote more than 50 controlled substance prescriptions and several days on which he wrote more than 100. *Id.*

In September 2007, Mr. Fosu called the DI, who had since returned to the Pittsburgh office. *Id.* at 430. Mr. Fosu reported that he had been solicited by another entity to fill more internet prescriptions for hydrocodone, which were issued by a physician in Puerto Rico, and that he had been sent copies of two prescriptions, one of which was for a Pennsylvania resident. *Id.* at 430–

[10] Various e-mails suggest that this amount was Respondent's compensation for filling the prescriptions and that it was also reimbursed for its drug costs. GX 15, at 3–14 (stating "your estimated cost for my totals for week 4 & 5 was about $31,000 that is only my cost of drugs. My service fee is about 13,180 for 670 script[s] filed"); *id.* at 17 (stating that in the "week ending 02/09/2007 I did 579 prescriptions my service fee is 11,580,000 [and my] drug cost is obout [sic] $12,000").

[11] Flynn's February 23rd prescriptions included 84 alprazolam, 30 for diazepam, 176 for lorazepam, and 12 for clonazepam; his February 28 prescriptions included 222 for alprazolam, 54 for diazepam, 9 for lorazepam, and 14 for clonazepam; his March 26 prescriptions included 137 for alprazolam and 210 for diazepam, and his April 3 prescriptions included 136 alprazolam, 76 for diazepam, 34 for lorazepam and 21 for clonazepam. GX12, at 1–2.

[12] His February 14 prescriptions included 136 for alprazolam and 58 for diazepam; his February 15 included 181 for alprazolam and 64 diazepam. GX 12, at 1.

[13] Based on this information, in July 2007, DEA personnel obtained a warrant to search Dr. Flynn's registered location, which was also his home. Tr. 461. While Dr. Flynn was not home when the warrant was executed, he returned the following day and was interviewed by the DI and others. *Id.* at 463. During his interview, Flynn admitted that he worked for Coralpines; he further admitted that he would go to its website and see "hundreds of questionnaires," that he issued prescriptions "without talking to any of the customers by phone [and] without reviewing any other medical records." *Id.* at 464. He further admitted that "in most cases * * * he didn't even review the questionnaires," that "[h]e viewed this as an easy way to make money, and that this "was not a legitimate medical practice." *Id.* at 464. Flynn also stated that "he was never contacted by any pharmacy to verify [his] prescriptions" and was "never questioned about" the legitimacy of the prescriptions. *Id.* On July 30, 2007, Dr. Flynn surrendered his registration and eventually pled guilty to violating 21 U.S.C. 846 Tr. 465; GXs 4 & 23.

As for Dr. De La Guardia, the record shows that he surrendered his registration on August 1, 2007. GX 5.

31. Mr. Fosu stated that he did not feel comfortable with the proposal and that he wanted to provide this information to the DI. *Id.* at 431.

Mr. Fosu then told the DI that he had since met again with Dr. Reppy, who told him that he had "weeded out the bad people" and that Reppy had asked him to continue to fill his prescriptions. *Id.* Mr. Fosu maintained that Reppy had assured him that he was actually seeing the patients and that he was requiring them to provide some form of identification. *Id.* at 432. Mr. Fosu then stated that he planned on filling these prescriptions "if he had some sort of identification for the patient to [show] that the patient was who they said they were" and that "would match what was on the" prescription. *Id.*

However, on cross-examination, the DI admitted that he did not know whether Reppy's patients were actually coming in to see him. *Id.* at 541. Moreover, the Government offered no other evidence probative of whether Reppy's patients were actually seeing him. *Id.* The DI also acknowledged that he did not know whether there was anything wrong with Reppy's prescriptions, none of which were entered into evidence. *Id.* Indeed, the DI acknowledged that he did not know whether Respondent had filled any prescriptions issued by Reppy and that it was "possible" that Respondent had not even filled Reppy's prescriptions. *Id.* at 543.

During their respective interviews, both Mr. and Mrs. Fosu acknowledged that Respondent had actually dispensed the Coralpines prescriptions, which had been placed in several boxes found in one of Respondent's back rooms. *Id.* 493–95, 497–500, 545. I thus find that Respondent filled and distributed the prescriptions identified in Government Exhibits 10 and 11.[14] I further find that Government Exhibits 12 & 13 accurately reflect prescriptions that Drs. Flynn and De La Guardia issued on various dates and which were eventually filled by Respondent.

The Government also introduced into evidence various e-mails that were sent from the Fosus to Coralpines and vice versa. See GX 15. Among these is a February 13, 2007 e-mail from "Kwamen and Pat" to "Coralpines Support" with the subject line of "sun&lake costs." *Id.* at 20. In this e-mail, Pat Fosu wrote:

> The volume is NOT the problem but rather your erratic payments. Do you know the amount of drugs and boxes upon boxes of UPS bags that we ordered just to service your company? Do you know the risk that we have to take to order enough narcotic or control [sic] medications just to meet your client needs?
>
> I have gone out of my way to order huge inventory of narcotics plus hire additional labor to take care of your needs only to experince [sic] your erratic, sluggish, and when-you-like payment attitude.
>
> Just last week, the DEA confiscated all the narcotics or control medications in another pharmacy and I stand to lose these meds if they should come to my pharmacy. But you don't have anything to lose! And when I go through all these headaches to satisfy your needs then I have to put up with your PAYMENT PLAN!

Id.

As part of its investigation, a DI sent administrative subpoenas to the boards of pharmacy of each State (except for Florida) and the District of Columbia to determine whether Respondent or each of the Fosus held the requisite pharmacy license. Tr. 204. The DI received a response from all but four States; these responses were submitted into the record as Government Exhibit 6. *Id.* at 205. According to the DI, neither of the Fosus was licensed in these States. *Id.* at 205–06. However, the Government did not submit a copy of the subpoenas it issued, and the ALJ found that the responses from the States of Delaware, Kansas, Missouri, New Hampshire, South Carolina, and Wyoming did not adequately establish "what inquiry was made and answered or why the author possesses the requisite competence to provide the information contained therein" and were therefore unreliable. ALJ at 9 n.15. I agree with the ALJ's findings. I further agree with the ALJ's findings that Respondent did not have a state license in the remaining States.

Respondent did not call any witnesses to testify on its behalf. It introduced but a single exhibit, which was comprised of photographs showing both the exterior and interior of its premises. *See* RX 11.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that "[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). In determining the public interest in the case of a practitioner, the Act directs that the Attorney General consider the following factors:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing * * * controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

"[T]hese factors are * * * considered in the disjunctive." *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked and/or an application should be denied. *Id.* Moreover, it is well settled that I am "not required to make findings as to all of the factors." *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

The Government has the burden of proving that the Respondent has committed acts which render its registration inconsistent with the public interest. 21 CFR 1301.44(d) & (e). However, where the Government has made out a *prima facie* case, the burden shifts to the applicant to "present[] sufficient mitigating evidence" to show why it can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))), *aff'd, Medicine Shoppe-Jonesborough* v.

[14] The Government also introduced a single prescription for alprazolam which was written by Dr. Shabir Bhimji of Austin, Texas for a patient in Boulder, Colorado, and a single prescription written by Dr. Gerard Romain of Tampa, Florida for a patient in Boston, Massachusetts. GXs 19 & 21. With respect to Dr. Bhimji, the DI testified that he had written 100 prescriptions on a signle day in April 2007. Tr. 458. However, other thant the single alprazolam prescription, the record does not establish that any of the other prescriptions were for controlled substances.

As for the prescription issued by Dr. Romain, while the DI testified "that there were a number of other prescriptions from other physicians not previously identified as being affiliated with Coralpines" and named Dr. Romain as someone who was "allegedly issuing prescriptions for patients all across the United States," and that an "examination of prescriptions [Respondent] filled * * * showed that there were patients all across the United States receiving these prescriptions," *id.* at 377–78, the DI subsequently admitted (on direct examination no less) that he had no information linking Romain to either Coralpines or any other internet facilitator. Tr. 407. Moreover, the Government did not produce any other evidence probative of whether the single Romain prescription laced a legitimate medical purpose and was issued outside of the usual course of professional practice.

DEA, 2008 WL 4899525 (6th Cir. 2008). "Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct." *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Trong Tran,* 63 FR 64280, 62483 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995).

Having considered all of the factors, I conclude that the evidence pertinent to factors two and four makes out a *prima facie* showing that Respondent "has committed such acts as would render [its] registration * * * inconsistent with the public interest."[15] 21 U.S.C. 824(a)(4). I further hold that Respondent has not rebutted the Government's *prima facie* case. Accordingly, Respondent's registration will be revoked and any pending applications will be denied.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Relating to Controlled Substances

Under a longstanding DEA regulation, a prescription for a controlled substance is unlawful unless it has been "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). The regulation further provides that while "[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a *corresponding responsibility rests with the pharmacist who fills the prescription*." *Id.* (emphasis added). Continuing, the regulation states that "the person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances." *Id.*

DEA has consistently interpreted this provision "as prohibiting a pharmacist from filling a prescription for a controlled substance when he either 'knows or has reason to know that the prescription was not written for a legitimate medical purpose.' " *Medicine Shoppe-Jonesborough,* 73 FR at 381 (quoting *Medic-Aid Pharmacy*, 55 FR 30043, 30044 (1990)); *see also Frank's Corner Pharmacy,* 60 FR 17574, 17576 (1995); *Ralph J. Bertolino,* 55 FR 4729, 4730 (1990); *United States* v. *Seelig,* 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that "[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription." *Bertolino,* 55 FR at 4730 (citations omitted).[16]

Under the CSA, it is fundamental that "a practitioner must establish a bona fide doctor-patient relationship in order to act 'in the usual course of * * * professional practice' and to issue a prescription for a 'legitimate medical purpose.' " *Patrick W. Stodola,* 74 FR 20727, 20731 (2009) (citing *Moore,* 423 U.S. at 141–43). At the time of the events at issue here, the CSA generally looked to state law to determine whether a doctor has established a bona fide doctor-patient relationship with an individual.[17] *Stodola,* 74 FR at 20731; *see also Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *United Prescription Servs., Inc.,* 72 FR 50397, 50407 (2007). As explained below, prior to the dispensings at issue here, numerous States had either enacted legislation or promulgated administrative rules which generally prohibited (except for in narrow circumstances not relevant here) a physician from prescribing a controlled substance to a person without having personally performed a physical examination.

In *United Prescription Services,* I further explained that "[a] physician who engages in the unauthorized practice of medicine is not a 'practitioner acting in the usual course of * * * professional practice.' " 72 FR at 50407 (citing 21 CFR 1306.04(a)). This rule derives from the text of the CSA, which defines the "[t]he term 'practitioner' [to] mean[] a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance." 21 U.S.C. 802(21). *See also* 21 U.S.C. 823(f) ("The Attorney General shall register practitioners * * * to dispense * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.").

As the Supreme Court held shortly after the CSA's enactment: "In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connection with his professional practice." *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975) (emphasis added). A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA. *Cf.* 21 CFR 1306.03(a)(1) ("A prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession[.]").

Finally, as I have previously explained, an entity which voluntarily engages in interstate commerce by shipping controlled substances to persons located in other States is properly charged with knowledge of the laws regarding both the practice of medicine and pharmacy in those States. *United Prescription Servs.,* 72 FR at 50408; *Bob's Pharmacy & Diabetic Supplies,* 74 FR 19599, 19601 (2009); *see also Hageseth* v. *Superior Court,* 59 Cal. Rptr.3d 385, 403 (Ct. App. 2007) (noting that the "proscription of the unlicensed practice of medicine is neither an obscure nor an unusual state prohibition of which ignorance can

[15] This Agency has repeatedly held that the possession of a valid state license is not dispositive of the public interest inquiry. *See Patrick W. Stodola*, 74 FR 20727, 20730 n.16 (2009); *Robert A. Leslie*, 68 FR at 15230. DEA has long held that "the Controlled Substances Act requires that the Administrator * * * make an independent determination as to whether the granting of controlled substances privileges would be in the public interest." *Mortimer Levin*, 57 FR 8680, 8681 (1992). Nor is the lack of any criminal convictions related to controlled substances dispositive. *Edmund Chein*, 72 FR 6580, 6793 n.22 (2007), *aff'd*, *Chein* v. *DEA*, 533 F.3d 828 (D.C. Cir. 2008). Thus, the fact that Respondent may still hold its Florida pharmacy license and that neither it, not its owners, have been convicted of a criminal offense is not dispositive.

[16] As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales* v. *Oregon*, 546 U.S. 243,274 (2006) (citing *United States* v. *Moore*, 423 U.S. 122, 135 (1975)).

[17] On October 15, 2008, the President signed into law the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Pub. L. 110–425, 122 Stat. 4820 (2008). Section 2 of the Act prohibits the dispensing of a prescription controlled substance "by means of the Internet without a valid prescription" and defines, in relevant part, the "[t]he term 'valid prescription' [to] mean [ ] a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by * * * a practitioner who has conducted at least 1 in-person medical evaluation of the patient." 122 Stat. 4820 (codified at 21 U.S.C. 289(e)(1) & (2)). Section 2 further defines "[t]he term 'in-person medical evaluation' [to] mean [ ] a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals." *Id.* (codified at 21 U.S.C. 829(e)(2)(B)). These provisions do not, however, apply to Respondent's conduct.

reasonably be claimed, and certainly not by persons . . . who are licensed health care providers. Nor can such persons reasonably claim ignorance of the fact that authorization of a prescription pharmaceutical constitutes the practice of medicine.").[18]

The Fosus had ample reason to know that the prescriptions Respondent filled for Coralpines were issued outside of the course of professional practice and lacked a legitimate medical purpose for multiple reasons. 21 CFR 1306.04(a). First, the Fosus knew that Drs. Flynn and De La Guardia were prescribing controlled substances without establishing a valid doctor-patient relationship. Indeed, the evidence is clear that the Fosus knew from the outset of their agreement with Pitcairn/Coralpines that Drs. Flynn and De La Guardia were issuing the prescriptions without having performed a physical examination of the persons who were seeking the drugs.

During the interviews they gave when the warrant was executed, both of the Fosus admitted they knew from the time they were approached by Mr. Wright that the Coralpines' scheme involved physicians issuing prescriptions for persons they never saw. Tr. 397 (DI's testimony regarding interview of Patricia Fosu) & 417–18 (DI's testimony regarding interview of Kwame Fosu). Moreover, certainly within days of agreeing to fill the prescriptions, the Fosus knew that, given the respective locations of Drs. Flynn (in Pennsylvania) and De La Guardia (Kansas) and the persons they were prescribing to, who were located throughout the country, neither doctor was performing physical examinations of these persons and establishing legitimate doctor-patient relationships with Coralpines' customers. Indeed, the Fosus admitted as much in their respective interviews. *Id.* at 396–97 & 419.

The volume of the prescriptions provided further reason to know—as if it was needed—that neither Dr. Flynn nor Dr. De La Guardia was physically examining these persons. As early as February 2, 2007, Dr. Flynn issued 344 prescriptions on a single day. Yet this did not lead the Fosus to stop filling the prescriptions. Indeed, on February 19, Flynn issued 837 prescriptions, a rate of nearly 35 prescriptions per hour had he worked around the clock. Notwithstanding their knowledge of Flynn's assembly line rate of prescribing, the Fosus continued to fill his prescriptions. While there were numerous other days on which Flynn wrote hundreds of prescriptions, Respondent continued to fill the prescriptions for several months thereafter.

While at the time of the events at issue, the CSA did not explicitly require that a physician perform a physical examination prior to prescribing a controlled substance through the Internet,[19] as DEA explained in the 2001 Guidance Document (a copy of which was provided to the Fosus shortly after they obtained Respondent's registration and which was published in the **Federal Register**), most state medical boards considered that a doctor's performance of a physical examination (and the taking of a medical history) to be essential steps in establishing a legitimate doctor-patient relationship. *See* 66 FR at 21182–83. Moreover, prior to Respondent's agreeing to fill the Pitcairn/Coralpines prescriptions, most States had enacted legislation, promulgated administrative rules, or issued policy statements making clear that, except for in limited circumstances not relevant here, a physician must physically examine a patient before prescribing to him/her. As licensed health care providers and participants in interstate commerce, the Fosus "cannot reasonably claim ignorance" of state rules and standards of medical practice applicable to the issuance of treatment recommendations as well as those prohibiting the unauthorized practice of both medicine and pharmacy. *See United Prescription Servs.,* 72 FR at 50408 (quoting *Hageseth,* 59 Cal. Rptr.3d at 403).

Since January 2001, California has prohibited the prescribing or dispensing of a dangerous drug "on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication therefore, except as authorized by Section 2242." Cal. Bus. & Prof. Code § 2242.1. In 2003, the Medical Board of California made clear that "[b]efore prescribing a dangerous drug, a physical examination must be performed" by the prescribing physician. *In re Steven Opsahl, M.D.,* Decision and Order, at 3 (Med. Bd. Cal. 2003) (available by query at *http://publicdocs.medbd.ca.gov/pdl/mbc.aspx*). Furthermore, the Medical Board of California determined that "[a] physician cannot do a good faith prior examination based on a history, a review of medical records, responses to a questionnaire and a telephone conversation with the patient, without a physical examination of the patient." *Id.*

Moreover, well before Respondent commenced to dispense the prescriptions at issue here, the Medical Board of California had issued numerous Citation Orders to out-of-state physicians for prescribing over the Internet to California residents. These Orders invariably cited both the physicians' failure to perform a "good faith prior examination" and their lack of a "valid California Physician and Surgeon's License to practice medicine in California." Citation Order, Martin P. Feldman (August 15, 2003); *see also* Citation Order, Harry Hoff (June 17, 2003); Citation Order, Carlos Gustavo Levy (Jan. 28, 2003); Citation Order, Carlos Gustavo Levy (November 30, 2001).[20] Respondent nonetheless dispensed controlled substance prescriptions issued by Drs. Flynn and De La Guardia to California residents and thus violated both the CSA and California law.

Similar to California, regulations adopted by the States of Ohio and Indiana require that a physician perform a physical examination of his/her patient prior to prescribing a controlled substance, except in limited circumstances not applicable here. 844 Ind. Admin. Code § 5–4–1(a); Ohio Admin. Code § 4731–11–09(A). The record shows that both Drs. Flynn and De La Guardia issued controlled substance prescriptions to residents of each State without performing physical examinations of them and thus violated the regulations of Indiana and Ohio.[21] While Respondent clearly had reason to know that the prescriptions were issued outside of the usual course of professional practice and lacked a legitimate medical purpose, it nonetheless filled them. In doing so, Respondent violated the CSA. 21 CFR 1306.04(a).

Under Virginia law, a doctor must establish a bona fide practitioner-patient relationship prior to prescribing a controlled substance. Va. Code Ann. § 54.1–3303(A). Moreover, Virginia law expressly requires that a practitioner "perform or have performed an

[18] In *Hageseth*, the California Court of Appeals upheld the State's jurisdiction to criminally prosecute an out-of-state physician who prescribed a drug to a California resident over the internet, for the unauthorized practice of medicine.

[19] It now does. *See* Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–425, 122 Stat. 4820 (2008). These provisions are codified throughout the CSA.

[20] The Medical Board of California had also issued press releases announcing its position on the issuance of prescriptions by physicians who do not hold a California license. *See* Medical Board of California, *Record Fines Issued by Medical Board to Physicians in Internet Prescribing Cases* (News Release Feb. 10, 2003) <available at *http://www.mbc.ca.gov/NR_2003_02-10_Internetdrugs.htm*>

[21] There is no dispute that those persons who received prescriptions through Coralpines did not see either Dr. Flynn or Dr. De La Guardia.

appropriate examination of the patient, either physically or by use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically" and that "except for [in] medical emergencies, the examination shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription." *Id.* Both Drs. Flynn and De La Guardia issued controlled substance prescriptions to residents of Virginia without performing physical examination of them and thus failed to establish bona fide doctor-patient relationships with these persons. Respondent nonetheless dispensed these prescriptions and thus failed to comply with its "corresponding responsibility" under Federal law to dispense only lawful prescriptions. *Id.*

These are but a few representative examples of state medical practice standards that Drs. Flynn and De La Guardia violated and which rendered their prescriptions unlawful. *See also* ALJ at 39–41 (citing various state authorities). Yet the Fosus filled thousands of controlled substance prescriptions issued by them.[22]

Many of the controlled substance prescriptions issued by Drs. Flynn and De La Guardia were unlawful for the further reason that both doctors prescribed to persons who resided in States where they were not licensed to practice medicine and where they were therefore engaged in the unauthorized practice of medicine. As noted above, a controlled substance prescription issued by a practitioner who is engaged in the unauthorized practice of medicine is not a prescription issued in the usual course of professional practice. *Moore,* 423 U.S. at 140–41; *United,* 72 FR at 50407.

For example, the evidence shows that both Drs. Flynn (who was licensed only in Pennsylvania) and De La Guardia (who was licensed only in Kansas and Nebraska) issued controlled substance prescriptions to residents of numerous States where they were not licensed to practice medicine including, *inter alia,* California, Georgia, Indiana, North Carolina, Ohio, Texas, and Virginia. *See* GX 10, at 1; GX 11, at 1. These prescriptions violated the laws of these States as well as the CSA. *See* Cal. Bus. & Prof. Code §§ 2052 (criminalizing the practice of medicine without state license); Ga. Code Ann. §§ 43–34–26(a) (requiring license), 43–34–31 (requiring state license for medical treatment of individual in State by physician in another State); 43–34.31.1(a) (2007) (defining practice of medicine to include electronic prescribing by "[a] person who is physically located in another state" and requiring Georgia license);[23] 225 Ill. Comp. Stat. Ann. § 60/3 (licensure requirement); *id.* § 60/3.5 (prohibiting unlicensed practice); *id.* § 60/49 (listing acts constituting holding oneself out to the public as a physician); *id.* § 60/49.5 (requiring persons engaged in telemedicine to hold Illinois license); Ind. Code Ann. §§ 25–22.5–8–1 (prohibiting the practice of medicine without a state license) & 25–22.5–1–1.1(a) (defining practice of medicine); N.C. Gen. Stat. Ann. § 90–18 (prohibiting practice of medicine across state lines unless licensed in state); Ohio Rev. Code Ann. §§ 4731.296 (prohibiting out-of-state practice of telemedicine without a special permit), 4731.41 (prohibiting practice of medicine without state license); Tex. Occup. Code Ann. §§ 155.001 (requiring license to practice medicine), 151.056(a) (making out-of-state treatment of individual in state the practice of medicine in state); Va. Code Ann. §§ 54.1–2902 (prohibiting practice of medicine without state licensure), 54.1–2903 (making prescribing the practice of medicine), 54.1–2929 (requiring license for the practice of medicine).[24] The Fosus nonetheless filled these prescriptions even though they were clearly illegal under both the respective State's law and the CSA.

Finally, as discussed at length in the ALJ's opinion, Respondent violated the laws of numerous States by engaging in the unauthorized practice of pharmacy. *See* ALJ at 43–44 & nn. 61–91 (citing numerous state laws). *See also, e.g.,* Alaska Stat. § 08.80.158, GX 6 at 5, GX 10 at 2, GX 11 at 2–3; Ark. Code Ann. §§ 17–92–301 (prohibiting practice of pharmacy without a license) & 17–92–302 (prohibiting filling of prescription by other than Arkansas-licensed pharmacist), GX 6 at 8–9, GX 10 at 5–6, GX 11, at 6–7; Cal. Bus. & Prof. Code § 4120 (requiring special permit for nonresident pharmacies), GX 6 at 10–15, GX 10 at 9–11, GX 11 at 11; Conn. Gen. Stat. Ann. § 20–627 (requiring registration of nonresident pharmacies), GX 6 at 17–18, GX 10 at 14–15, GX 11, at 14–15; La. Rev. Stat. Ann. § 37:1221 (requiring special permit for out-of-state pharmacies to provide pharmacy services to residents of the state), GX 6 at 27, GX 10 at 36–38, GX 11 at 36. Respondent dispensed prescriptions to residents of all of these States without holding the pharmacy licenses required to do so.[25] *See* GXs 10 & 11.

In its brief, Respondent contends that it filled the Internet prescriptions for only "a brief period of time" and that "[t]he vast majority of its business is, and always has been" retail 'walk-up' service and prescriptions deliveries to local nursing homes." Resp. Br. at 1. Contrary to Respondent's contention, its conduct in filling thousands of unlawful prescriptions over a period of five to six months was not a "brief" sojourn into illegality.

By itself, Respondent's (and the Fosus') conduct is egregious enough to conclude that its registration is inconsistent with the public interest. 21 U.S.C. 823(f). Indeed, the evidence shows that Respondent (and the Fosus) acted with flagrant and intentional disregard for both the CSA and state laws as demonstrated by the facts that: (1) Even though the Fosus had been previously advised by both DEA personnel (through both a briefing and written materials such as the 2001 Guidance Document) and by a representative of the Florida Board of Pharmacy that it was unlikely that internet prescriptions are issued in the course of a legitimate doctor-patient relationship, they knowingly filled the prescriptions; (2) Mr. Fosu's statement to the DIs during the December 2005 meeting that he had rejected a proposal to fill internet prescriptions because "he did not see the doctor-patient relationship," Tr. 49; as well as the Fosus' statements during their June 2007 interviews that they had raised similar questions when approached by Wright; and (3) Mrs. Fosu's Feb. 13, 2007 e-mail in which she asked Coralpines whether it "kn[ew] the risk that we have to take to order enough

[22] For the reasons given by the ALJ, I also reject Respondent's argument that under *Forlaw* v. *Fitzer,* 456 So.2d 432, 435 (Fla. 1984), a physician's failure to conduct a physical examination is not a basis to conclude that a prescription is invalid. *See* ALJ at 36; Resp. Br. 18. I further note that even if this is an accurate statement of Florida law, Florida's standards for prescribing a controlled substance do not apply in other States.

[23] This provision was re-designated as Ga. Code Ann. § 43–34–31 by Ga. L. 2009, p. 859, § 1/HB509.

[24] In his opinion, the ALJ discussed at length various provisions of Alabama's law that require a special purpose license to practice medicine across state lines. ALJ at 39 (citing Ala Code. §§ 34–24–343, 34–24–501, 34–24–502(a); Ala. Admin. Code r. 540–x–16.03). However, as the ALJ noted, a physician is not required to obtain a special purpose license if he engages in such activity on an "irregular or infrequent basis" as defined by three different criteria. *Id.* (quoting Ala. Code § 34–24–505; Ala. Admin. Code r. 540–x–16.02). The record does not, however, establish that either Drs. Flynn or De La Guardia prescribed to Alabama residents at a frequency which required them to obtain an Alabama special purpose license.

[25] In light of the extensive evidence that Respondent violated Federal law in filling the Coralpines prescriptions, I deem it unnecessary to make any findings as to whether it failed to comply with its corresponding responsibility in filling Dr. Reppy's prescriptions.

narcotic or control medications just to meet your client needs" and noted that "[j]ust last week, the DEA confiscated all the narcotics or control medication in another pharmacy and I stand to lose these meds if they should come to my pharmacy." GX 16, at 20. In short, the Fosus clearly knew that in filling the Coralpines prescriptions, they were violating the CSA.

Under Agency precedent, where, as here, the Government has established its *prima facie* case, the burden shifts to the Respondent to demonstrate why the continuation of its registration is consistent with the public interest. *See, e.g., Medicine Shoppe,* 73 FR at 387. An essential element of this showing is that the registrant and its principals accept responsibility for their misconduct by acknowledging their wrongdoing. *Id.; see also Jackson,* 72 FR at 23853; *Kennedy,* 71 FR at 35709.

Here, however, Mr. Fosu did not testify and Mrs. Fosu invoked her Fifth Amendment privilege. I therefore hold that the Fosus (and Respondent) have failed to accept responsibility for their misconduct. Because Respondent has failed to rebut the Government's *prima facie* case, I further conclude that its registration should be revoked and that any pending application should be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as by 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BS9433828, issued to Sun & Lake Pharmacy, Inc., be, and it hereby is, revoked. I further order that any pending applications of Sun & Lake Pharmacy, Inc., to renew or modify its registration, be, and they hereby are, denied. This Order is effective June 1, 2011.

Dated: April 22, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–10506 Filed 4–29–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Availability of the Environmental Assessment for the Short Term Sentences Acquisition Procurement

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Public Comment on Environmental Assessment.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Environmental Assessment (EA) prepared for the proposed contract to secure additional inmate bed space for the BOP's growing inmate population.

As part of this action, known as the Short Term Sentences Acquisition procurement, the BOP has identified a specific requirement to confine an aggregate population of approximately 3,000 low-security adult male inmates (with one year or less remaining to serve) that are primarily criminal aliens. The BOP is seeking to accommodate the growing federal inmate population by requesting additional contract beds.

In accordance with the National Environmental Policy Act (NEPA) of 1969, the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), and the Department of Justice procedures for implementing NEPA (28 CFR 61), the BOP published an EA on January 28, 2011 which described the potential environmental and other impacts associated with the proposed action to award a contract to one or more private correctional contractors to house a population of approximately 3,000 federal, low-security, adult male inmates that are primarily criminal aliens with one year or less to serve on their sentences. Copies of the EA were distributed to federal, state, regional and local officials, agencies, organizations and the public. Publication of the EA initiated a public comment period lasting no less than 30 days and during that comment period, which ended on February 28, 2011, comments were received from several government agencies and a member of the public.

With the passage of time since the EA was first published, and following a thorough review of all public comments and environmental documentation amassed in support of the proposed action, the BOP determined that it was appropriate and in the best interests of the public to prepare a new EA. This new EA incorporates additional information prepared in response to public comments received by the BOP along with the most current information regarding the alternative facilities. The BOP's EA evaluates the potential environmental consequences of three action alternatives and the No Action Alternative. Natural, cultural, and socioeconomic resource impacts associated with the implementation of the proposed action at each of the alternative locations were analyzed to determine how these resources may be affected by the proposed action.

The alternatives considered in the EA include the use of the following privately-owned and operated facilities: Diamondback Correctional Center, Watonga, Oklahoma; Great Plains Correctional Facility, Hinton, Oklahoma; and Willacy County Processing Center, Raymondville, Texas. The EA also includes information concerning the BOP's preferred alternative. Inmates housed in one or more of these facilities would be primarily criminal aliens who have less than one year remaining to serve of their sentences.

Request for Comments

The BOP invites your participation and is soliciting comments on the EA. The EA will be the subject of a 30-day comment period which begins May 2, 2011 and ends May 31, 2011. Comments concerning the EA and the proposed action must be received during this time to be assured consideration. All written comments received during this review period will be taken into consideration by the BOP. *Copies of the EA are available for public viewing at:* Watonga Public Library, 301 N. Prouty, Watonga, OK; Norman Smith Memorial Library, 115 E. Main Street, Hinton, OK; and Reber Memorial Library, 193 N. 4th Street, Raymondville, TX.

The EA is available upon request. *To request a copy of the EA, please contact:* Richard A. Cohn, Chief, or Issac J. Gaston, Site Selection Specialist, Capacity Planning and Site Selection Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 *Tel:* 202–514–6470, *Fax:* 202–616–6024/*e-mail: racohn@bop.gov* or *igaston@bop.gov*.

FOR FURTHER INFORMATION CONTACT: Richard A. Cohn, or Issac J. Gaston, Federal Bureau of Prisons.

Dated: April 26, 2011.

Richard A. Cohn,

Chief, Capacity Planning and Site Selection Branch.

[FR Doc. 2011–10751 Filed 4–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Recurrence

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Office of Workers' Compensation Programs sponsored information collection

request (ICR) titled, "Notice of Recurrence," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 1, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The Notice of Recurrence, Form CA–2a, is used to claim wage loss or medical treatment resulting from a recurrence of a work-related injury while Federally employed. The information is necessary to ensure the accurate payment of benefits. While the DOL has revised the form to enhance the Privacy Act Statement and make a few formatting changes, requiring the DOL to identify this submission as a revision, those changes are not expected materially to affect the public burden in responding to this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0009. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on February 23, 2011 (76 FR 10071).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to ensure appropriate consideration, comments should reference OMB Control Number 1240–0009. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Notice of Recurrence.

OMB Control Number: 1240–0009.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 314.

Total Estimated Number of Responses: 314.

Total Estimated Annual Burden Hours: 157.

Total Estimated Annual Costs Burden: $148.

Dated: April 26, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–10525 Filed 4–29–11; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,110]

Columbia Forest Products, Inc., Presque Isle Division, Including On-Site Leased Workers From Tempo, Presque Isle, Maine; Amended Revised Determination on Reconsideration

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Notice of Revised Determination on Reconsideration on March 23, 2011, applicable to workers of Columbia Forest Products, Inc., Presque Isle Division, Presque Isle, Maine. The workers produce hardwood veneer. The notice was published in the **Federal Register** on April 7, 2011 (76 FR 19474).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from TEMPO were employed on-site at the Presque Isle, Maine location of Columbia Forest Products, Inc., Presque Isle Division. The Department has determined that these workers were sufficiently under the control of Columbia Forest Products, Inc., Presque Isle Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from TEMPO working on-site at the Presque Isle, Maine location of Columbia Forest Products, inc., Presque Isle Division.

The amended notice applicable to TA–W–70,110 is hereby issued as follows:

All workers of Columbia Forest Products, Inc., Presque Isle Division, including on-site leased workers from TEMPO, Presque Isle, Maine, who became totally or partially separated from employment on or after May 18, 2008, through March 23, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 19th day of April 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–10527 Filed 4–29–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of April 11, 2011 through April 15, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,838	Cali Jeans	Los Angeles, CA	November 3, 2009.
74,889	Scott Port-A–Fold, Inc., Spherion of Lima	Archbold, OH	November 5, 2009.
74,965	Ross Sand Casting Industries, LLC	Orrville, OH	December 4, 2009.
75,038	International Paper Company, Container the Americas Division; Leased Workers from Manpower.	Bellevue, WA	December 20, 2009.
75,105	DW National Standard-Niles, LLC, A Heico Wire Group Co., Heico Co., Trillium Staffing.	Niles, MI	January 14, 2010.
75,114	Allentown Metal Works, Inc	Allentown, PA	January 15, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,981	Ideal Manufacturing Solutions, Inc	Franklin, WI	December 7, 2009.
75,125	WestPoint Home, Inc., Manufacturing Division	Greenville, AL	January 19, 2010.
75,125A	WestPoint Home, Inc., Distribution Center	Greenville, AL	January 19, 2010.
75,150	International Brake Industries, Inc., A Subsidiary of Qualitor, Inc.	Lima, OH	January 31, 2010.
75,308	C.R. Bard, Glen Falls Div., Keena People and Integrated Staffing.	Queensbury, NY	February 14, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,223	Global Suspension Systems, LLC, Including on-site Leased Workers from Elwood Staffing and Aerotek.	Bryan, OH	February 7, 2010.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,257	Walsh Trucking Company	Dillard, OR	February 11, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
75,215	Fidelity Brokerage Services, LLC, Retirement Services Operations.	Salt Lake City, UT.	
75,266	Maine Bucket Company	Lewiston, ME.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,986	Hewlett Packard Company, EDS, Enterprise Service, SUN/Oracle Account.	Camp Hill, PA.	
75,035	3M Company, 3M Health Care, 3M ESPE, 3M IMTEC	Ardmore, OK.	
75,151	Navistar Truck Development and Technology Center, Navistar International Corporation, Truck Division.	Fort Wayne, IN.	
75,167	Sun Printing of Ohio, Inc	Mansfield, OH.	
75,249	J.C. Penney Corporation, Inc., Rio Rancho Call Center	Rio Rancho, NM.	

I hereby certify that the aforementioned determinations were issued during the period of April 11, 2011 through April 15, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: April 20, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–10526 Filed 4–29–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 12, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 12, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of April 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[11 TAA petitions instituted between 4/11/11 and 4/15/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80100	Wilton Brands Inc. (Workers)	Cloverdale, CA	04/11/11	04/11/11
80101	R Squared Circuits (Workers)	Folsom, CA	04/11/11	04/11/11
80102	JPMorgan Chase (State/One-Stop)	Fort Worth, TX	04/11/11	04/11/11
80103	HIRel Systems LLC (State/One-Stop)	Duluth, MN	04/12/11	04/11/11
80104	Sullivan Carson (Company)	York, SC	04/13/11	04/12/11
80105	United Carving Inc. (Company)	Hickory, NC	04/13/11	04/13/11
80106	Delphi (Workers)	El Paso, TX	04/14/11	04/05/11
80107	Muller Martini Manufacturing (Workers)	Newport News, VA	04/14/11	04/13/11
80108	Hartford Financial (State/One-Stop)	Simsbury, CT	04/15/11	04/05/11
80109	Coupled Products LLC (Company)	Columbia City, IN	04/15/11	04/14/11
80110	Callaway Golf Ball Operations, Inc. (Company)	Chicopee, MA	04/15/11	04/14/11

[FR Doc. 2011–10528 Filed 4–29–11; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Proposed Collection; Comment Request

AGENCY: Office of National Drug Control Policy.

ACTION: 60-Day notice and request for comments. New Information Collection Request: Drug Free Communities Support Program National Evaluation.

SUMMARY: The Office of National Drug Control Policy (ONDCP) intends to submit the following information collection request to the Office of Management and Budget for review and approval under the Paperwork Reduction Act.

DATES: ONDCP encourages and will accept public comments 60 days after the date of this publication.

ADDRESSES: Address all comments in writing within 60 days to Shannon D. Weatherly. Facsimile and email are the most reliable means of communication. Ms. Weatherly's facsimile number is (202) 395–6841, and her e-mail address is *sweatherly@ondcp.eop.gov.* Mailing address is: Executive Office of the President, Office of National Drug Control Policy, Drug-Free Communities (DFC) Support Program, 750 17th Street, Washington, DC 20503. For further information, contact Ms. Weatherly at (202) 395–6774.

Abstract: ONDCP directs the Drug Free Communities (DFC) Program in partnership with the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention. The DFC Program has two primary goals: To reduce youth substance abuse, and to support community anti-drug coalitions by establishing, strengthening, and fostering collaboration among public and private agencies.

Congress mandated an evaluation of the DFC Program to determine effectiveness in meeting objectives. In 2009, the DFC Program awarded a contract to build upon the results of an earlier evaluation and make use of an existing web-based performance system, called the Coalition Online Management and Evaluation Tool (COMET) and the Coalition Classification Tool (CCT), to gather information from DFC grantees.

COMET and CCT are being revised to reduce the burden of information collection on grantees, increase the quality of the data, and facilitate the monitoring and tracking of grantee progress.

In addition to the information collected from the COMET and CCT system, the new evaluation will include a case study component to document coalition practices. This element of the evaluation will involve interviews with coalition leaders and surveys of coalition partners from a number of agencies. Each year, nine DFC grantees will be evaluated and the information from the case studies will be shared other grantees.

Type of Information Collection: Web-based data collection, surveys and interviews of DFC and Sober Truth on Preventing Underage Drinking (STOP) Act grantees.

Title: Drug Free Communities Support Program National Evaluation.

Frequency: Semi-annually by DFC and Stop Act Program Directors via COMET, and annually for DFC Program Directors and selected coalition members via the CCT. Interviews and electronic surveys of Program Directors and electronic surveys of selected coalition members will be accomplished one time.

Affected Public: DFC and STOP Act grantees.

Estimated Burden: ONDCP expects that the time required to complete each semi-annual report via COMET will be approximately five hours, and each CCT report will take approximately one hour to complete. Face to face interviews will take 1.5–2 hours and surveys will take approximately .25 hours each to complete. The estimated total amount of time required by all respondents over one year, including Program Directors and grantees to complete COMET, CCT, surveys, and interviews, is 9,680 hours.

Goals: ONDCP intends to use the data of the DFC National Evaluation to assess the DFC Program's effectiveness in preventing and reducing youth substance use. Two primary objectives of the evaluation are to: (1) Support an effective grant monitoring mechanism that provides the Federal government with the expertise, system, functions, and products to collect, analyze, and report data collectively, and (2) regularly monitor and measure data in order to demonstrate the progress of the DFC program and its grantees.

Comment Request: ONDCP especially invites comments on: (1) Whether the proposed data are proper for the functions of the agency; (2) whether the information will have practical utility; (3) the accuracy of ONDCP's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (4) ways to enhance the quality, utility, and clarity of the information to be collected; and, (5) ways to ease the burden on proposed respondents, including the use of automated collection techniques or other forms of information technology. Comments will be accepted for sixty days.

Dated: April 26, 2011.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. 2011–10481 Filed 4–29–11; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414; NRC–2011–0100; Docket Nos. 50–369 and 50–370; Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; McGuire Nuclear Station, Units 1 and 2; Oconee Nuclear Station, Units 1, 2, and 3; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request by Duke Energy Carolinas, LLC (the licensee), to withdraw its April 26, 2010, application for proposed amendments to Renewed Facility Operating Licenses NPF–35 and NPF–52 for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina; Renewed Facility Operating Licenses NPF–9 and NPF–17, for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina; and Renewed Facility Operating Licenses DPR–38, DPR–47, and DPR–55 for the Oconee Nuclear Station, Units 1, 2, and 3 located in Oconee County, South Carolina.

The proposed amendment would have revised the Technical Specifications (TSs) and Licenses by making organizational changes.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 7, 2010 (75 FR 54392). However, the licensee has chosen not to pursue the proposed change.

For further details with respect to this action, see the application for amendment dated April 26, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML101250042), and the NRC staff's letters dated April 18, 2011 (ADAMS Accession No. ML11094A029), and April 26, 2011 (ADAMS Accession No. ML11109A079). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of April 2011.

For the Nuclear Regulatory Commission.

John Stang,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10558 Filed 4–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0097]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1264, "Thermal Overload Protection for Electric Motors On Motor-Operated Valves."

FOR FURTHER INFORMATION CONTACT: Darrell Murdock, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–251–7629 or e-mail *Darrell.Murdock@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or

postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Thermal Overload Protection for Electric Motors On Motor-Operated Valves," is temporarily identified by its task number, DG–1264, which should be mentioned in all related correspondence. DG–1264 is proposed Revision 2 of Regulatory Guide 1.106, dated March 1977.

This regulatory guide describes a method acceptable to NRC's staff for complying with the above criteria with regard to the application of thermal overload protection devices that are integral with the motor starter for electric motors on motor-operated valves. This method would ensure that the thermal overload protection devices will not needlessly prevent the motor from performing its safety-related function.

II. Further Information

The NRC staff is soliciting comments on DG–1264. Comments may be accompanied by relevant information or supporting data and should mention DG–1264 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0097 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0097. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and copy for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available on line in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Regulatory Analysis is available electronically under ADAMS Accession Number ML110130180.

Comments would be most helpful if received by June 28, 2011. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1264 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Library at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML110130176.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 21st day of April 2011.

For the Nuclear Regulatory Commission.

Edward O'Donnell,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–10561 Filed 4–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0181]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide (RG) 3.67, "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities."

FOR FURTHER INFORMATION CONTACT: Kevin M. Ramsey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3123 or e-mail *Kevin.Ramsey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses. Revision 1 of Regulatory Guide 3.67, "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities" was issued for public comment in May 2010 with a temporary identification as Draft Regulatory Guide, DG–3039. The comment period ended on July 12, 2010 and the final guide was prepared considering the comments received.

This guide provides guidance acceptable to the NRC staff on the information to be included in emergency plans and establishes a format for presenting the information. Use of a standard format will help ensure uniformity and completeness in the preparation of emergency plans.

The NRC's regulations in 10 CFR part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material;" part 40, "Domestic Licensing of Source Material;" part 63, "Disposal

of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada;" Part 70, "Domestic Licensing of Special Nuclear Material;" part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste;" and part 76, "Certification of Gaseous Diffusion Plants," require some fuel cycle and materials licensees to prepare emergency plans. The information specified in this guide should be included in the licensee's emergency plan to comply with the requirements of 10 CFR 30.32(i)(3), 40.31(j)(3), 63.161, 70.22(i)(3), 72.32, and 76.91.

II. Further Information

In May 2010, DG–3039 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on July 12, 2010. Electronic copies of Regulatory Guide 3.67, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML103360487. The regulatory analysis may be found in ADAMS under Accession No. ML103370659.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at 301–415–4737 or 1–800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 21st day of April 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–10559 Filed 4–29–11; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Regulatory Commission

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on May 10, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 10, 2011—8:30 a.m. Until 5 p.m.

The Subcommittee will review draft regulatory guides (DG), entitled, "Conducting Periodic Testing for Breakaway Oxidation Behavior," temporarily identified by task number, DG–1261; "Testing for Postquench Ductility," temporarily identified by task number, DG–1262; and "Establishing Analytical Limits for Zirconium Based Alloy Cladding," temporarily identified by task number, DG–1263. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. These DGs are being made publicly available to provide awareness to the public regarding the staff position, so they can effectively participate in the ACRS meeting. The NRC is not soliciting comments at this time, but will address any comments during the scheduled public comment period later in the year. A FR notice will be issued requesting public participation at that time. The ML numbers are: DG–1261: ML111100300, DG–1262: ML111100368, and DG–1263: ML111100391. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or e-mail: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the conference room.

Dated: April 26, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–10557 Filed 4–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of April 25, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of April 25, 2011

Thursday, April 28, 2011

11:30 a.m. Part 2—Briefing on the Status of NRC Response to Events in Japan and Briefing on Station Blackout—Security Issues (Closed Ex. 3)

* * * * *

* 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: Rochelle Bavol, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION

By a vote of 5–0 on April 26, 2011, the Commission decided to add a closed session, part 2, to the Briefing on the Status of NRC Response to Events in Japan and Briefing on Station Blackout currently scheduled on April 28, 2011.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/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 Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to 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), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: April 27, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–10702 Filed 4–28–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIMES: Tuesday, May 10, 2011, at 8 a.m. and 2 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: Tuesday, May 10 at 8 a.m.—Closed; and at 2 p.m.—Open.

MATTERS TO BE CONSIDERED:

Tuesday, May 10 at 8 a.m. (Closed)

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, May 10 at 2 p.m. (Open)

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Committee Reports.
5. Quarterly Report on Financial Performance.
6. Quarterly Report on Service Performance.
7. Tentative Agenda for the June 20–21, 2011, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–10750 Filed 4–28–11; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29660; 812–13736]

HighMark Capital Management, Inc., et al., Notice of Application

April 26, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

APPLICANTS: HighMark Capital Management, Inc. ("HCM" or "Adviser"),[1] HighMark Funds (each series of HighMark Funds a "Current Fund," collectively, the "Current Funds"),[2] any existing or future registered management investment companies and their series that are advised or subadvised by the Adviser ("Future Funds," Future Funds and Current Funds are collectively the "Funds"),[3] and Morgan Stanley & Co., Inc. ("MS & Co.").

SUMMARY OF APPLICATION: Applicants request an order to permit the Funds to engage in principal transactions in certain money market instruments with MS & Co.

DATES: *Filing Dates:* The application was filed on December 28, 2009, and amended on June 18, 2010, and March 25, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 23, 2011, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Karen Seaman, Esq., Union Bank, N.A., 400 California Street, 16th Floor, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, (202) 551–6817 or Janet M. Grossnickle, Assistant Director, (202) 551–6821 (Office of Investment Company

[1] Applicants also seek relief for any other existing or future registered investment adviser which acts as investment adviser or subadviser to a Fund (defined below) and which controls, is controlled by or is under common control (as defined in section 2(a)(9) of the Act) with HCM (individually a "Future Adviser" and collectively the "Future Advisers"). HCM and the Future Advisers are referred to individually as an "Adviser" and collectively as the "Advisers." HCM is the only Adviser that currently intends to rely on the requested order. Any other Adviser that relies on the order in the future will comply with the terms and conditions of the application.

[2] HighMark Funds offers five series that operate as money market funds subject to rule 2a–7 under the 1940 Act: HighMark 100% U.S. Treasury Money Market Fund, HighMark California Tax-Free Money Market Fund, HighMark Diversified Money Market Fund, HighMark Treasury Plus Money Market Fund and HighMark U.S. Government Money Market Fund (each a "Money Market Fund").

[3] Any existing or future Funds which are money market funds subject to rule 2a–7 and authorized to invest in Money Market Instruments (as defined below) are also "Money Market Funds." Any Fund that currently intends to rely on the requested order is named as an applicant in the application. Any other Fund that relies on the order in the future will comply with the terms and conditions of the application.

Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. HighMark Funds, an open-end management company registered under the Act, is organized as a Massachusetts business trust and is comprised of multiple series that are Funds. HCM, an investment adviser registered under the Investment Advisers Act of 1940, is a California corporation and an indirect wholly-owned subsidiary of Mitsubishi UFJ Financial Group, Inc. ("Mitsubishi UFJ"). Each Fund has an investment advisory agreement with the Adviser pursuant to which the Adviser provides investment advisory and management services. MS & Co., a broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act") is a primary dealer in U.S. Government securities and one of the largest dealers in the United States in commercial paper, repurchase agreements and other money market instruments. Applicants state that Mitsubishi UFJ currently holds an approximately 21% interest in Morgan Stanley ("MS"). MS & Co. is a wholly owned subsidiary of MS.

2. Applicants state that HCM and MS & Co. are functionally independent of each other and operate as completely separate entities. While MS & Co. and HCM could be deemed second-tier affiliates through their relationship with Mitsubishi UFJ, each entity has its own separate officers and employees, is separately capitalized, maintains its own separate books and records and operates on different sides of walls of separation with respect to the Funds and Money Market Instruments. HCM also maintains offices physically separate from MS & Co.

3. Investment decisions for the Funds are determined solely by the Adviser. The portfolio managers and other employees that are responsible for the investment of the Funds are employed solely by the Adviser (and not MS & Co.), and have lines of reporting responsibility solely within the Adviser. The compensation of personnel assigned to an Adviser will not depend on the volume or nature of trades with MS & Co., except to the extent that such trades may affect the profits and losses of Mitsubishi UFJ and its affiliates as a whole.

4. As used in the application, the term Taxable Money Market Instruments refers to taxable securities which are eligible for purchase by money market funds under rule 2a–7, including short-term U.S. Government securities, short-term U.S. Government agency securities, bank money market instruments, bank notes, commercial paper, other short-term fixed income instruments and repurchase agreements. The term Tax-Exempt Money Market Instruments refers to tax-exempt securities which are eligible for purchase by money market funds under rule 2a–7, including conventional municipal notes, tax-exempt commercial paper, variable rate demand notes, put bonds and flexible notes. Money Market Instruments consist of Taxable and Tax-Exempt Money Market Instruments. Each Fund that is not a Money Market Fund is authorized to invest in Taxable Money Market Instruments pursuant to its investment objectives and policies.

5. Trading in Money Market Instruments generally takes place in over-the-counter markets consisting of groups of dealers who are primarily major securities firms or large commercial banks. The money market consists of sophisticated and elaborate telephonic and electronic communications networks among buyers and sellers, which generally precludes being able to obtain a single market price for a given instrument at any given time. Applicants state that the money market (for both Taxable and Tax-Exempt Money Market Instruments) tends to be somewhat segmented. The markets for the different types of instruments will vary in terms of price, volatility, liquidity and availability. With respect to any given type of security or instrument, there may be only a few dealers who can be expected to have the security in inventory and be in a position to quote a favorable price. Applicants also state that different dealers may quote different prices with respect to the same type of instrument because of differing outlooks on future yields, to adjust their inventory or because of competitive pressure (or the lack thereof) to meet other dealers' quotes. Only customers of a dealer may obtain quotations for Money Market Instruments and trade on them.

6. MS & Co. is one of the world's largest dealers in Taxable Money Market Instruments, ranking among the top firms in each of the major markets and product areas. As of December 31, 2010, MS & Co. had become the fourth largest dealer in terms of the number of existing U.S. asset-backed commercial paper programs, the most significant part of the commercial paper market by outstanding dollar amounts. Applicants believe that MS & Co. is one of the ten leading dealers in the repurchase agreement market. From January 2010 to December 2010, MS & Co.'s aggregate month-end principal balance for repurchase agreements and reverse repurchase agreements ranged from approximately $240 billion to approximately $337 billion. MS & Co. is an active participant in the public auction market for U.S. Treasuries, being one of only 20 primary dealers and receiving on average from 0.04% to 5.34% of the primary distribution of U.S. Treasuries during January through December 31, 2010. In secondary trading, MS & Co. ranked as one of the top four primary dealers for U.S. Treasuries with maturities of three to six years and with maturities under three years for seven of the last eight quarters (through the fourth quarter of 2010). MS & Co. also has been an active participant in the secondary market for government agency securities and ranked ninth in underwriting primary issuances in 2010.

7. MS & Co. also is a major participant in both the primary new issue market and in the secondary dealer market for Tax-Exempt Money Market Instruments. MS & Co. estimates that its market share in the new issue market for Tax-Exempt Money Market Instruments included 8.6% of conventional notes, 10% of tax-exempt commercial paper and 7.2% of variable rate demand notes for the period January 1, 2010 through December 31, 2010. Applicants state that there is no comprehensive information published as to the dollar amount and volume of secondary market transactions executed in Tax-Exempt Money Market Instruments. However, MS & Co. believes that it is generally one of the top five secondary market dealers in Tax-Exempt Money Market Instruments. Based upon MS & Co. estimates, MS & Co. was responsible for 9% of the trading volume in variable rate demand notes and tax-exempt commercial paper among MS & Co. and nine other leading dealers as of January 1, 2011. MS & Co. estimates its market share in the put bonds market at 15.7% as of December 31, 2010.

8. Applicants state that over the past few years, the growth in Money Market Instruments has been substantially outpaced by the growth in portfolios which purchase Money Market Instruments, which has contributed to the limited availability of Money Market Instruments to the Funds.[4] Applicants

[4] Applicants state that from 2000 through 2010, the growth of the market in Tax-Exempt Money Market Instruments was 119%, while the growth of Taxable Money Market Instruments was 143%.

further state that because of consolidation in the money market industry, there is a substantially smaller number of major dealers who are active in the money market than was the case a decade ago. Applicants state that MS & Co. has remained committed to the taxable and tax-exempt money market, and has moved to fill the void left by departing dealers. As the number of dealers with whom the Funds can transact business has decreased, it has become even more important for the Funds to have meaningful access to all of the major dealers in Money Market Instruments in order to diversify each Fund's investments, to maintain portfolio liquidity, and to increase opportunities for obtaining best price and execution with respect to portfolio trades.

9. Subject to the general supervision of the board of trustees of the Funds ("Board"), the Adviser is responsible for making investment decisions and for the placement of portfolio transactions. The Funds have no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, the Adviser must attempt to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type and difficulty of the transaction involved and the dealer's general execution and operational facilities. The transaction costs of the Funds with respect to Money Market Instruments consist primarily of dealer or underwriter spreads. Spreads vary some based on the type of money market security or the occurrence of turbulent market conditions, but generally spread levels for Taxable Money Market Instruments are in the range of 1 to 5 basis points (.01% to .05%), while spreads for Tax-Exempt Money Market Instruments typically are not greater than 12.5 basis points (0.125%).

Applicants' Legal Analysis:

1. Applicants request an order pursuant to sections 6(c) and 17(b) of the Act exempting certain transactions from the provisions of section 17(a) of the Act to permit MS & Co., acting as principal, (a) to sell or purchase Taxable Money Market Instruments to or from the Funds; and (b) to sell or purchase Tax-Exempt Money Market Instruments to or from the Money Market Funds, subject to the conditions set forth below.

2. Section 17(a) of the Act generally prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of that person ("second-tier affiliate"), acting as principal, from selling to or purchasing from the registered company, or any company controlled by the registered company, any security or other property. Because Mitsubishi UFJ could be deemed to control the Funds, and Mitsubishi UFJ indirectly owns 21% of MS & Co., the Funds and MS & Co. could be deemed second-tier affiliates, and the Funds could be prohibited from conducting portfolio transactions with MS & Co. in transactions in which MS & Co. acts as principal.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants note the following in support of the requested relief:

(a) With over $5 billion invested in Money Market Instruments, the Funds have a strong need for access to large quantities of high quality Money Market Instruments. The applicants believe that access to a major dealer as MS & Co. in this market increases the Funds' ability to obtain suitable portfolio securities.

(b) The policy of the Funds that are money market and fixed income funds of investing in securities with short maturities combined with the active portfolio management techniques employed by the Advisers results in a high level of portfolio activity and the need to make numerous purchases and sales of Money Market Instruments. This high level of portfolio activity emphasizes the importance of increasing opportunities to obtain suitable portfolio securities and best price and execution.

(c) The taxable and tax-exempt money market, including the market for repurchase agreements, is highly competitive, and maintaining a dealer as prominent as MS & Co. in the pool of dealers with which the Funds could conduct principal transactions may provide the Funds with opportunities to purchase and sell Money Market Instruments, including those not available from any other source.

(d) MS & Co. is such a major factor in the tax-exempt and taxable money market that being unable to deal directly with MS & Co. may indirectly deprive the Funds of obtaining best price and execution even when the Funds trade with unaffiliated dealers.

5. Applicants believe that the requested order will provide the Funds with a broader and more complete access to the money market (both taxable and non-taxable) which is necessary to carry out the policies and objectives of each of the Funds in obtaining the best price, execution and quality in all portfolio transactions, and will provide the Funds with important new information sources in the taxable and tax-exempt money market, to the direct benefit of investors in the Funds. Applicants believe that the transactions contemplated by the application are identical to those in which they are currently engaged except for the proposed participation of MS & Co. and that such transactions are consistent with the policies of the Funds as recited in their registration statements and reports filed under the Act. Applicants further believe that the conditions below and the procedures to be followed with respect to transactions with MS & Co. are structured in such a way as to ensure that the transactions will be, in all instances, reasonable and fair, will not involve overreaching on the part of any person concerned, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. With respect to Tax-Exempt Money Market Instruments, principal purchase or sale transactions will be conducted only in Money Market Instruments that are First Tier Securities as defined in rule 2a–7(a)(14)(i) under the Act. With respect to Taxable Money Market Instruments, the principal purchase or sale transactions which may be conducted pursuant to the exemption will be limited to transactions in

Eligible Securities.[5] Notwithstanding the foregoing, if a Fund purchases a Money Market Instrument meeting the above requirements from MS & Co. and, subsequent to such purchase, the security becomes no longer an *Eligible Security,* the Fund may sell the security to MS & Co. in a manner consistent with the requirements of rule 2a–7(c)(7)(i)(B). To the extent a Fund is subject to rule 2a–7, such *Eligible Securities* must meet the portfolio maturity and quality requirements of paragraphs (c)(2) and (c)(3) of rule 2a–7. To the extent a Fund is not subject to rule 2a–7, such *Eligible Securities* must meet the requirements of clauses (i), (iii) and (iv) of paragraph (c)(3) of rule 2a–7. Additionally:

(a) No Fund shall make portfolio purchases pursuant to the exemption that would result directly or indirectly in the Fund investing pursuant to the exemption more than 2% of its *Total Assets* (or, in the case of a Fund that is not subject to rule 2a–7, more than 2% of the total of its cash, cash items and *Eligible Securities*) in securities which, when acquired by the Fund (either initially or upon any subsequent rollover) are *Second Tier Securities;* provided that any Fund may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to this limitation.

(b) The exemption shall not apply to an *Unrated Security* other than a *Government Security.*

(c) The Funds may engage in repurchase agreements with MS & Co. only if MS & Co. has: (i) Net capital, as defined in rule 15c3–1 under the 1934 Act, of at least $100 million and (ii) a record (including the record of predecessors) of at least five years continuous operations as a dealer during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. MS & Co. shall furnish the Advisers with financial statements for its most recent fiscal year and the most recent semi-annual financial statements made available to its customers. The Advisers shall determine that MS & Co. complies with the above requirements and with other repurchase agreement guidelines adopted by the Board. Each repurchase agreement will be *Collateralized Fully.*

(d) The exemption shall not apply to any purchase or sale of any security, other than a repurchase agreement, issued by MS, Mitsubishi UFJ or any affiliated person of MS or Mitsubishi UFJ or to any security subject to a *Demand Feature* or *Guarantee* issued by MS, Mitsubishi UFJ or any affiliated person of MS or Mitsubishi UFJ. For purposes of this requirement, MS and Mitsubishi UFJ will not be considered to be the issuer of a *Demand Feature* or *Guarantee* solely by reason of the fact that MS & Co. or an affiliate thereof serves as a remarketing agent for a Money Market Instrument.

2. The relevant Adviser (unless the Board decides that the Fund should make these determinations) will determine with respect to each principal transaction conducted by a Fund pursuant to the order, based upon the information reasonably available to the Funds and the Advisers, that the price available from MS & Co. is at least as favorable to the Fund as the prices obtained from two other dealer bids in connection with securities falling within the same category of instrument, quality and maturity (but not necessarily the identical security or issuer) ("price test"). In the case of "Swaps" involving trades of one security for another, the price test shall be based upon the transaction viewed as a whole and not upon the two components thereof individually. With respect to each transaction involving repurchase agreements, the relevant Adviser will determine (unless the Board decides that the Fund should make these determinations), based upon the information reasonably available to the Fund and the Adviser, that the income to be earned from the repurchase agreement is at least equal to that available from other sources. In the case of variable rate demand notes, for which dealer bids are not ordinarily available, the Funds will only undertake purchases and sales where the rate of interest to be earned from the variable rate demand note is at least equal to that of variable rate demand notes of comparable quality that are available from other dealers. Neither MS, Mitsubishi UFJ nor any other affiliate thereof (other than the Advisers) will have any involvement with respect to proposed transactions between the Funds and the Advisers and, except to the extent set forth in condition 6(d) below, will not attempt to influence or control in any way the placing by the Funds or the Advisers of orders with MS & Co.

3. Before any principal transaction may be conducted pursuant to the order, the relevant Fund or Adviser must obtain such information as it deems reasonably necessary to determine that the price test (as defined in condition (2) above) has been satisfied. In the case of each purchase or sale transaction, the relevant Fund or Adviser must make and document a good faith determination with respect to compliance with the price test based on current price information obtained through the contemporaneous solicitation of bona fide offers in connection with securities falling within the same category of instrument, quality and maturity (but not necessarily the identical security or issuer). With respect to variable rate demand notes, contemporaneous solicitation of a bona fide offer will be construed to mean any bona fide offer solicited during the same trading day. With respect to prospective purchases of securities by a Fund, the dealer firms from which prices are solicited must be those who have securities of the same categories and the type desired in their inventories and who are in a position to quote favorable prices with respect thereto. With respect to the prospective sale of securities by a Fund, these dealer firms must be those who, in the experience of the Funds and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Fund or the relevant Adviser must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required.

4. Principal transactions in all Money Market Instruments other than repurchase agreements conducted by a Fund pursuant to the order shall be limited to no more than (a) an aggregate of 25% of the direct or indirect purchases and 25% of the direct or indirect sales of *Eligible Securities* other than repurchase agreements conducted by that Fund and (b) an aggregate of 25% of the purchases or sales, as the case may be, by MS & Co. of *Eligible Securities* other than repurchase agreements. Repurchase agreements conducted pursuant to the exemption shall be limited to no more than 10% of (a) the repurchase agreements directly or indirectly entered into by the relevant Fund and (b) the repurchase agreements transacted by MS & Co. Principal transactions in Tax-Exempt Money Market Instruments conducted by each Money Market Fund pursuant to the order, shall be limited to no more than an aggregate of 20% of the direct or indirect purchases and 20% of the direct or indirect sales of Tax-Exempt Money Market Instruments by that Money Market Fund. The Adviser or Fund and MS & Co. will measure these

[5] Italicized terms are defined as set forth in paragraph (a) of rule 2a–7 under the Act, unless otherwise indicated.

limits on an annual basis (the fiscal year of each Fund) and shall compute them using the dollar volume of transactions.

5. MS & Co.'s dealer spread regarding any transaction with the Funds will be no greater than its customary dealer spread on similar transactions (with unaffiliated parties) of a similar size during a comparable time period. Its customary dealer spread also will be consistent with the average or standard spread charged by dealers in Money Market Instruments of a similar type and transaction size.

6. The Advisers, on the one hand, and MS & Co. on the other, will operate on different sides of appropriate walls of separation with respect to the Funds and the Money Market Instruments. The walls of separation will include all of the following characteristics, and such others that MS & Co. and the Advisers consider reasonable to facilitate the factual independence of the Advisers from MS & Co.:

(a) Each of the Advisers will maintain offices physically separate from those of MS & Co.

(b) The compensation of persons assigned to any of the Advisers (*i.e.,* executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the Advisers for the Funds with MS & Co. under the exemption, except to the extent that such trades may affect the profits and losses of Mitsubishi UFJ and its affiliates as a whole.

(c) MS & Co. will not compensate the Advisers based upon its profits or losses on transactions conducted pursuant to the exemption, provided that the allocation of the profits by Mitsubishi UFJ to its shareholders and the determination of general firm-wide compensation of officers and employees, will be unaffected by this undertaking.

(d) Personnel employed by the Advisers' investment advisory operations on behalf of the Funds will be exclusively devoted to the business and affairs of one or more of the Advisers. Personnel employed by MS & Co. will not participate in the decision-making process for or otherwise seek to influence the Advisers other than in the normal course of sales and dealer activities of the same nature as are simultaneously being carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and MS & Co., on the other hand, may nonetheless maintain affiliations other than with respect to the Funds, and in addition with respect to the Funds, Adviser personnel may rely on research, including credit analysis and reports prepared by various subsidiaries and divisions of MS & Co.

7. The Funds and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. To this end, each Fund shall maintain the following:

(a) An itemized daily record of all purchases and sales of securities pursuant to the exemption, showing for each transaction the following: (i) The name and quantity of securities; (ii) the unit purchase or sale price; (iii) the time and date of the transaction; and (iv) whether the security was a *First Tier* or *Second Tier Security.* For each transaction (other than variable rate demand notes), these records shall document two quotations received from other dealers for securities falling within the same category of instrument, quality and maturity; including the following: (i) The names of the dealers; (ii) the names of the securities; (iii) the prices quoted; (iv) the times and dates the quotations were received; and (v) whether such securities were *First Tier* or *Second Tier Securities.* In the case of variable rate demand notes, the Fund shall maintain the same records except that the rates of return quoted will be substituted for the prices quoted.

(b) Records sufficient to verify compliance with the volume limitations contained in condition (4) above. MS & Co. will provide the Funds with all records and information necessary to implement this requirement.

(c) Each Fund shall maintain a ledger or record showing, on a daily basis, the percentage of the Fund's *Total Assets* (or, in the case of a Fund that is not subject to rule 2a–7 the percentage of its total cash, cash items and *Eligible Securities*) represented by *Second Tier Securities* acquired from MS & Co.

(d) Each Fund shall maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition 1(c) above.

The records required by this condition (7) will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1) under the Act.

8. The legal and compliance departments of MS & Co. and the Advisers will prepare and administer guidelines for personnel of MS & Co. and the Advisers to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the order and that the parties generally maintain arm's-length relationships. In the training of MS & Co's personnel, particular emphasis will be placed upon the fact that the Funds are to receive rates as favorable as other institutional purchasers buying the same quantities. The legal and compliance departments will periodically monitor the activities of MS & Co. and the Advisers to make certain that the conditions set forth in the order are adhered to.

9. The members of the Board of each of the Funds who are not "interested persons" as defined in Section 2(a)(19) of the Act ("Independent Trustees") will approve, periodically review, and update as necessary, guidelines for the Funds and the Advisers that are reasonably designed to make certain that the transactions conducted pursuant to the exemption comply with the conditions set forth herein and that the above procedures are followed in all respects. The Independent Trustees will periodically monitor the activities of the Funds and the Advisers in this regard to ensure that these goals are being accomplished.

10. The Board, including a majority of the Independent Trustees, will have approved each Fund's participation in transactions conducted pursuant to the exemption and determined that such participation by the Fund is in the best interests of the Fund and its shareholders. The minutes of the meeting of the Board at which this approval was given must reflect in detail the reasons for the Board's determination. The Board will review no less frequently than annually each Fund's participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Fund's participation in such transactions continues to be in the best interests of the Fund and its shareholders. Such review will include (but not be limited to) (a) a comparison of the volume of transactions in each type of security conducted pursuant to the exemption to the market presence of MS & Co. in the market for that type of security, which market data may be based on good faith estimates to the extent that current formal data is not reasonably available, and (b) a determination that the Funds are maintaining appropriate trading relationships with other sources for each type of security to ensure that there are appropriate sources for the quotations required by condition 3. The minutes of the meetings of the Board at which these determinations are made will reflect in detail the reasons for the Board's determinations.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10543 Filed 4–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 5, 2011 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 5, 2011 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; a litigation matter; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 28, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–10772 Filed 4–28–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64343; File No. SR–ISE–2011–26]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Option Expiration Months Open for Trading on the Exchange

April 26, 2011.

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 20, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 its rules to permit the Exchange to list additional expiration months if such expiration months are listed on another exchange. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend ISE Rules to permit the Exchange to list additional expiration months if such expiration months are listed on another exchange. This filing is based on a filing previously submitted by NASDAQ OMX PHLX, Inc. ("PHLX").[3]

Under current rule 504(e), ISE usually will open four (4) expiration months for each type of option of a class of options open for trading on the Exchange: The first two (2) being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. For example, if the Exchange listed in late September a new stock option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest-term months (October and November) and the next two expiration months of the cycle (January and April). Further, when the October series expire, the Exchange would add the December series as the next nearest month. And when the November series expire, the Exchange would add the July series as the next month of the cycle.

In 2010, the Exchange established a pilot program to add up to two additional expiration months for each class of options opened for trading on the Exchange (the "Additional Expiration Months Pilot").[4] Under the Additional Expiration Months Pilot, ISE lists expiration months that are considered "mid-month." For example, for options classes that have expiration months of October, November, January, and April, the Exchange lists the December series. For options classes that have expiration months of October, November, February and May, the Exchange lists the December and January series. The listing of additional expiration months has been well-received by our members and has had very limited impact on system resources.

PHLX recently submitted a filing to adopt rules pursuant to which it can

[3] *See* Securities Exchange Act Release No. 63700 (January 11, 2011) 76 FR 2931 (January 18, 2011) (SR–PHLX–2011–04). In its filing, PHLX cites to the Commission's approval of the NASDAQ Options Market and rules pertaining thereto as the basis for making the change to its rules.

[4] *See* Securities Exchange Act Release No. 63104 (October 14, 2010) 75 FR 64773 (October 20, 2011) (SR–ISE–2010–91).

open "at least one expiration month" for each class of options opened for trading on that exchange.[5] Consequently, while ISE is currently restricted to listing a limited number of expiration months that are permissible under its rules and the Additional Expiration Months Pilot, PHLX has the ability to list an unlimited number of expiration months, including those that ISE would not be able to currently list under its rules. Indeed, PHLX has listed additional expiration months that no other exchange, including ISE, can currently list. For example, in February 2011, PHLX listed the October 2011 expiration in Omnicare, Inc. (ticker: OCR). PHLX was able to list that expiration month based on its amended rule. Meanwhile, ISE could not list the October 2011 series under Rule 504(e) because the standard expiration months for OCR in February are March, April, June, and September. ISE also could not list the October 2011 series as part of the Additional Expiration Months Pilot because OCR is not one of the classes selected by the Exchange to participate in the Additional Expiration Months Pilot (nor could ISE select it for the Additional Expiration Months Pilot because all 20 available selections have been chosen). As a result, PHLX was the only exchange that listed the October 2011 series in OCR and continues to trade that series without any competition.

For competitive reasons, ISE now proposes to add new Supplementary Material .10 to its Rule 504 and Supplementary Material .04 to ISE Rule 2009 to permit the Exchange to list additional expiration months on options classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other national securities exchange. This proposed rule change will allow ISE to match the listing of expiration months that PHLX or NOM lists in the event ISE is not able to list those expiration months because they do not comport to ISE Rules or the Additional Expiration Months Pilot.

The Exchange notes that the proposed rule change affords additional flexibility in that it will permit the exchange to list those additional expiration months that have an actual demand from market participants thereby potentially reducing the proliferation of classes and series. The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that permit the listing of identical expiration months across exchanges for products that are multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to accommodate requests made by its members and other market participants to list the additional expiration months and thus encourage competition without harming investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing the Exchange to list and trade option series that are trading on other options exchanges. Therefore, the Commission designates the proposal operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–ISE–2011–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–26. 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

[5] This paragraph was modified at the request of the Exchange on April 25, 2011. *See* e-mail, dated April 25, 2011, from Samir M. Patel, Assistant General Counsel, International Securities Exchange, to Kathleen J. Gray, Attorney, Division of Trading and Markets, Commission.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[9] 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).

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–ISE–2011–26 and should be submitted on or before May 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10468 Filed 4–29–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64342; File No. SR–NYSEArca–2011–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Madrona Forward Domestic ETF, Madrona Forward International ETF, and Madrona Forward Global Bond ETF

April 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): Madrona Forward Domestic ETF; Madrona Forward International ETF; and Madrona Forward Global Bond ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares [3] ("Shares") under NYSE Arca Equities Rule 8.600: Madrona Forward Domestic ETF; Madrona Forward International ETF; and Madrona Forward Global Bond ETF (each, a "Fund" and, collectively, "Funds").[4] The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment adviser to the Funds is AdvisorShares Investments, LLC ("Adviser"). Madrona Funds LLC is the Funds' sub-adviser ("Sub-Adviser") and provides day-to-day portfolio management of the Funds. Foreside Fund Services, LLC ("Distributor") is the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon Corporation ("Administrator") serves as administrator, custodian, and transfer agent for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Exchange-Traded Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR–NYSEArca–2009–114) (order approving listing and trading of Grail McDonnell Fixed Income ETFs); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing of Cambria Global Tactical ETF); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (order approving listing of Peritus High Yield ETF).

[5] The Trust is registered under the 1940 Act. On November 30, 2010, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333–157876 and 811–22110) ("Registration Statement"). The Trust has also filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13677, dated May 6, 2010) ("Exemptive Application"). The description of the operation of the Trust and the Funds herein is based on the Registration Statement.

portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, with respect to each of the Funds, the Sub-Adviser employs a forward-looking fundamental investment process when making capital allocation decisions across investment strategies for the Funds. The underlying investment process for the Madrona Forward Domestic ETF and the Madrona Forward International ETF is based on a measure of forecasted earnings and projected growth relative to the price of the equities. The underlying investment process for the Madrona Forward Global Bond ETF is based on fundamental yield curve analysis and a measure of mean reversion for future expected yield curve trajectory.

Each Fund utilizes a core investment allocation strategy which seeks to replace what the Sub-Adviser's investment committee deems inefficient index methodologies for core investing that are prevalent in the marketplace. The Funds invest in actively managed, broadly diversified portfolios and differ from most traditional indices in that the proportion, or weighting, of the securities in the Funds are based on forward-looking fundamental analysis rather than only on market capitalization of such securities. Risk management guidelines are employed to protect against dramatic over- or under-weighting of individual securities, reducing company specific risks.

Madrona Forward Domestic ETF

According to the Registration Statement, the Madrona Forward Domestic ETF seeks to provide long-term capital appreciation above the capital appreciation of its benchmark, the S&P 500 Index. The Sub-Adviser seeks to achieve the Fund's investment objective primarily by selecting a portfolio of up to 500 of the largest U.S. exchange-traded equity securities.[7] The Sub-Adviser selects the securities for the Fund's portfolio using a weighted allocation system based on a consensus of analyst estimates of the present value of future expected earnings relative to the share price of each security. The Sub-Adviser's investment committee meets on a bi-weekly basis to monitor the portfolio and make allocation decisions. The investment committee uses third-party analyst research and a proprietary fundamental process to make allocation decisions, and employs guidelines to protect against dramatic over- or under-weighting of individual securities in the Fund's portfolio. The investment committee relies heavily on a stock's price and market cap relative to its future expected earnings in its analysis of individual securities. Changes to the Fund's portfolio typically occur upon the reporting and analysis of individual securities through the earnings season and rely heavily on a stock's price and market cap relative to the future expected earnings.

According to the Registration Statement, the Fund utilizes the following investment process:

Step 1: The Sub-Adviser's use of third-party research consists of analyzing the consensus analyst valuation estimates to drive the proprietary models that derive the present value of future expected earnings relative to the current stock price of each stock.

Step 2: The Sub-Adviser reviews this data on a company-by-company basis, and the companies are put in order from most attractive to least attractive, and the Fund weights these companies accordingly.

Step 3: Risk management guidelines are established to allocate the total percentage invested in each quartile of securities. In other words, each group of up to 125 securities will receive a certain investment percentage within the Sub-Adviser's established guidelines. This process ensures no dramatic over-weighting or under-weighting of individual securities.

Step 4: The Fund's portfolio is consistently monitored when company-specific data is released, and the Sub-Adviser's models are updated to drive allocation changes.

Madrona Forward International ETF

According to the Registration Statement, the Madrona Forward International ETF seeks to provide long-term capital appreciation above the capital appreciation of its international benchmarks, the MSCI EAFE Index, the Fund's primary benchmark, and the BNY Mellon Classic ADR Index, the Fund's secondary benchmark. The Fund seeks to achieve the Fund's investment objective by selecting a portfolio primarily composed of U.S. exchange-listed American Depository Receipts ("ADRs") from among the largest issuers of Europe, Australasia and the Far East ("EAFE"), and Canada. The Fund's portfolio may also include U.S. exchange-listed equity securities of large-capitalization non-U.S. issuers that provide exposure to certain markets deemed to be emerging markets. Securities are selected, weighted, and sold based upon the Sub-Adviser's proprietary investment process. The Sub-Adviser's investment committee meets on a bi-weekly basis to monitor the portfolio and make allocation decisions. The investment committee uses third-party analyst research and a proprietary fundamental process to make allocation decisions. Changes to the Fund's portfolio typically occur upon the reporting and analysis of individual securities through the earnings season and rely heavily on a security's price and market cap relative to future earnings.

The composition of the Fund's portfolio, on a continual basis, will be subject to the following:

(1) Component stocks, including component stocks underlying ADRs, that, in the aggregate, account for at least 90% of the weight of the portfolio, each shall have a minimum market value of at least $100 million;

(2) Component stocks, including component stocks underlying ADRs, that, in the aggregate, account for at least 70% of the weight of the portfolio, each shall have a minimum global

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The Fund may hold only equity securities traded in the U.S. on registered exchanges and will hold a minimum of 13 equity components.

monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(3) A minimum of 20 component stocks, including component stocks underlying ADRs, of which the most heavily weighted component stock shall not exceed 25% of the weight of the portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the portfolio; and

(4) Each non-U.S. equity security underlying ADRs held by the Fund will be listed and traded on an exchange that has last-sale reporting.

According to the Registration Statement, the Fund utilizes the following investment process:

Step 1: The Sub-Adviser's use of third-party research consists of analyzing the consensus analyst valuation estimates to drive the proprietary models that derive the present value of future expected earnings relative to the current stock price of each stock.

Step 2: The Sub-Adviser reviews this data on a company-by-company basis, and the companies are put in order from most attractive to least attractive, and the Fund weights these companies accordingly.

Step 3: Risk management guidelines are established to allocate the total percentage invested in each quartile of securities. Each quartile will receive a certain investment percentage within the Sub-Adviser's established guidelines. This process ensures no dramatic over-weighting or under-weighting of individual securities.

Step 4: The Fund's portfolio is consistently monitored when company specific data is released, and the Sub-Adviser's models are updated to drive allocation changes.

Madrona Forward Global Bond ETF

According to the Registration Statement, the Madrona Forward Global Bond ETF seeks investment results that exceed the price and yield performance of its benchmark, the Barclays Capital Aggregate Bond Index. The Sub-Adviser seeks to achieve the Fund's investment objective primarily by selecting a portfolio of fixed income (bond) U.S. exchange-traded funds ("ETFs") and other U.S. exchange-traded products ("ETPs," and, together with ETFs, "Underlying ETPs"), including but not limited to, exchange-traded notes ("ETNs"), exchange-traded currency trusts, and exchange-traded commodity pools.[8] The Fund will invest in indexed Underlying ETPs that provide exposure to at least 12 distinct bond classes, including, but not limited to, short-term treasury bonds, municipal bonds, and high-yield U.S. corporate bonds (sometimes referred to as "junk bonds"). The Sub-Adviser will construct the Fund's portfolio using a weighted allocation system based on yield-curve analysis of each bond category. The investment committee meets on a bi-weekly basis to monitor the Fund's portfolio and make allocation decisions. The investment committee uses third-party analyst research and a proprietary fundamental process to make allocation decisions. Each major bond category would have a three percent minimum percentage inclusion in the Fund's portfolio.

Through its investments in Underlying ETPs, the Fund will invest in at least 12 distinct global bond classes, including, but not limited to, the following: Mortgage Backed/Agency; Investment Grade U.S. Corporate; Short-Term Treasury; Intermediate-Term Treasury; Long-Term Treasury; Inflation Protected Treasury (TIPS); High-Yield U.S. Corporate; International Treasury; Convertible and Preferred; Emerging Markets; Municipal; International Investment Grade Corporate; International High Yield; and Build America Bonds.

The Fund will invest in an Underlying ETP for each of the bond classes held in the portfolio. Changes to the Fund's portfolio typically occur upon the reporting and analysis of each bond category's risk assessment.

According to the Registration Statement, the Fund utilizes the following investment process:

Step 1: The Sub-Adviser selects an Underlying ETP for each bond category based on expense ratios and institutional strengths of each Underlying ETP provider to ensure efficient internal trading.

Step 2: The Sub-Adviser's use of third-party research consists of analyzing the historical class by class yield-curve analysis and how the curve stands in relation to the current yield-curve of the particular bond class. Based on the research, the Sub-Adviser determines which bond classes will receive higher- and lower-than-average allocations as compared to typical bond indices.

Step 3: Risk management guidelines are established to allocate the total percentage invested in each bond class. Each class will receive a minimum investment within the Sub-Adviser's established guidelines. This process ensures no dramatic over-weighting or under-weighting of individual bond categories.

Step 4: The Fund's portfolio is consistently monitored when bond class data is released, and the Sub-Adviser's models are updated to drive allocation changes.

Other Investments of the Funds

With respect to each of the Funds, to respond to adverse market, economic, or political conditions, a Fund may invest 100% of its total assets, without limitation, in short-term, high-quality debt securities and money market instruments either directly or through Underlying ETPs.[9] A Fund may be invested in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities,[10] repurchase

[8] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Madrona Forward Global Bond ETF may invest in the securities of Underlying ETPs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Funds will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The Underlying ETPs in which the Fund may invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index.

[9] Adverse market conditions would include large downturns in the broad market value of two or more times current average volatility, where the Sub-Adviser views such downturns as likely to continue for an extended period of time. Adverse economic conditions would include significant negative results in factors deemed critical at the time by the Sub-Adviser, including significant negative results regarding unemployment, Gross Domestic Product, consumer spending or housing numbers. Adverse political conditions would include events such as government overthrows or instability, where the Sub-Adviser expects that such events may potentially create a negative market or economic condition for an extended period of time.

[10] Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, including U.S. Treasury bills, U.S. Treasury notes, and U.S. Treasury bonds. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as Fannie Mae, Freddie Mac, the Government National Mortgage Association, the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the Student Loan Marketing Association, the National Credit Union Administration, and the Federal Agricultural Mortgage Corporation ("Farmer Mac"). The Funds may invest in U.S. Treasury zero-coupon bonds. These securities are U.S. Treasury bonds which

agreements,[11] and bonds that are BBB or higher. The Funds also may invest in shares of REITs. REITs are pooled investment vehicles which invest primarily in real estate or real estate related loans.

A Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[12] For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective ADR.

A Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. The Funds will not invest 25% or more of its total assets in any investment company that so concentrates.[13]

For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective ADR.

The Funds may not purchase illiquid securities if, in the aggregate, more than 15% of their net assets would be invested in illiquid securities.[14]

According to the Registration Statement, the Funds will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.[15]

Except for Underlying ETPs that may hold non-U.S. issues, the Funds will not otherwise invest in non-U.S.-registered issues.

Pursuant to the terms of the Exemptive Application, the Funds will not invest in options contracts, futures contracts, or swap agreements. The Funds' investments will be consistent with the each Fund's investment objective and will not be used to enhance leverage.

Net Asset Value

Each Fund calculates net asset value ("NAV") by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders. The Funds calculate NAV once each business day as of the regularly scheduled close of normal trading on the New York Stock Exchange ("NYSE") (normally, 4 p.m. Eastern Time).

In calculating NAV, the Funds generally value investment portfolios at market price. If market prices are unavailable or a Fund thinks that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Funds will price those securities at fair value as determined in good faith using methods approved by the Funds' Board of Trustees.

Creation and Redemption of Shares

The Funds offer and issue Shares on a continuous basis at NAV only in aggregated lots of 25,000 or more Shares (each a "Creation Unit" or "Creation Unit Aggregation"), generally in exchange for: (i) A basket of equity securities ("Deposit Securities") and (ii) an amount of cash ("Cash Component"). Shares are redeemable only in Creation Unit Aggregations, and, generally, in exchange for portfolio securities and a specified cash payment.

A "creator" enters into an authorized participant agreement ("Participant Agreement") with the Distributor or uses a Depository Trust Company ("DTC") participant who has executed a Participant Agreement ("Authorized Participant"), and deposits into a Fund a portfolio of securities closely approximating the holdings of that Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 25,000 Shares of the Fund (or multiples thereof).

All orders to purchase Creation Units must be received by the Distributor no later than the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern Time) on the date such order is placed in order for the purchase of Creation Units to be effected based on the NAV of Shares of a Fund as next determined on such date after receipt of the order in proper form.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Administrator and only on a business day.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Exchange Act,[16] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a

have been stripped of their unmatured interest coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons.

[11] The Funds may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Funds follow certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. The Funds may enter into reverse repurchase agreements as part of the Funds' investment strategy. Reverse repurchase agreements involve sales by a Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

[12] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[13] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.*, Investment Company Act Release No. 9011 (Oct. 30, 1975), 40 FR 54241 (November 21, 1975).

[14] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[15] 26 U.S.C. 851. One of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies, and net income from an interest in a qualified publicly traded partnership ("90% Test"). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership ("Asset Test").

[16] 17 CFR 240.10A–3.

representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Funds' Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),[17] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Funds' calculation of NAV at the end of the business day.[18]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information on the Funds' Web site: Ticker symbol (if applicable); name of security or financial instrument; number of shares or dollar value of financial instruments held in the portfolio; and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of each Fund.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Funds' Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.* Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session by one or more major market data vendors. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing, and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[19] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange 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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the

[17] The Bid/Ask Price of the Funds is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[18] Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[19] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

Exchange has in place a comprehensive surveillance sharing agreement.[20]

The Exchange may obtain surveillance information from all securities exchanges holding the securities held by the Funds.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[21] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The equity holdings of the Madrona Forward Domestic ETF and Madrona Forward International ETF will be comprised of U.S. exchange-listed equities, including ADRs, and the Madrona Forward Global Bond ETF's Underlying ETP holdings will be U.S. exchange-listed. The listing and trading of such equity holdings and Underlying ETPs is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. Except for Underlying ETPs that may hold non-U.S. issues, the Funds will not otherwise invest in non-U.S.-registered issues. The Funds will not invest in options contracts, futures contracts, or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on their Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Portfolio Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the Prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

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.

[20] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[21] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 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 shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–17. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also 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 No. SR–NYSEArca–2011–17 and should be submitted on or before May 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10502 Filed 4–29–11; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12530 and #12531]

North Carolina Disaster Number NC–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA—1969—DR), dated 04/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/16/2011.

Effective Date: 04/21/2011.

Physical Loan Application Deadline Date: 06/20/2011.

EIDL Loan Application Deadline Date: 01/20/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 04/19/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Currituck, Craven, Greene, Hertford, Hoke, Pitt, Robeson, Sampson.

Contiguous Counties: (Economic Injury Loans Only):

North Carolina: Beaufort, Camden, Dare, Gates, Lenoir, Pamlico, Richmond, Scotland.

South Carolina: Dillon, Horry, Marlboro.

Virginia: Chesapeake City, Southampton, Virginia Beach City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–10489 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12503 and # 12504]

Hawaii Disaster # HI–00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment to the Administrative declaration of a disaster for the State of HAWAII dated 03/29/2011.

Incident: Honshu Tsunami.

Incident Period: 03/11/2011.

Effective Date: 04/26/2011.

Physical Loan Application Deadline Date: 05/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration in the State of Hawaii, dated 03/29/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Area: City and County of Honolulu.

Contiguous Counties: None.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–10621 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12534 and #12535]

California Disaster #CA–00171

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of CALIFORNIA dated 04/26/2011.

Incident: March 2011 Statewide Storms.

Incident Period: 03/15/2011 through 03/27/2011.

Effective Date: 04/26/2011.

Physical Loan Application Deadline Date: 06/27/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 01/26/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Santa Cruz.

Contiguous Counties:

California: Monterey, San Benito, San Mateo, Santa Clara.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12534 B and for economic injury is 12535 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–10620 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12538 and #12539]

Texas Disaster #TX–00375

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas. Dated 04/26/2011.

Incident: Rock House Wildfire.

Incident Period: 04/09/2011 and continuing.

DATES: *Effective Date:* 04/26/2011.

Physical Loan Application Deadline Date: 06/27/2011.

Economic Injury (EIDL) *Loan Application Deadline Date:* 01/26/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jeff Davis.

Contiguous Counties: Texas, Brewster, Culberson, Hudspeth, Pecos, Presidio, Reeves.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12538 5 and for economic injury is 12539 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

April 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–10616 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12536 and #12537]

Oklahoma Disaster #OK–00045

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1970–DR), dated 04/22/2011.

Incident: Severe Storms, Tornadoes, and Straight-line Winds.

Incident Period: 04/14/2011.

Effective Date: 04/22/2011.

Physical Loan Application Deadline Date: 06/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 01/23/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/22/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Atoka.

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Bryan, Choctaw, Coal, Johnston, Pittsburg, Pushmataha.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12536B and for economic injury is 125370.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–10490 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Intermediary Lending Pilot (ILP) Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The U.S. Small Business Administration (SBA) requests that eligible organizations submit applications to become Intermediary Lending Pilot (ILP) Intermediaries. SBA will select up to 20 applicants to participate in the ILP program and receive direct loans of up to $1,000,000. ILP Intermediaries must use the ILP Loan funds to make loans of up to $200,000 to startup, newly established, or growing small business concerns.

DATES: The application deadline is 5 p.m. on June 10, 2011.

ADDRESSES: Completed applications must be sent to U.S. Small Business Administration, Office of Financial Assistance, Microenterprise Development Branch, Attention: Jody Raskind, Chief, 409 3rd Street, SW., Suite 8200, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, (202) 205–6485.

SUPPLEMENTARY INFORMATION:

Background: The Small Business Jobs Act of 2010 (Pub. L. 111–240), enacted September 27, 2010 (the Act), includes a provision that requires SBA to implement a three year Intermediary Lending Pilot (ILP) program. Under the ILP program, SBA will make loans to selected nonprofit intermediaries for the purpose of providing loans to small businesses. Eligible intermediaries, which include private, nonprofit community development corporations, must have at least one year of experience making loans to startup, newly established, or growing small businesses. SBA will use a competitive selection process to select ILP Intermediaries to participate in the program and will make ILP Loans of up to $1 million to no more than 20 in each of fiscal years 2011, 2012, and 2013 (depending on availability of funds). SBA currently has funding to make ILP Loans only in fiscal years 2011 and 2012. ILP Loans have a 20 year term and an interest rate of 1%, with the first payment deferred for two years. SBA collects no fees on the loans and requires no collateral. An ILP Intermediary must use the ILP Loan proceeds to make loans of up to $200,000 to startup, newly established, or growing small businesses.

Available funding: The amount currently available for ILP Loans in fiscal year 2011 is $20,000,000. SBA intends to select up to 20 applicants to become ILP Intermediaries and to make loans of up to $1,000,000 to each ILP Intermediary. SBA reserves the right to select and fund some, all, or none of the applicants for the ILP program under this NOFA.

Application materials: Intermediaries seeking to apply for the ILP program can obtain an ILP Program Application for Selection (SBA Form 2417) and the FY 2011 ILP Program Announcement, which describes the evaluation criteria and SBA's review and selection processes, at *http://www.sba.gov/content/intermediary-lending-pilot.* More information about all aspects of the ILP program is available in the regulations authorizing the ILP program at 13 CFR Part 109, as published in the **Federal Register** on April 1, 2011 (76 FR 18007).

Public meetings: SBA will hold public meetings in San Francisco on April 27, 2011 and in Washington, DC on May 5, 2011 to provide general information to potential applicants on the requirements of the ILP program and the application and selection process to become an ILP Intermediary. *See* the notice published in the **Federal Register** on April 13, 2011 (76 FR 20799). SBA will not discuss specific applications at these meetings.

Application submission rules: Complete applications must be received by the Chief, Microenterprise Development Branch in the Office of Financial Assistance, or by specific individuals designated by the Chief, by the deadline date and time. Applications received after that date and time will not be considered. Due to the required irradiation of regular mail prior to its delivery to Federal offices in the Washington, DC area, organizations are encouraged to use a "next day" or "overnight delivery" method to ensure the timely receipt of materials. Each application must be submitted in two different formats: (1) Hard copy with original signatures, and (2) in Word or PDF format on a standard Compact Disc. *See* the instructions in the ILP Program Application for Selection (SBA Form 2417) for specific requirements. Applications sent via email or by facsimile will not be accepted.

Authority: 15 U.S.C. 636(l) and 13 CFR 109.200(a).

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2011–10622 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Solutions Capital I, L.P.; License No. 03/03–0247; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Solutions Capital I, L.P., 1100 Wilson Blvd, Suite 3000, Arlington, VA 22209, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under § 312 of the Act and § 107.730, Financings which

constitute conflicts of interest, of the Small Business Administration Rules and Regulations (13 CFR part 107). Solutions Capital I, L.P. proposes to provide debt and equity financing to Orbitel Holdings, LLC, 21116 N. John Wayne Parkway, Suite B–9, Maricopa, AZ 85139. The financing is contemplated for Orbitel Holdings, LLC's acquisition of another company.

The financing is brought within the purview of § 107.730(a) of the Regulations because MCG Capital Corporation, an Associate of Solutions Capital I, L.P., has a greater than 10% equity interest in Orbitel Holdings, LLC, thereby making Orbitel Holdings, LLC an Associate of Solutions Capital I, L.P., as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Sean J. Greene,

Associate Administrator for Investment and Innovation.

[FR Doc. 2011–10492 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Wind-Up Order of the United States District Court for the Northern District of California, San Jose Division, dated September 2, 2010, the United States Small Business Administration hereby revokes the license of Aspen Ventures III, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 09790420 issued to Aspen Ventures III, L.P. on September 16, 1994 and said license is hereby declared null and void as of September 2, 2010.

U.S. Small Business Administration.

Dated: April 26, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–10494 Filed 4–29–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; Proposed Alteration to an Existing Privacy Act System of Records, Housekeeping Changes, and New Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Altered system of records and housekeeping changes.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to alter an existing system of records, make housekeeping and other miscellaneous changes, and add a routine use applicable to our system of records entitled the *Listing and Alphabetical Name File (Folder) of Vocational Experts, Medical Experts, and Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare) (60–0012).* Hereinafter, we will refer to the system as the *File (Folder) and Hearing Availability and Scheduling Information of Vocational Experts, Medical Experts, Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare), and Verbatim Hearing Reporters.*

We propose the following changes:

- Change the system of records name from the *Listing and Alphabetical Name File (Folder) of Vocational Experts, Medical Experts, and Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare) to the File (Folder) and Hearing Availability and Scheduling Information of Vocational Experts, Medical Experts, Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare), and Verbatim Hearing Reporters* to more accurately reflect the functions and persons covered by the system of records.
- Expand the category of persons covered by the system of records to include persons who provide verbatim reporter services.
- Expand the category of records we maintain in the system of records to include Social Security number (SSN), employer identification number, primary specialty, business address(es), and telephone numbers; e.g., business, fax and cell phone. The expanded category also will include the blanket purchase agreement number, contract beginning and ending dates, renewal date, termination date, and termination reason.
- Add new routine use number 9 to the system of records to allow us to disclose information to the Department of Treasury to assist in collecting erroneous payments made to persons who provide services in disability and non-disability hearing cases.
- Edit the document to ensure a more reader-friendly document and correct miscellaneous and stylistic format errors.

We discuss the system of records changes in the Supplementary Information section below. We invite public comments on this proposal.

DATES: We filed a report of the system of records with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on April 21, 2011. The system of records will become effective on May 30, 2011, unless we receive comments before that date that require further consideration.

ADDRESSES: Interested persons may comment on this publication by writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* All comments we receive will be available for public inspection at the above address and will be posted to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christine W. Johnson, Social Insurance Specialist (Senior Analyst), Disclosure Policy Development and Services Division I, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–8563, or e-mail: *chris.w.johnson@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the System of Records

A. General Background

This system of records allows us to collect, maintain, and use information about persons who have contracted with the Office of Disability Adjudication and Review, under a Blanket Purchase Agreement, to provide expert witness and hearing reporter services in disability and non-disability hearing cases.

B. Discussion of the System of Records

The proposed alteration brings together information on all external experts and verbatim hearing reporters who are recognized providers of service and are approved to do business with us. It also allows us to implement an automated scheduling process that will give us real-time access to information concerning participant availability for hearings.

The current process for scheduling a hearing is a very complex and time-consuming activity. For example, in addition to securing the hearing site, the scheduler manually coordinates the calendars and availability for the administrative law judge, expert witness, hearing reporter, appointed representative, and the interpreter.

In the automated scheduling process, approved external experts and verbatim hearing reporters who register through the Integrated Registration Electronic Services and Automated Scheduling Registration processes will have the ability to access the automated scheduling calendar(s) to provide information about their availability for hearings. Appointed representatives will have access to automated scheduling through the Appointed Representative Suite of Services facility.

Thus, in addition to real-time access to essential information, the automated scheduling process will enable us to schedule hearings in a more timely and efficient manner and ultimately save significant resource time.

C. Discussion of New Routine Use

Routine use number 9 will allow us to disclose information to the Department of Treasury to assist in collecting erroneous payments made to persons for services provided in disability and non-disability hearings.

Accordingly, we are establishing routine use number 9 in the *File (Folder) and Hearing Availability and Scheduling Information of Vocational Experts, Medical Experts, Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare), and Verbatim Hearing Reporters* system of records.

9. We will disclose information under this routine use to the Department of Treasury for the purpose of, and to the extent necessary, to assist in collecting erroneous payments made to persons who provide services in disability and non-disability hearing cases.

We will disclose information under this routine use to assist in collecting erroneous payments to persons who fail to return such payments. For example, we will disclose the person's name, SSN, and the date and amount of the erroneous payment. In these situations, the Department of Treasury serves as collector of the debt.

II. Compatibility of Proposed Routine Use

New routine use number 9 will allow us to release payment information to the Department of Treasury to assist in collecting erroneous payments made to persons who provide services in disability and non-disability hearing cases. The routine use will improve our ability to recoup erroneous payments. In accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulations (20 CFR part 401), we can disclose information maintained in a system of records pursuant to a published routine use when the use is compatible with the purpose for which we collected the information. This routine use meets the relevant regulatory criteria.

III. Records Storage Medium and Safeguards for the Information Covered by the System of Records

We will maintain, in paper and electronic form, information covered by this system of records. We will keep paper records in locked cabinets or in other secure areas. We will safeguard the security of the electronic information covered by the system of records by requiring the use of access codes to enter the computer system that will house the data.

We annually provide all our employees and contractors with appropriate security awareness training that includes reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

IV. Effects of the System of Records on the Rights of Individuals

We propose altering the system of records as part of our responsibilities in continuing to expand our business processes. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alteration to this system of records will have any adverse effect on the privacy or other rights of the persons covered by the system of records.

V. Housekeeping and Other Miscellaneous Changes in the System of Records

We are making housekeeping changes that include changing the system of records name from *Listing and Alphabetical Name File (Folder) of Vocational Experts, Medical Experts, and Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare)* to the *File (Folder) and Hearing Availability and Scheduling Information of Vocational Experts, Medical Experts, and Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare), and Verbatim Hearing Reporters* to more accurately reflect the functions and persons covered by the system. The changes also include edits throughout the document to ensure a more reader-friendly document and to correct miscellaneous and stylistic format errors.

Dated: April 21, 2011.

Michael J. Astrue,

Commissioner.

Social Security Administration; Notice of System of Records; Required by the Privacy Act of 1974; as Amended

System Number:

60–0012.

SYSTEM NAME:

File (Folder) and Hearing Availability and Scheduling Information of Vocational Experts, Medical Experts, Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare), and Verbatim Hearing Reporters, Social Security Administration, Office of Disability Adjudication and Review.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration (SSA), Office of Disability Adjudication and Review (ODAR) regional offices for each hearing office in their jurisdiction.

Contact the systems manager at SSA, ODAR, Division of Field Practices and Procedures, 5107 Leesburg Pike, Falls Church, VA. 22041, or access *http://www.socialsecurity.gov/foia/bluebook/app_f.htm* for hearing office address information. Each hearing office maintains and uses hearing and availability information to facilitate the selection of expert witnesses and verbatim hearing reporters.

CATEGORIES OF PERSONS COVERED BY THE SYSTEM:

This system covers vocational experts, medical experts, other health care professional and/or non-health care professional experts (Medicare), and verbatim hearing reporters who have contracted with ODAR, under a blanket purchase agreement (BPA), to provide expert witness and hearing reporter services in disability and non-disability hearing cases and who are within the hearing office service area.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

As applicable, this system will contain personally identifiable information and contact information for all vocational experts, medical experts, other health care professional and/or non-health care professional experts (Medicare), and verbatim hearing reporters contracted under a BPA with ODAR to provide expert witness and verbatim reporter services in disability and non-disability cases, and who are within the hearing office service area. For example, the system will contain name, Social Security number (SSN), employer identification number, business address(es), and telephone numbers; e.g., business, fax, and cell phone. The system also will contain business information such as primary specialty, usage records (e.g., documentation of occasions on which each expert and hearing reporter provided services to ODAR), BPA number, contract beginning and ending dates, renewal date, termination date, and termination reason.

Additionally, ODAR regional offices and/or hearing offices will maintain a folder for each expert and verbatim hearing reporter, which may contain a copy of the BPA, professional qualifications, travel orders, invoices, correspondence and other written records, such as reports of contact by telephone or letter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 1631(d)(1), (42 U.S.C. 405 and 1383), Titles XI and XVIII of the Social Security Act, and Section 413(b) of the Federal Coal Mine Health and Safety Act (the Coal Act), as amended.

PURPOSE(S):

The *File (Folder) and Hearing Availability and Scheduling Information of Vocational Experts, Medical Experts, Other Health Care Professional and/or Non-Health Care Professional Experts (Medicare), and Verbatim Hearing Reporters* system of records enables us to have electronic access to information concerning vocational experts, medical experts, other health care professional and/or non-health care professional experts (Medicare), and verbatim hearing reporters contracted under a BPA with ODAR to provide expert witness and verbatim reporter services in disability and non-disability hearing cases.

We also will use the information maintained in this system of records to carry out our administrative management responsibilities. For example, we will use the information in connection with budgetary planning, service and usage assessment, contract renewals, and to develop statistical or summary reports. Additionally, we will use the information in this system to assist in collecting erroneous payments made to persons who provide services in disability and non-disability hearing cases.

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures are indicated below; however, we will not disclose any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party acting on the subject's behalf.

2. To the Office of the President in response to an inquiry the Office of the President made at the request of the subject of the record or a third party acting on the subject's behalf.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components; or

(b) any SSA employee in his or her official capacity; or

(c) any SSA employee in his or her individual capacity when DOJ (or SSA) has agreed to represent the employee; or

(d) The United States or any agency thereof, when we determine that the litigation is likely to affect the operations of SSA or any of our components, is a party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court or other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

4. To contractors and other Federal agencies, as necessary, to assist us in efficiently administering our programs. We will disclose information under this routine use only in situations in which we may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To the General Services Administration and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

6. To student volunteers, persons working under a personal services contract, and others when they need access to information in our records in order to perform their assigned duties.

7. To the Secretary of Health and Human Services or to any State, information required in writing by the Secretary for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

8. To the appropriate Federal, State, and local agencies, entities, and persons when (1) We suspect or confirm a compromise of the security or confidentiality of information; (2) we determine that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, risk of identity theft or fraud, or risk of harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons will assist us in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy any harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

9. To the Department of Treasury for the purpose of, and to the extent necessary, to assist in collecting erroneous payments made to persons who provide services in disability and non-disability hearing cases.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We will store records in this system in paper and electronic form.

RETRIEVABILITY:

We will retrieve records alphabetically by name, BPA number, and hearing office.

SAFEGUARDS:

We retain paper and electronic files with personal identifiers in secure storage areas accessible only to our authorized employees and contractors. We limit access to data with personal identifiers from this system to only authorized personnel who have a need for the information in the performance of their official duties. We annually provide all of our employees and contractors with appropriate security awareness and training that includes reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(l). Employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

RETENTION AND DISPOSAL:

For purposes of records management dispositions authority, we follow the NARA and Department of Defense (DOD) 5015.2 regulations (DOD Design Criteria Standard for Electronic Records Management Software Applications). We will maintain records for 2 years after expiration of the contract at which time we will shred the records.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Social Security Administration, ODAR, 5107 Leesburg Pike, Falls Church, VA 22041.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information in this system of records that will identify them. Persons requesting notification by mail must include a notarized statement to us to verify their identity or they must certify in the request that they are the person they claim to be and understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record about which they are requesting notification. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another person, the subject person must be on the telephone with the requesting person and us in the same telephone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information, such as mother's maiden name) and ask for his or her consent to provide information to the requesting person. These procedures are in accordance with our regulations (20 CFR 401.40 and 401.45).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with our regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations (20 C.F.R. § 401.65(a)).

RECORD SOURCE CATEGORIES:

We obtain information covered by this system of records from the persons covered by the system or our officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–10487 Filed 4–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–18]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 23, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0342 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. 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 for 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).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 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: Frances Shaver, ARM–200, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 27, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0342.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 91.609.

Description of Relief Sought: Boeing requests relief to allow Boeing to operate certain "N" registered airplanes that do not meet specific flight data recorder and cockpit voice recorder requirements on certain types of flights required to support production, delivery, and marketing.

[FR Doc. 2011–10529 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 66]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the forty-fourth meeting of the RSAC, a Federal advisory committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator, and status reports will be provided by the Passenger Hours of Service, Training Standards, Track Safety Standards, Dark Territory, Passenger Safety, and Medical Standards Working Groups. This agenda is subject to change, including the possible addition of further proposed tasks under the Rail Safety Improvement Act of 2008.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. on Friday, May 20, 2011, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Deputy Associate Administrator for Regulatory and Legislative Operations, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at: *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for additional information about the RSAC.

Issued in Washington, DC, on April 26, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–10498 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 3, 2011, and comments were due by April 4, 2011. No comments were received.

DATES: Comments must be submitted on or before June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–0704; or e-mail: *richard.lolich@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: MARAD's Marine Transportation Economic Impact Model Data Needs.

OMB Control Number: 2133–0538.

Type of Request: Extension of currently approved collection.

Affected Public: The target population for the survey will be approximately 100 U.S. vessel and marine terminal operating companies.

Forms: MA–1051, MA–1052.

Abstract: This collection will provide current marine transportation system operational data for the Marine Transportation Economic Impact Model that is not available through other means. The model uses information collected through surveys of the maritime operating areas to develop a profile of the industry. Since the last survey in 1999, significant increases in fuel, surface transportation, and security costs have occurred, as well as the introduction of new information and environmental technologies that have substantially affected marine transportation system operations.

Annual Estimated Burden Hours: 450 hours.

Addressees: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, Northwest, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Dated: April 20, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–10571 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0039]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BELISARIUS.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD 2011 0039 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before June 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD 2011 0039. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BELISARIUS is: INTENDED COMMERCIAL USE OF VESSEL: "6 pack charter and sport fishing." GEOGRAPHIC REGION: "California."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By order of the Maritime Administrator.

Dated: April 19, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–10594 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0038]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FIREFLY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0038 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0038. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, e-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FIREFLY is:

Intended Commercial Use of Vessel: "We see an opportunity to do occasional charters to help defray the cost of operating the yacht. The primary use, however, will remain recreational. The potential for charter will depend on interest in market that has yet to be tested and the ability to obtain clientele willing to pay for the premium offering that the yacht represents. For charter cruises in and about the yacht's home port of Washington, DC, we would expect to have 6–8 passengers. Most trips would be a simple river cruise on the Potomac or Anacostia Rivers but there may be some overnight cruises, possibly up to one week in duration. For a day cruise we would have a maximum of 12 passengers, for overnight we would accommodate a maximum of 6 guests. Charters would be arranged on an ad hoc basis depending on the level of interest and schedule. There is the possibility of dropping passengers off at the Nationals baseball park which elevates our interest in trying something no one appears to be doing."

Geographic Region: "District of Columbia, Virginia, Maryland, Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 19, 2011.

Christine Gurland.

Secretary, Maritime Administration.

[FR Doc. 2011–10597 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0042]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DALLIANCE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0042 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0042. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DALLIANCE is:

Intended Commercial Use of Vessel: "Coastwise Uninspected 6 pack Commercial Small Passenger Vessel for Hire."

Geographic Region: "NC, SC, GA, FL, VA, MD, DC."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: April 19, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–10599 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0040]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TRAVELER.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD 2011

0040 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before June 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD 2011 0040. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979, e-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TRAVELER is: *Intended Commercial Use of Vessel:* "Carry passengers by commercial charter." *Geographic Region:* "California and Hawaii."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: April 19, 2011.

By Order of the Maritime Administrator.

Christine Gurland.

Secretary, Maritime Administration.

[FR Doc. 2011–10595 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974: Computer Matching Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Matching Program.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

DATES: *Effective Date:* This notice will be effective June 1, 2011.

ADDRESSES: Inquiries may be mailed to the Director, Office of Governmental Liaison and Disclosure, *Attn:* Samuel M. Farrow, Program Manager, Internal Revenue Service, SE:S:CLD:GLD:DS—M/S C–2–235, 500 Ellin Road, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Samuel M. Farrow, Program Manager, Office of Governmental Liaison and Disclosure, Internal Revenue Service, SE:S:CLD:GLD:DS—M/S C–2–235, 500 Ellin Road, Lanham, MD 20706. (202) 283–5211.

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published on August 15, 2008 at 73 FR 48021. Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Purpose

The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interest of the subjects of the match. Information is disclosed by the Internal Revenue Service only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Authority

In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any federal, state or local agency administering a program listed below:

(1) A state program funded under part A of Title IV of the Social Security Act;

(2) Medical assistance provided under a state plan approved under Title XIX of the Social Security Act;

(3) Supplemental security income benefits under Title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(4) Any benefits provided under a state plan approved under Title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(5) Unemployment compensation provided under a state law described in section 3304 of the IRC:

(6) Assistance provided under the Food Stamp Act of 1977;

(7) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(8)(a) Any needs-based pension provided under Chapter 15 of Title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(b) Parents' dependency and indemnity compensation provided under section 1315 of Title 38, United States Code;

Name of Recipient Agency: Internal Revenue Service.

Categories of records covered in the match: Internal Revenue Service Wage and Information Returns Processing file (Treas/IRS System 22.061 (IRP)) for the latest tax year. This file contains information returns (e.g., Forms 1099–DIV, 1099–INT and W–2G) filed by payors of income.

Name of source agencies and categories of records covered in the match:

A. Federal agencies expected to participate and their Privacy Act systems of records are:

1. Department of Veterans Affairs: Veterans Benefits Administration—

Compensation, Pension and Education and Rehabilitation Records-VA, 58 VA 21/22; and Veterans Health Administration-Healthcare Eligibility Records, 89VA19;

2. Social Security Administration, Office of Systems Requirements—Supplemental Security Income record and Special Veterans Benefits, (60–0103)

B. State agencies expected to participate using non-federal systems of records are:

1. Alabama Department of Human Resources.
2. Alabama Medicaid Agency.
3. Alaska Department of Health & Social Services.
4. Arizona Department of Economic Security.
5. Arkansas Department of Human Services.
6. California Department of Social Services.
7. Colorado Department of Human Services.
8. Connecticut Department of Social Services.
9. Delaware Department of Health & Social Services.
10. D.C. Department of Human Services.
11. Florida Department of Children & Families.
12. Georgia Department of Human Resources.
13. Hawaii Department of Human Services.
14. Idaho Department of Health and Welfare.
15. Illinois Department of Human Services.
16. Indiana Family & Social Services Administration.
17. Iowa Department of Human Services.
18. Kansas Department of Social/Rehab Services.
21. Kentucky Cabinet for Health and Family Services.
22. Louisiana Department of Health & Hospitals.
23. Louisiana Department of Children and Family Services.
24. Maine Department of Human Services.
25. Maryland Department of Human Services.
26. Massachusetts Department of Transitional Assistance.
27. Michigan Department of Human Services.
28. Minnesota Department of Human Services.
29. Mississippi Department of Human Services.
30. Mississippi Division of Medicaid.
31. Missouri Department of Social Services.
32. Montana Department of Public Health & Human Services.
33. Nebraska Department of Health & Human Services.
34. Nevada Department of Human Services.
35. New Hampshire Department of Health & Human Services.
36. New Jersey Department of Human Services.
37. New Mexico Human Services Department.
38. New York Office of Temporary & Disability Assistance.
39. North Carolina Department of Health & Human Services.
40. North Dakota Department of Human Services.
41. Ohio Department of Job and Family Services.
42. Oklahoma Department of Human Services.
43. Oregon Department of Human Resources.
44. Pennsylvania Department of Public Welfare.
45. Puerto Rico Department of the Family.
46. Rhode Island Department of Human Services.
47. South Carolina Department of Social Services.
48. South Dakota Department of Social Services.
49. Tennessee Department of Human Services.
50. Texas Health and Human Services Commission.
51. Utah Department of Health.
52. Utah Department of Workforce Services.
53. Vermont Department of Children and Families.
54. Virgin Islands Department of Human Services.
55. Virginia Department of Health and Human Services.
56. Washington Department of Social & Health Services.
57. West Virginia Department of Health and Human Services.
58. Wisconsin Department of Health Services.
59. Wyoming Department of Family Services.

Beginning and completion dates: The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, January 1, 2011, through June 30, 2012. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

Dates: April 26, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency and Records.

[FR Doc. 2011–10566 Filed 4–29–11; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—May 11, 2011 Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on May 11, 2011, to address "The Implications of China's Military and Civil Space Programs."

Background: This is the seventh public hearing the Commission will hold during its 2011 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The May 11 hearing will examine China's military and civil space programming and implications for the United States. The hearing will be co-chaired by Commissioners Daniel Blumenthal and Michael Wessel.

Any interested party may file a written statement by May 11, 2011, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web Site *http://www.uscc.gov*.

Date and Time: Wednesday, May 11, 2011, 8:55 a.m.–3:00 p.m. Eastern Standard Time. A detailed agenda for the hearing and roundtable will be posted to the Commission's Web Site at *http://www.uscc.gov* as soon as available. Please check the Web site for

possible changes to the hearing schedule.

ADDRESSES: The hearing will be held in Room H–309 of the U.S. Capitol Building, located at Constitution Avenue and 1st Street, NE., in Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Michael Danis, Executive Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1407, or via e-mail at *contact@uscc.gov*.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: April 27, 2011.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2011–10617 Filed 4–29–11; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0469]

Proposed Information Collection (Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish entitlement to Government Life insurance proceeds.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0469" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary, VA Form 29–541.

OMB Control Number: 2900–0469.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the information collected on VA Form 29–541 to establish a claimant's entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,078.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10583 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Proposed Information Collection (Request for Certificate of Eligibility) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for loan guaranty benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0086" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Certificate of Eligibility, VA Form 26–1880.

OMB Control Number: 2900–0086.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 26–1880 is used to determine a claimant's eligibility for home loan guaranty benefits. Claimants also use VA Form 26–1880 to request restoration of entitlement previously used, or a duplicate Certificate of Eligibility due to the original being lost or stolen.

Affected Public: Individuals or households.

Estimated Annual Burden: 62,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250,000

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10585 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Proposed Information Collection (Insurance Deduction Authorization (For Deduction From Benefit Payments)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to authorize deduction from a beneficiary's compensation check.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0024" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Insurance Deduction Authorization (For Deduction from Benefit Payments), VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–888 is completed by the insured or their representative to authorize deduction from their compensation check to pay premiums, loans and/or liens on his or her insurance contract.

Affected Public: Individuals or households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10574 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0492]

Proposed Information Collection (VA MATIC Authorization); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to deduct insurance premiums from policyholder's bank account.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0492" in any correspondence. During the comment

period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA MATIC Authorization, VA Form 29–0532–1.

OMB Control Number: 2900–0492.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran policyholders complete VA Form 29–0532–1 to authorize deduction of Government Life Insurance premiums from their bank account.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10584 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0324]

Proposed Information Collection (Supplemental Physical Examination Report); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine a veteran's eligibility or reinstatement for Government Life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0324" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Supplemental Physical Examination Report, VA Form 29–8146.

b. Attending Physician's Statement, VA Form 29–8158.

c. Supplemental Physical Examination Report (Diabetes—Physician's Report), VA Form 29–8160.

OMB Control Number: 2900–0324.

Type of Review: Extension of a currently approved collection.

Abstract: The forms are used to obtain information regarding the physical and/or mental condition of a veteran who has submitted an application for Government Life Insurance or reinstatement of eligibility for such insurance.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 29–8146—750 hours.

b. VA Form 29–8158—165 hours.

c. VA Form 29–8160—165 hours.

Estimated Average Burden per Respondent:

a. VA Form 29–8146—45 minutes.

b. VA Form 29–8158—45 minutes.

c. VA Form 29–8160—45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29–8146—220.

b. VA Form 29–8158—1,000.

c. VA Form 29–8160—220.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10582 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Proposed Information Collection (Request for Certificate of Eligibility) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for loan guaranty benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0086" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Certificate of Eligibility, VA Form 26–1880.

OMB Control Number: 2900–0086.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 26–1880 is used to determine a claimant's eligibility for home loan guaranty benefits. Claimants also use VA Form 26–1880 to request restoration of entitlement previously used, or a duplicate Certificate of Eligibility due to the original being lost or stolen.

Affected Public: Individuals or households.

Estimated Annual Burden: 62,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250,000

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10581 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0605]

Agency Information Collection (Application for Accreditation as a Claims Agent or Attorney) Under OMB Review

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of General Counsel (OGC), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0605" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0605."

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Accreditation as a Claims Agent or Attorney, VA Form 21a.

b. Filing of Representatives' Fee Agreements.

c. Motions for Review of Such Fee Agreements.

OMB Control Number: 2900–0605.

Type of Review: Extension of a currently approved collection.

Abstract: Applicants seeking accreditation as claims agents or attorneys to represent benefits claimants before VA must complete VA Form 21a. The applicant is required to file the application with VA General Counsel to establish initial eligibility for accreditation. The information requested is necessary to establish the statutory and regulatory eligibility requirements, *e.g.,* good character and reputation which includes basic identifying information, information concerning past representation, military service, employment, criminal activity and mental health of the applicant. The data is used to determine the applicant's eligibility for accreditation as a claims agent. The data collected under Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements is used to determine whether a fee agreement between claimants and their representative is in compliance with the law governing representation.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 8, 2011, at page 6846.

Affected Public: Individuals and households.

Estimated Annual Burden:

a. Application for Accreditation as a Claims Agent, VA Form 21a—1,967 hours.

b. Filing of Representatives' Fee Agreements—1,222 hours

c. Motions for Review of Such Fee Agreements—78 hours.

Estimated Average Burden per Respondent:

a. Application for Accreditation as a Claims Agent or Attorney, VA Form 21a—45 minutes.

b. Filing of Representatives' Fee Agreements—12 minutes.

c. Motions for Review of Such Fee Agreements—2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Application for Accreditation as a Claims Agent, VA Form 21a—2,623.

b. Filing of Representatives' Fee Agreements—5,869.

c. Motions for Review of Such Fee Agreements—39.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10580 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0503]

Proposed Information Collection (Veterans Mortgage Life Insurance—Change of Address Statement); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a veteran's continued entitlement to Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0503" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance—Change of Address Statement, VA Form 29–0563.

OMB Control Number: 2900–0503.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 29–0563 will be used to inquire about a veteran's continued ownership of property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. VA uses the data collected to determine whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10579 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Proposed Information Collection (Application for VA Education Benefits) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's eligibility for educational benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0154" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for VA Education Benefits, VA Form 22–1990.

b. Application for Transfer of Entitlement (TOE), Basic Educational Assistance Under the Montgomery GI Bill, VA Form 22–1990E.

c. Application for VA Education Benefits Under the National Call to Service (NCS) Program, VA Form 22–1990N.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Claimants complete VA Form 22–1990 to apply for education assistance allowance.

b. Claimants who signed an enlistment contract with the Department of Defense for the National Call to Service program and elected one of the two education incentives complete VA Form 22–1990E.

c. VA Form 22–1990N is completed by claimants who wish to transfer his or her Montgomery GI Bill entitlement their dependents.

Affected Public: Individuals or households.

Estimated Annual Burden: 206,919 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 671,087.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10578 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0501]

Proposed Information Collection (Veterans Mortgage Life Insurance Inquiry); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to maintain Veterans Mortgage Life Insurance accounts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0501" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance Inquiry, VA Form 29–0543.

OMB Control Number: 2900–0501.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans whose mortgage is insured under Veterans Mortgage Life Insurance (VMLI) completes VA Form 29–0543 to report any recent changes in the status of their mortgage. VMLI coverage is automatically terminated when the mortgage is paid in full or when the title to the property secured by the mortgage is no longer in the veteran's name.

Affected Public: Individuals or households.

Estimated Annual Burden: 45 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 540.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10577 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Proposed Information Collection (Request for Supplemental Information on Medical and Nonmedical Applications); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine the insured's eligibility to reinstate or change government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;*

or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0131" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–615 used by the insured to apply for new issue, reinstatement or change of plan on Government Life Insurance policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10576 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Proposed Information Collection (Report of Treatment by Attending Physician) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine claimants' eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0120" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report of Treatment by Attending Physician, VA Form 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–551a is used to collect information from attending physician to determine a claimant's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10575 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0166]

Proposed Information Collection (Application for Ordinary Life Insurance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility for replacement insurance.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0166" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29–8485.

b. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 70, National Service Life Insurance, VA Form 29–8485a.

c. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29–8700.

d. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 70, National Service Life Insurance, VA Form 29–8701.

e. Information About Modified Life Reduction, VA Forms 29–8700a–e and VA Forms 29–8701a–e.

OMB Control Number: 2900–0166.

Type of Review: Extension of a currently approved collection.

Abstract: Policyholder's use the forms to apply for replacement of Modified Life insurance. Modified Life insurance coverage is reduced automatically by one–half from its present face value on the day before a policyholder's 65th and 70th birthdays. Policyholder's who wish to maintain the same amount of coverage must purchase whole life insurance prior to their 65th and 70th birthdays to replace the coverage that will be lost when the Modified Life insurance is reduce.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,284 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 15,400.

Dated: April 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–10573 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on May 20, 2011, at the St. Regis Hotel, 923, 16th and K Streets NW., Washington, DC. The meeting will convene at 9 a.m. and adjourn at 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates and will be asked to continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans. The meeting focus will be on current and upcoming genome sequencing technologies, their implications for data computation, analytics, and data storage. The Committee will begin to explore the potential impact of whole genome data on clinical decision making. The meeting will also receive an update on the status of the newly launched Million Veteran Program. The Committee will receive public comments at 3:15 p.m. Comments are limited to 5 minutes each. Individuals who speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Sumitra Muralidhar, Designated Federal Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Sumitra.muralidhar@va.gov*. Any member of the public wishing to attend or seeking additional information should contact Dr. Muralidhar at (202) 443–1686.

Dated: April 26, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of the General Counsel.

[FR Doc. 2011–10483 Filed 4–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War has scheduled a meeting on May 16–18, 2011, at the Marriott Residence Inn, Arlington Pentagon City, 550 Army Navy Drive, Arlington, Virginia. The meeting will begin at 9 a.m. and adjourn at 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care, and rehabilitation.

On May 16, the Committee will hear from its Chairman and the Director, Compensation and Pension Service. They will receive briefings on the Robert E. Mitchell Center and Employee Education System. In the afternoon, the Committee will receive additional briefings on outreach to the Former Prisoner of War (FPOW) community and

training for FPOW coordinators and doctors. On the morning of May 17, the Committee will receive an update on the Veterans Health Initiative and Compensation and Pension. In the afternoon, the Committee will hear recommendations and topics of discussion. On May 18, the Committee will discuss their 2011 recommendations and draft of their final Committee report.

Public comments will be received at 2 p.m. on May 17. Individuals who speak are invited to submit a 1–2 page summaries of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. Jim Adams, Executive Assistant, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *jim.adams1@va.gov*. Any member of the public seeking additional information should contact Mr. Adams at (202) 461–9659.

Dated: April 26, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of General Counsel.

[FR Doc. 2011–10484 Filed 4–29–11; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1915
General Working Conditions in Shipyard Employment; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1915

[Docket No. OSHA–S049–2006–0675 (formerly Docket No. S–049)]

RIN 1218–AB50

General Working Conditions in Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising its standards on general working conditions in shipyard employment. These revisions update existing requirements to reflect advances in industry practices and technology, consolidate some general safety and health requirements into a single subpart, and provide protection from hazards not addressed by existing standards, including the control of hazardous energy.

DATES: *Effective date:* This final rule becomes effective and enforceable on August 1, 2011, except for the provisions in § 1915.89, which become effective and enforceable on October 31, 2011.

Information Collections: The collection of information requirements are contained in paragraphs § 1915.83, § 1915.87, § 1915.88, and § 1915.89 (See section *VIII Office of Management and Budget Review Under the Paperwork Reduction Act of 1995*). Notwithstanding the general date of applicability that applies to all other requirements contained in the final rule, affected parties do not have to comply with the collection of information requirements until the Department of Labor publishes a separate notice in the **Federal Register** announcing the Office of Management and Budget has approved them under the Paperwork Reduction Act of 1995.

Incorporation by reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 1, 2011.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), OSHA designates Joseph M. Woodward, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, Room S–4004, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Camilla F. McArthur, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

General information and technical inquiries: Joseph V. Daddura, Director, Office of Maritime, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222.

Additional copies of this Federal Register notice: OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice are also available at *http://www.regulations.gov,* the Federal eRulemaking Portal. This notice, as well as news releases and other relevant documents, also is available at OSHA's Web site at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

The following table of contents identifies the major sections of the preamble to the final rule on General Working Conditions in Shipyard Employment:

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I. Background

A. *References and Exhibits.* In this **Federal Register** notice, OSHA references documents in Docket No. OSHA–S049–2006–0675, which was formerly OSHA Docket No. S–049. In addition, OSHA references documents in the following dockets, which the Agency incorporates by reference into this rulemaking:

- The proceedings of the Shipyard Employment Standards Advisory Committee (SESAC)—Docket Nos. SESAC–1988 through SESAC–1993;
- The proceedings of the Maritime Advisory Committee for Occupational Safety and Health—Docket Nos. MACOSH–1995 through MACOSH–2008;
- The General Industry Lockout/Tagout rulemaking record—OSHA Docket Nos. S–012, S–012A, and S–012B;
- The Shipyard Employment Standards rulemaking record—OSHA Docket No. S–024; and
- The Field Sanitation rulemaking record—OSHA Docket No. H–308.

References to documents in Docket No. OSHA–S–049–2006–0675. References to documents in Docket No. OSHA–S049–2006–0675 are given as "Ex." followed by the last sequence of numbers in the Document ID Number and, in the case of the hearing transcripts, the page number. Thus, Ex. 88 is Document Number OSHA–S049–2006–0675–0088, and will appear in this document as (Ex. 88).

The exhibits in this docket (Docket No. OSHA–S049–2006–0675), including public comments, supporting materials, hearing transcripts, and other documents, can be found at *http://www.regulations.gov,* the Federal eRulemaking Portal, by searching the docket number. All exhibits are listed, but some exhibits (for example, copyrighted material) are not available to read or download from that Web page. All exhibits are available for inspection and, if permissible, copying at the OSHA Docket Office, Docket No. OSHA–S049–2006–0675, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350.

References to other dockets incorporated by reference. In this notice, references to documents in other dockets incorporated by reference are given as the docket number followed by the exhibit number for the document in that docket. For example, a reference to "OSHA Docket H–308 Ex. 1" means Exhibit 1 in the Field Sanitation rulemaking docket. Referenced documents in those dockets are available for inspection and, if permissible, copying at the OSHA Docket Office.

B. Introduction

OSHA is revising and updating standards in subpart F of 29 CFR part 1915 that address hazards in general working conditions in shipyard employment. These revisions update existing requirements to reflect advances in industry practices and technology, consolidate certain safety and health requirements into a single subpart, and provide protection from hazards not previously addressed, including the control of hazardous energy.

This final rule covers diverse working conditions in shipyard employment, including sanitation, medical services and first aid, motor vehicle and pedestrian safety, lighting, housekeeping, and hazardous energy.

OSHA has determined that the rulemaking record supports the need for the revisions and additions to subpart F to protect the safety and health of workers performing shipyard employment operations.

The OSH Act requires OSHA to make certain findings with respect to standards. One of these findings, specified by section 3(8) of the OSH Act, requires an OSHA standard to address a significant risk and to reduce this risk significantly (See Industrial *Union Dep't* v. *American Petroleum Institute,* 448 U.S. 607 (1980)). As discussed in other sections of the preamble, OSHA has determined that the hazards addressed by this rule represent a significant risk, and estimates that the final standard will prevent 1.2 fatalities and 348.4 injuries annually. In accordance with the requirements of Section 6(b) of the OSH Act, OSHA has determined that this standard is both technologically and economically feasible.

The Regulatory Flexibility Act (5 U.S.C. 601, as amended) requires that OSHA determine whether a standard will have a significant economic impact on a substantial number of small firms. As discussed in Section IV of the preamble, OSHA examined the effects of this standard on small firms and certifies that the standard will not have a significant impact on a substantial number of small firms.

In accordance with Executive Orders 13563 and 12866, OSHA has estimated the benefits, costs, and net benefits of this standard. As shown in the table below, the annual benefits of this standard are significantly in excess of the standard's annualized compliance costs. It should be noted that these monetized estimates of net benefits are for informational purposes only. In accordance with the OSH Act, OSHA does not use the magnitude of net benefits as the decision-making criterion in determining what standards to promulgate.

Net Benefits and Cost Effectiveness of the Final General Working Conditions in Shipyards Standard	
Annualized Costs	
Sanitation	$748,709
Medical Services and First Aid	$418,349
Lockout/Tags-plus	$3,004,397
Vehicle Safety	$13,887
Total Annual Costs	$4,185,342
Annual Benefits	
Number of Injuries Prevented	348.4
Number of Fatalities Prevented	1.2
Monetized Benefits (assuming $67,000 per injury $8.7 million per fatality prevented)	$33.8 million
OSHA standards that are updated and consistent with voluntary standards	Unquantified
Net Benefits (benefits minus costs)	$29.6 million
Cost Effectiveness: Compliance with the standard would result in the prevention of 1 fatality and 81 injuries per $2 million spent, or alternatively, $7.06 in benefits per dollar of cost.	

C. Events Leading to the Final Rule

OSHA adopted the existing standards in subpart F in 1972 (37 FR 22458, Oct. 19, 1972) pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 655). Section 6(a) permitted OSHA, during the first two years following passage of the OSH Act, to adopt as occupational safety and health standards any established Federal standards and national consensus standards. OSHA adopted the existing provisions in subpart F from Federal regulations promulgated under section 41 of the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 941), as well as national consensus standards (for example, ANSI sanitation standards).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested that OSHA: (1) Revise and update the existing shipyard standards, including subpart F; and (2) consolidate into a single set of shipyard standards those general industry standards that apply to shipyards, particularly landside operations.

In response to these recommendations, OSHA established the Shipyard Employment Standards Advisory Committee (SESAC) in November 1988. The purpose of SESAC, which included representatives from industry, labor, and professionals in the maritime community, was to provide guidance and technical expertise to OSHA about revising the shipyard employment standards. SESAC met from 1988 until 1993 to develop recommendations and provide technical expertise in developing draft regulatory language for revising the shipyard safety standards. On April 29, 1993, SESAC unanimously approved and submitted to OSHA final draft recommendations for revising subpart F (Docket SESAC 1993–2, Ex. 102X, p. 257; detailed discussion on SESAC comments and specific recommendations are presented in Section III, the Summary and Explanation section below).

In 1995, OSHA established the Maritime Advisory Committee for

Occupational Safety and Health (MACOSH) under section 7 of the OSH Act (29 U.S.C. 656) to advise the Agency on issues relating to occupational safety and health standards in the shipyard and marine cargo-handling (longshoring) industries. On September 8, 1995, MACOSH discussed and approved the recommendations and draft regulatory language that SESAC developed and made additional recommendations, including that OSHA do a separate rulemaking on the control of hazardous energy (Docket MACOSH 1995–1, Exs. 2; 102X, pp. 25, 26).

OSHA published the proposed rule on December 20, 2007 (72 FR 72452). The Agency requested public comment by March 19, 2008, on the proposed rule, the preliminary economic analysis, and the issues the Agency raised in the proposal. The Agency received comments on the proposed rule from employees, employers, trade associations, consultants, and government agencies (Exs. 88 through 132.1). In addition, a number of stakeholders requested an informal public hearing and an extension of the 60-day comment period (Exs. 93 through 99). OSHA granted the requests to hold a hearing in two locations (73 FR 54340, Sept. 19, 2008; 73 FR 36823, June 30, 2008), and denied the request to extend the comment period.

After publishing notice of an informal public hearing (73 FR 36823, June 30, 2008; 73 FR 54340, Sept. 19, 2008), OSHA convened the hearing on September 9, 2008, in Washington, DC, with Administrative Law Judge Stephen Purcell presiding (Ex. 168). The hearing continued October 21 and 22, 2008, in Seattle, WA, where Administrative Law Judge Jennifer Gee presided (Exs. 198; 199). Thirty-five stakeholders presented oral testimony at the public hearing.

Pursuant to OSHA's recommendation, on September 9, 2008, Judge Purcell ordered that after the close of the hearing on October 22, 2008, the hearing record would remain open for an additional 60 days, until December 22, 2008, for the submission of new factual information and data relevant to the hearings (Ex. 169). Judge Purcell also ordered that the record would remain open until February 20, 2009, for the submission of final written comments, arguments, summations, and briefs (Exs. 197 and 200 through 206.1). OSHA's recommendation for a 120-day post-hearing comment period was in response to comments from some stakeholders who said the 60-day pre-hearing comment period had not provided stakeholders with sufficient time to submit comments (for example, Ex. 119.1).

On August 25, 2009, Judge Purcell issued an order closing the record of the public hearing on the Proposed Rule to Update OSHA's Standards on General Working Conditions in Shipyard Employment and certifying the record to the Assistant Secretary of Labor for Occupational Safety and Health.

As required by the OSH Act, this final rule is based on careful analysis and consideration of the rulemaking record as a whole, including materials discussed or relied upon in the proposed rule, written comments and exhibits received, and the record of the public hearing.

D. Hazards

Shipyard employment is a risky occupation that exposes workers to a number of different hazards. Shipyard-employment workers are at risk due to the nature of their work, which includes a variety of industrial operations such as steel fabrication, welding, abrasive blasting, electrical work, pipefitting, rigging, stripping, and coating applications. Shipyard-employment workers also operate and service complex machinery and equipment such as powered industrial trucks, cranes, and vessel systems. Several stakeholders said that vessel systems, in particular, present "unique complexity" (Ex. 132.2).

The hazards associated with these operations and equipment are heightened because they are often performed outdoors in all kinds of weather. Gerry Merrigan, of Prowler LLC and Ocean Prowler LLC, commented on the risks of working outdoors and on vessels: "The predictability of shoreside operations is not often found at sea (for example, ice accumulation on vessels)," and that "Almost everyday so far this fishing season in the Bering Sea had freezing spray warning" (Ex. 100). A number of other stakeholders also said that working in rain, ice, and snow is common in shipyard employment (Exs. 101.1; 105.1; 121.1; 124; 128).

Yaniv Zagagi, of Atlantic Marine Florida, also addressed the range of environmental conditions that shipyard workers face:

> With outdoor work a common practice on vessels under construction and repair, maintaining dry work surfaces at all times in all area[s], since work areas cannot be delineated, is not possible. In this region, rainfall averages 6 inches per month, with an inch or more common for a single rain event (Ex. 115.1).

The nature of work spaces in shipyard employment also poses risks for employees. Shipyard employment activities are performed aboard vessels, in confined or enclosed spaces below deck, on scaffolds, and on busy, crowded docks. James Thornton, of Northrop Grumman—Newport News, commented: "Shipbuilding and repair, by nature, requires employees to access numerous small, awkward spaces, such as catapult wing voids on aircraft carriers and vertical launch silos on submarines; therefore, working space is inherently limited" (Ex. 116.2).

The safe coordination of shipyard employment activities also is complicated by the fact that most shipyards are multi-employer worksites where shipyard workers, ship's crew, contractors, and subcontractors work side-by-side and often on the same vessel system at the same time.

The combination of these hazards puts workers at risk of injury, regardless of whether they are working on vessels or at landside operations.

The proposed rule examined in detail the fatalities and injuries associated with the hazards this rule addresses (72 FR 72453–55, Dec. 20, 2007). Since OSHA did not receive any objections on its fatality and injury analysis, the Agency does not see a need to repeat the analysis here. In addition, section IV of this preamble discusses the fatalities and injuries the final rule is estimated to prevent.

II. Pertinent Legal Authority

The purpose of the OSH Act is to "assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to issue and to enforce occupational safety and health standards. See 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and Federal standards within two years of the OSH Act's effective date); 655(b) (authorizing promulgation of standards pursuant to notice and comment); and 654(a)(2) (requiring employers to comply with OSHA standards).

A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment" 29 U.S.C. 652(8).

A standard is reasonably necessary or appropriate within the meaning of section 3(8) of the OSH Act if it materially reduces a significant risk to workers; is economically feasible; is technologically feasible; is cost effective; is consistent with prior

Agency action or is a justified departure; adequately responds to any contrary evidence and argument in the rulemaking record; and effectuates the Act's purposes at least as well as any national consensus standard it supersedes. See 29 U.S.C. 652; 58 FR 16612, 16616, Mar. 30, 1993.

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. See *Pub. Citizen Health Research Group* v. *U.S. Dep't of Labor,* 557 F.3d 165, 170–71 (3rd Cir. 2009); *Am. Iron and Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991) ("*AISI*"); *United Steelworkers of Am., AFL–CIO–CLC* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1980).

A standard is economically feasible if industry can absorb or pass on the cost of compliance without threatening its long-term profitability or competitive structure. See *Am. Textile Mfrs. Inst.* v. *Donovan,* 452 U.S. 490, 530 n.55 (1981) ("*ATMI*"); *AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir 1994) ("*LOTO III*"). See also *ATMI,* 452 U.S. at 514 n.32 (suggesting that the "reasonably necessary or appropriate" language of Section 3(8) of the Act (29 U.S.C. 652(8)) might require OSHA to select the less expensive of two equally effective measures).

Section 6(b)(7) of the OSH Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing, and other information-gathering and transmittal provisions. 29 U.S.C. 655(b)(7).

All safety standards must be highly protective. See 58 FR 16614–16615, Mar. 30, 1993; *LOTO III,* 37 F.3d at 668. Finally, whenever practicable, standards shall "be expressed in terms of objective criteria and of the performance desired." 29 U.S.C. 655(b)(5).

III. Summary and Explanation of the Final Rule

This section of the preamble discusses the requirements of the final standard and explains the purpose of the requirements and the reasons supporting them. This section also discusses and resolves issues raised during the comment period, significant comments received as part of the rulemaking record, and any substantive changes from the proposed rule.

As mentioned, OSHA adopted many of the provisions in subpart F in 1972 from existing Federal occupational safety and health standards and national consensus standards (for example, sanitation, medical services and first aid, housekeeping). Since then, those national consensus standards have been updated and revised. OSHA carefully reviewed the updated standards and, when they encompassed new technology and requirements to provide greater workplace safety and health, has incorporated those changes in the final rule.

SESAC recommended many of the provisions in the final rule as representing industry best practices. To the extent that such practices and technology have changed since SESAC made its recommendations, OSHA has updated those recommendations accordingly.

In the final rule, OSHA has consolidated a number of provisions to more clearly indicate that they apply to shipyard employment. For example, both existing general industry (part 1910) and shipyard employment (part 1915) standards address housekeeping, sanitation, and medical services and first aid. General industry standards apply to shipyard employment when part 1915 standards do not address a particular hazard or working condition. To make the applicable requirements easier to understand and follow, the final rule consolidated the sets of standards into one section. To illustrate, § 1910.141 and § 1915.97 contain requirements on sanitation that are applicable to shipyard employment. The final rule has combined all of the sanitation requirements in both standards that are applicable to shipyard employment in § 1915.88.

The consolidation of some standards, and the addition of new sections, has resulted in a renumbering of the sections in subpart F. Table 1 lists the section numbers of the final rule and the existing section(s), if any, from which they were derived.

TABLE 1—PROPOSED PROVISIONS AND CORRESPONDING EXISTING PROVISIONS

Title of provision	Final rule	Existing rule applicable to shipyard employment
Scope, application, and definitions	§ 1915.80	Each section of subpart F has a scope and application provision. No existing section for definitions.
Housekeeping	§ 1915.81	§ 1915.91 and § 1910.141.
Lighting	§ 1915.82	§ 1915.92.
Utilities	§ 1915.83	§ 1915.93.
Working alone	§ 1915.84	§ 1915.94.
Vessel radar and communication systems	§ 1915.85	§ 1915.95.
Lifeboats	§ 1915.86	§ 1915.96.
Medical services and first aid	§ 1915.87	§ 1915.98 and § 1910.151.
Sanitation	§ 1915.88	§ 1915.97 and § 1910.141.
Control of hazardous energy (lockout/tagout)	§ 1915.89	No existing rule.
Safety color code for marking physical hazards	§ 1915.90	§ 1910.144.
Accident prevention signs and tags	§ 1915.91	§ 1910.145.
Retention of DOT markings, placards and labels	§ 1915.92	§ 1915.100.
Motor vehicle safety equipment, maintenance, and operation	§ 1915.93	No existing rule.
Servicing multi-piece and single-piece rim wheels	§ 1915.94	No existing rule.

To the extent possible, OSHA has expressed the final rule in performance language; that is, the requirements are "expressed in terms of objective criteria and of the performance desired." 29 U.S.C. 655(b)(5). Some stakeholders, particularly larger establishments, supported this approach and urged OSHA to adopt a flexible approach in the final rule (Exs. 116.1; 120.1). Other stakeholders, particularly smaller businesses, urged OSHA to provide more specific language in the final rule (Exs. 104.1; 107; 121.1; 125; 198, p. 56). For example, Philip Dovinh, of Sound Testing, Inc., said that vague or "open-ended" language "leaves ample room for

erroneous misinterpretations" (Ex. 121.1).

OSHA believes that the performance-based approach in the final rule provides employers with maximum flexibility in determining the most effective strategies for controlling hazards and protecting their workers. At the same time, OSHA believes that the objective criteria the final rule incorporates will assist employers, particularly small businesses, with complying with the final rule. In addition, as stakeholders requested, OSHA has defined a number of additional terms used in the final rule (Exs. 121.1; 129.1). OSHA believes this approach also will help employers understand and comply with the final rule while providing flexibility for the range of employers the final rule covers.

Section 1915.80—Scope, Application, and Definitions

Paragraph (a)—Scope and Application

Paragraph (a) specifies that the provisions in subpart F apply to general working conditions:

- In shipyard employment;
- At landside operations and on vessels and vessel sections; and
- Regardless of geographic location.

Final paragraph (a) consolidates the individual scope provisions contained in each section of existing subpart F into one section. Paragraph (a) also applies subpart F to all operations constituting shipyard employment. Some of the existing scope provisions, which were part of the LHWCA standards that OSHA adopted in 1972, applied only to certain sectors of shipyard employment. However, OSHA's intention always has been that part 1915 standards apply to all of shipyard employment, which § 1915.4(i) defines as "ship repairing, shipbuilding, shipbreaking and related employments." As OSHA stated in the proposed rule, this consolidation eliminates duplication. Finally, the consolidation also makes the scope and application section consistent with other subparts of 29 CFR part 1915 that OSHA has revised (for example, subpart B—Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (59 FR 37816, Jul. 25, 1994); subpart I—Personal Protective Equipment in Shipyard Employment (61 FR 26322, May 24, 1966); and subpart P—Fire Protection in Shipyard Employment (69 FR 55702, Oct. 15, 2004). OSHA did not receive any comments on the proposed consolidation.

Paragraph (a) of the final rule adopts the proposed language that subpart F applies to shipyard-employment work on vessels and vessel sections and at landside operations. With regard to vessels, this means that the requirements of subpart F apply to the extent that OSHA has authority over the vessel. OSHA's instruction titled, "OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS)," provides current Agency policy, information, and guidance on OSHA's authority to regulate working conditions on certain vessels (inspected vessels, commercial uninspected fishing vessels, and other uninspected vessels) (CPL–02–01–047, Feb. 22, 2010). The instruction is available to read and download on OSHA's Web site at *http://www.osha.gov.*

Paragraph (a) also adopts language from the proposed rule clarifying OSHA's longstanding position that subpart F applies to shipyard employment "regardless of geographic location" of the shipyard activity. OSHA included the phrase "regardless of geographic location" in the scope so that protection is afforded to employees whenever they engage in shipyard employment: On vessels, on vessel sections, at landside facilities, or at any other location where they perform shipyard employment. This has been the Agency's longstanding policy on shipyard employment, and is included in the scope of subpart B—Confined and Enclosed Spaces and Other Dangerous Atmospheres, subpart I—Personal Protective Equipment, and subpart P—Fire Protection.

Shipyard employment also occurs on vessels and vessel sections within the navigable waters of the United States, and includes work on a vessel or part of a vessel that is being constructed, or repaired, whether it is in the shipyard or dockside, at anchor, or underway for testing. The requirements in this subpart will apply to all vessels within OSHA's jurisdictional boundaries.

Several commenters requested that OSHA define "navigable waters" in the final rule (Exs. 101.1; 124; 126; 128; 132.2). Since the final rule does not use the term "navigable waters," OSHA does not believe there is a need to include a definition in the rule. In any event, the U.S. Coast Guard, not OSHA, is the Federal agency responsible for making determinations about whether a body of water is considered "U.S. navigable waters." The Coast Guard definition of navigable waters and other associated terms are contained at 33 CFR part 2, which is available at *http://www.gpoaccess.gov/cfr/index.html.*

One stakeholder urged OSHA to exempt from the rule vessels under 200 gross weight tons or vessels that do not process seafood (Ex. 197.1). Karen Conrad of the North Pacific Fishing Vessel Owners' Association commented:

> [T]hese regulations would apply to all uninspected vessels and that would include "tens of thousands" of vessels of all kinds. OSHA needs to consider that these vessels do ongoing maintenance work, not just at the dock, but while they move to other locations. We suggest that OSHA communicate with the Coast Guard and industry to identify which vessels need this regulation and best to scale down this regulation to cover the sector of vessels that should be covered (Ex. 197.1).

OSHA does not agree with the stakeholder's position and has not exempted small vessels from the final rule. OSHA regulates hazardous working conditions where they are found. To the extent that the hazardous working conditions addressed in subpart F are present, OSHA believes employees are at risk of injury and death and need protection. Of course, OSHA has authority only to the extent that the hazard, employer, and vessel are within the Agency's geographical authority.

Paragraph (b)—Definitions

Paragraph (b) of the final rule sets forth definitions that are applicable to subpart F. As mentioned, OSHA believes that defining key terms makes the final rule easier to understand and, therefore, will increase compliance.

OSHA has moved the definitions to the beginning of subpart F from the final section of the proposed rule (§ 1915.95). Two stakeholders urged OSHA to move the definitions forward (Exs. 119.1; 121.1). Philip Dovinh of Sound Testing, Inc. commented:

> Definitions are an extremely important part of any successful regulation. OSHA may have misled the reader that their set of definitions is just an incomplete afterthought as represented in the current Proposed Rule. Section 1915.95 Definitions, is awkwardly buried in the last section of Subpart F–General Working Conditions. Why not be consistent and place it immediately following § 1915.80 Scope and application—as in the rest of the other OSHA regulations? By having the definitions located immediately at the front of the Proposed Rule, they will grab the attention of the reader and become much more beneficial (Ex. 121.1).

OSHA agrees with the commenter that prominently placing the definitions for this subpart immediately after the Scope and Application section will assist the employer and employees in understanding the provisions in subpart F.

Many of the proposed definitions have been carried forward unchanged, or with editorial changes, to better clarify the term. Some of the clarification, additions, and modifications have been made in response to stakeholder comments, which provided helpful and useful language to improve the clarity of terms used in the final rule. OSHA also has added new definitions to the final rule, many of which help to explain and clarify OSHA's revised approach to the control of hazardous energy. Definitions that have been added to the final rule, or substantially clarified or modified from the proposal, are described below.

Additional safety measure. A definition for "additional safety measure" was added to the final rule to more fully explain and clarify the tags-plus system described in § 1915.89, Control of hazardous energy. "Additional safety measure" is defined as a component of the tags-plus system that provides an impediment (in addition to the energy-isolating device) to the release of hazardous energy or the energization or startup of the machinery, equipment, or system being serviced. Examples include, but are not limited, to removing an isolating circuit element; blocking a control switch; blocking, blanking, or bleeding lines; removing a valve handle or wiring it in place; or opening an extra disconnecting device.

Authorized employee. Paragraph (b)(3) of § 1915.80 specifies that an "authorized employee" is an employee who performs one or more of the following lockout/tagout responsibilities:

- Executes the lockout/tagout procedures;
- Installs a lock or tagout system on any machinery, equipment, or system that is to be serviced; or
- Services any machinery, equipment, or system that is under a lockout/tagout application.

The final definition specifies clearly and more directly than the proposed definition the role of authorized employees in lockout/tagout situations. In addition, the final definition retains the sentence clarifying that affected employees become authorized employees if their duties include servicing machinery, equipment, or systems under a lockout/tagout application.

Contract employer. OSHA has added a new definition for "contract employer." OSHA determined that this definition was needed to clarify the requirements in § 1915.89(l), Multi-employer worksites. The definition is currently included in subpart P, Fire Protection for Shipyard Employment, and has been carried over into subpart F in this final rule. A "contract employer" is an employer who performs shipyard employment-related services or work under contract to the host employer or to another employer who is under contract to the host employer when the work or services takes place at the host employer's worksite. Services a contract employer may provide include painting, joinery, carpentry, or scaffolding. The definition excludes any employer who provides services that are not directly related to shipyard employment, such as mail delivery, office-supply, or food vending services.

Dummy load. In § 1915.85, Vessel radar and communication systems, paragraph (b)(2) was revised at the suggestion of Northrop Grumman Shipbuilding—Newport News (Ex. 116.2) to require protection for employees working on a system with a dummy load. OSHA defines "dummy load" as a device used in place of an antenna to aid in the testing of a radio transmitter that converts transmitted energy into heat to minimize energy radiating outward or reflecting back to its source during testing.

Hazardous energy. "Hazardous energy" was defined to ensure that employers understand that § 1915.89, Control of hazardous energy, applies to any source or type of energy, including mechanical (for example, power transmission apparatus, counterbalances, springs, pressure, and gravity), pneumatic, hydraulic, electrical, chemical, and thermal (for example, high or low temperature), that could cause injury to employees. These energy sources may be active, residual, or stored. Because this definition encompasses the various types of energy, it was not necessary to define separately the phrase "energy source," so OSHA deleted the phrase as its own defined term.

Hazardous substances. In the proposal, OSHA defined "hazardous and toxic substances" broadly as used in § 1915.87, Medical services and first aid. Several commenters stated that this definition was not appropriate, was economically infeasible, or was too broad (Exs. 104.1; 107.1; 105.2; 106.1; 112.1). OSHA has replaced "hazardous and toxic substances" with "hazardous substances" in the final standard, which are defined as substances that may cause injury, illness, or disease, or otherwise harm an employee by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful. OSHA has concluded that this definition adequately sets forth the hazards that have the potential to occur in shipyard employment. This definition will assist employers to address the hazards in their particular workplaces by providing, for example, quick-drench facilities and other first aid or emergency medical equipment.

Host employer. OSHA added a new definition for "host employer" in the final rule. OSHA determined that this definition was needed to clarify the requirements in § 1915.89(l), Procedures for multi-employer worksites. The definition is currently included in subpart P, Fire Protection for Shipyard Employment, and has been carried over into subpart F in this final rule. "Host employer" is an employer who is in charge of coordinating the shipyard-employment work of other employers, or who hires other employers to perform shipyard-employment work or to provide shipyard employment-related services at a multi-employer worksite.

Isolated location. For purposes of § 1915.84, Working alone, OSHA has added a new definition for "isolated location," as requested by many commenters (Exs. 101.1; 104.1; 105.1; 114.1; 115.1; 118.1; 124; 125; 126; 128; 130.1; 198, p. 73). "Isolated location" is defined as an area where employees are working alone or with little assistance from others due to the type, time, or location of their work. Isolated locations include remote locations or other work areas where employees are not in close proximity to each other. Examples of isolated locations include an employee working alone on a job task at the far end of a vessel, vessel section, or shipyard; an employee working alone in a hold, sonar space, or tank; or an employee working in a confined space. OSHA intends to include situations where co-workers may be near an employee working alone but are not participating in the work of the lone worker. For example, an isolated location exists when two employees are working on either side of a metal partition, or when one employee performs hot work and a firewatch is on the other side of the bulkhead.

Lock. OSHA has shortened the phrase "lockout device" from proposed § 1915.89, Control of hazardous energy, by removing the word "device," since "device" is not needed to explain what a lock is. A lock is self explanatory, although OSHA retained the definition of the term in this final rule. Throughout the standard, when the proposal required the employer to affix a "lockout device," OSHA has simplified the term to "lock." The term is defined as a device that utilizes a positive

means, either a key or combination lock, to hold an energy-isolating device in a "safe" position that prevents the release of energy and the startup or energization of the machinery, equipment, or system to be serviced.

Lockout/tags-plus coordinator. OSHA has added a new requirement in § 1915.89, Control of hazardous energy, to designate a lockout/tagout coordinator in certain situations to verify each lockout/tagout system. Thus, OSHA has added the term "lockout/tags-plus coordinator" to the definition section. The lockout/tags-plus coordinator is an employee designated by the employer to coordinate all lockout and tags-plus applications on vessels or vessel sections and at landside facilities when employees are performing multiple servicing operations on the same equipment at the same time, or on vessels and vessel sections when employees are servicing multiple machines, equipment, or systems at the same time. As explained in the summary and explanation of § 1915.89, the employer may have more than one lockout/tags-plus coordinator, depending on the size of the shipyard and the scope of work being performed at any given time. The coordinator will also be responsible for maintaining a lockout/tagout log for each worksite.

Lockout/tags-plus materials and hardware. A new definition for "lockout/tags-plus materials and hardware" was added to clarify the requirements for controlling hazardous energy in § 1915.89. This hardware includes locks, chains, wedges, blanks, key blocks, adapter pins, self-locking fasteners, or other hardware used to isolate, block, or secure machinery, equipment, or systems to prevent the release of energy or the startup or energization of the machinery, equipment, or system.

Navy ship's force. A new term for "Navy ship's force" was added to clarify situations when naval vessels are in shipyards and the ship's force will maintain control of the lockout/tagout applications under § 1915.89. "Navy ship's force" is the crew of a vessel, owned and operated by the U.S. Navy, other than a time- or voyage-chartered vessel, that is under the control of a Commanding Officer or Master.

Normal production operations. The term "normal production operations" was modified from proposed § 1915.89 to include several examples of machinery or equipment that OSHA intends this phrase to encompass. These machines or types of equipment may include, but are not limited to, punch presses, bending presses, shears, lathes, keel press rollers, or automated burning machines.

Readily accessible/available. In § 1915.82, Lighting, § 1915.83, Utilities, § 1915.87, Medical services and first aid, and § 1915.88, Sanitation, OSHA uses the term "readily accessible." Several commenters requested that OSHA clarify the term "readily accessible" for this final rule (Exs. 105.1; 121.1). OSHA agrees, and has defined "readily accessible/available" to mean capable of being reached quickly enough by an employee to ensure, for example, that medical services and first aid can be rendered effectively, or that employees can reach sanitation facilities in time to meet their health and personal needs.

Servicing. The proposed term "servicing and/or maintenance" in § 1915.89, Control of hazardous energy, has been shortened in the final rule to "servicing" because "maintenance" has been incorporated into the definition as one of the workplace activities that the term "servicing" encompasses. The definition now clarifies that servicing covers workplace activities that involve constructing, installing, adjusting, inspecting, modifying, testing, and repairing machinery, equipment or systems. Servicing also includes maintaining machines, equipment, or systems when performing these services would expose the employee to harm from the start-up or energization of the system being serviced or the release of hazardous energy. Servicing would not include the inspection of a space since that is not an inspection of a machine, piece of equipment or a system.

Shield. As used in § 1915.83, Utilities, "shield" means to install a covering, protective layer, or other effective measure on or around a steam hose or temporary steam-piping system, including metal fittings and couplings, to protect employees from coming into contact with hot surfaces or elements. This action would protect the employee, as well as the piping or hose. OSHA received comments requesting that this definition be added to the final rule (Exs. 106.1; 117.1).

Short bight. In § 1915.83 of the final rule, Utilities, OSHA added the new term "short bight." NIOSH commented: "[I]t would be useful to define the term 'short bights'" (Ex. 129.1). OSHA agrees with this comment. "Short bight" is the loop that is created in a line or rope that is used to tie back or fasten hoses, wiring, or fittings. A short bight is not the rope, or the act of fastening the hose, but the loop in the rope that is being used.

Tag. OSHA has shortened the phrase "tagout device" from proposed § 1915.89, Control of hazardous energy, by removing the word "device," since "device" is not needed to explain what a tag is. The term "tag" is self explanatory, although OSHA retained the definition of this term in this final rule. Throughout the standard, when the proposal required the employer to affix a "tagout device," OSHA has simplified the term to "tag" for the final rule. The term is defined as a prominent warning device that includes a means of attachment that can be securely fastened to an energy-isolating device in accordance with an established procedure to indicate that the energy-isolating device and the equipment being controlled must not be operated until the tag is removed by an authorized employee.

Tags-plus system. A definition for "tags-plus system" was added to clarify the requirements of § 1915.89, Control of hazardous energy. Although similar to the proposed "tagout" definition, it needed to be revised to be consistent with requirements in the final standard. Tags-plus is a system for controlling hazardous energy that is comprised of: An energy-isolating device with a tag affixed to it and an additional safety measure. It is imperative that employers and employees understand that the system is made up of two parts; without both components, employers will not meet the tags-plus requirements, and employees will not be fully protected.

Verification of isolation. In § 1915.89 of the final rule, a new term, "verification of isolation," was added for clarification. The term refers to the means necessary to detect the presence of hazardous energy, which may involve the use of a test instrument, such as a voltmeter, a visual inspection, or a deliberate attempt to start-up the machinery, equipment, or system. For electric shock protection, employers may not use a visual inspection or a deliberate attempt to start-up the machinery, equipment or system.

Walkway. In § 1915.81, Housekeeping OSHA included a single definition for "walking and working surfaces" in the proposal. Based on comments, that section was amended for clarity. As explained in the summary and explanation of § 1915.81, OSHA split the requirements for walkways and working surfaces into separate provisions and added definitions for both of these terms in this final rule. A "walkway" is any surface where employees walk or pass through to perform their job tasks. This may be a vertical, slanted, or horizontal surface, and may include access ways, designated walkways, aisles, exits, gangways, ladders, ramps, stairs, and passageways. In addition, if an

employer has instructed employees to use an area such as a scaffold to gain access to other locations, the scaffold will also be considered a walkway.

Work area. OSHA has defined two new terms—"work area" and "worksite"—that are used throughout this subpart. These terms were added in response to the number of commenters asking for such definitions (Exs. 101.1; 104.1; 107.1; 124; 126; 128; 130). Richard Webster from Marine Industries Northwest testified: "Work area is also an awkward definition. You've got work location and work area, but you really don't define what it is. * * * So it would be helpful to have work area * * * much better defined than it is right now" (Ex. 198, p. 195). The Agency agrees that defining terms will assist employers to better understand the intent of the provisions where the terms occur. Thus, a "work area" is defined as a specific area, such as a fabrication area, machine shop, tank, space, or hold, where one or more employees are working.

Working surface. A "working surface," as used in § 1915.81, Housekeeping, encompasses any surface where work is occurring or any area where tools, materials, and equipment are being staged for performing work. This definition does not include storage areas where tools, materials, and equipment have been stored out of walkways, but it may include a walkway that is now being used to stage tools, materials, and equipment for a job in progress.

Worksite. As discussed previously, this term was added in response to the number of commenters asking for a definition (Exs. 101.1; 104.1; 107.1; 124; 126; 128; 130). A "worksite" is a general work location where employees are performing work, such as a shipyard, pier, vessel, vessel section, or barge.

Terms Not Defined and Definitions Deleted by OSHA

The Agency has decided not to define "adequate" or "adequate number," as used primarily in § 1915.87, Medical services and first aid. Richard Webster of Marine Industries Northwest stated, "You use the terminology over and over again, adequate, adequate. Adequate number of first aid kits, adequate number of—adequate supplies. * * * The term is just begging for [a] definition" (Ex. 198, p. 194). Other commenters stressed the need to define "adequate" (Exs. 101.1; 124; 126; 128; 130.1). OSHA believes that the employer, by considering the factors required in § 1915.87(c)(3), will be able to determine the number of first aid providers they will need at their facility. These factors include the size and location of each shipyard worksite, the number of employees at each worksite, and the nature of the hazards present at each worksite. To determine first aid and CPR needs, employers must also consider the distance of each worksite from on-site infirmaries or clinics, or off-site hospitals. For sanitation facilities, employers must take into account the distance of each worksite from the sanitation facilities.

OSHA has also deleted the following proposed definitions from the final rule: "Energized," "energy source," "hot tap," and "ship's systems." While no comments were received on these definitions, Electric Boat Corp. noted that proposed § 1915.89(a)(2)(iii)(B) referred to "hot-tapping" even though 29 CFR 1915.14 "requires a Marine Chemist certificate for hot work on pipelines that contain or have contained flammable or combustible liquids" (Ex. 108.1). Furthermore, Electric Boat Corp. noted:

> NFPA Standard 306 (Control of Gas Hazards on Marine Vessels) does not permit the Marine Chemist to authorize hot tapping except in emergency situations where the vessel is in peril. If this work cannot be authorized in the marine environment why include it in the proposed standard. The practice of hot tapping in a shipyard should be removed to eliminate any confusion (Ex. 108.2).

OSHA agrees with the commenter and understands that hot tapping is an uncommon practice in shipyard employment. Therefore, the definition and related provisions have been removed from this final rule.

The terms "energized," "energy source," and "ship's systems" are no longer used in the regulatory text of § 1915.89 of this final rule and, therefore, need not be defined.

Definitions Included Without Change or With Minor Editorial Changes

OSHA did not receive comments on the remaining definitions, and believes that all of the terms used in this subpart are "terms of art" in the industry and are universally recognized by shipyard employees and employers. In addition, some terms were carried forward into the final standard with only minor editorial changes. These terms include "affected employee," "capable of being locked out," "energy-isolating device," "healthcare provider," "lockout," "motor vehicle," "portable toilet," "potable water," "sanitation facility," "serviceable condition," "sewered toilet," "tagout," "vehicle safety equipment," and "vermin."

Section 1915.81—Housekeeping

This section of the final rule covers housekeeping issues that are found throughout shipyard employment that, unless adequately addressed, can add to an already hazardous environment. The final rule, like the proposed rule, consolidates, revises, and reorganizes the housekeeping requirements applicable to shipyards (§ 1910.141(a)(3) and § 1915.91). However, in the final rule OSHA has changed the approach to, and the organization of, the housekeeping requirements.

In the proposed rule, OSHA applied the housekeeping requirements uniformly to all "walking and working surfaces" rather than treating walking surfaces and working surfaces as two distinct areas having unique characteristics and warranting separate safety considerations and requirements. As mentioned in the discussion of § 1915.80(b), the proposed rule defined walking and working surfaces as "any surface on or through which employees gain access to or perform their job duties or upon or through which employees are required or allowed to walk or work in their workplace." The proposed definition also specified that the term included work areas, accessways, aisles, exits, gangways, ladders, ramps, stairs, steps, and walkways. OSHA applied this umbrella term to all of the housekeeping requirements in an attempt to make this section easier to understand.

However, many commenters expressed concern that combining walking and working surfaces created a term that was too broad (Exs. 106.1; 108.2; 117.1). For example, Electric Boat stated: "Every location in a shipyard and on a vessel has the potential to be a working surface" (Ex. 108.2). Bath Iron Works added that the term walking and working surfaces is so broad that it "will include every square foot of a shipyard" (Ex. 106.1).

Stakeholders also said combining walking and working surfaces as one term could result in confusion since walking surfaces sometimes became working surfaces and vice versa (Exs. 121.1; 199, p. 102). Manitowoc Marine Group commented: "During the construction and repair of a vessel, many operations take place simultaneously, and it could be easily very difficult to discriminate what is and what is not considered, quote, a 'work area' " (Ex. 168, p. 68). Commenters from the American Shipbuilding Association and the North Pacific Fishing Vessel Owners' Association requested that OSHA establish separate definitions for walkways and working surfaces to eliminate potential confusion (Exs. 117.1; 197).

Northrop Grumman—Newport News pointed to the uniqueness of working surfaces in shipyard employment to support dividing walking and working surfaces into separate terms:

> Shipbuilding and repair, by nature, requires employees to access numerous small, awkward spaces, such as the catapult wing voids on aircraft carriers and vertical launch silos on submarines; therefore, working space is inherently limited even under the very best housekeeping practices (Exs. 116.2; 120.1).

Based on the comments received and testimony heard, OSHA has decided to separate "walking and working surfaces" into two terms: "walkways" and "working surfaces." Section 1915.80(b)(35) of the final rule defines a "walkway" as any surface on which employees walk, including areas that employees pass through, to perform their job tasks. Walkways include, but are not limited to, accessways, designated walkways, aisles, exits, gangways, ladders, ramps, stairs, steps, passageways, and scaffolding. If an area is used or is intended to be used, to gain access to other locations, it is a walkway within the meaning of the final rule.

The final rule defines "working surface" as any surface where work is occurring or any area where tools, material, and equipment are being staged for performing work (§ 1915.80(b)(37)).

To make the distinction between walkways and working surfaces, OSHA has reorganized § 1915.81 of the final standard into three paragraphs. Paragraph (a) covers general requirements that apply to both walkways and working surfaces; paragraph (b) includes specific requirements for walkways; and paragraph (c) includes specific requirements for working surfaces.

Paragraph (a)—General Requirements

Paragraph (a)(1) requires the employer to establish and maintain good housekeeping practices to eliminate hazards to employees to the extent practicable. Proposed § 1915.81(a) required that the employer maintain good housekeeping conditions "at all times" to ensure that walking and working surfaces "do not create a hazard for employees." American Seafoods Company commented that this requirement was "vague and impractical in that maintenance and cleaning operations at times necessitate that the walking and working surfaces be lifted from their frames" (Ex. 105.1). In addition, the U.S. Navy stated that the term " '[g]ood housekeeping' adds an ambiguity without apparent benefit" (Ex. 132.2). Other stakeholders said that in shipyard employment it is not always possible to maintain good housekeeping conditions at all times (Exs. 99; 104.1; 107). For example, Steven Labreque of Electric Boat Corp. said: "Maintaining a clean and dry condition in all these locations is simply not feasible" (Ex. 108.2).

After considering stakeholder comments and other information in the record, OSHA has modified the language in § 1915.81(a) of the final rule in two ways. First, the final rule requires that employers establish good housekeeping practices. OSHA's intention in including a general housekeeping requirement has always been to ensure that shipyard employers develop and implement procedures for regular and systematic housekeeping to minimize hazards and protect employees from harm. In particular, OSHA believes that requiring employers to establish regular housekeeping practices will be effective in helping to reduce the large number of slip, trip, and fall injuries that occur in shipyard employment. As stated in the preamble to the proposed rule (72 FR 72458, December 20, 2007), according to the BLS data for 2002, slips, trips, and falls accounted for 19 percent of all injuries and illnesses involving days away from work in ship and boat building and repairing (Ex. 69).

Second, OSHA has revised the language in paragraph (a)(1) to require that employer housekeeping practices eliminate hazards to employees "to the extent practicable." The proposed rule would have required that employers ensure that they maintain good housekeeping conditions at all times in their workplaces so no hazard is created for employees. The revised language recognizes that, due to unique conditions inherent in shipyard employment, it may not be possible to maintain good housekeeping conditions in shipyard-employment workplaces at all times or ensure that workplace conditions never present a hazard. However, the rule requires employers to implement and maintain rigorous housekeeping conditions unless it is impracticable.

Paragraph (a)(2) specifies that employers must eliminate slippery conditions on walkways and working surfaces "as necessary." This provision, proposed as paragraph (g), would have required that slippery conditions, including snow and ice, be eliminated "as they occur."

Northrop Grumman Shipbuilding—Newport News supported the proposal: "[E]liminating slippery conditions, including those associated with snow and ice, are important to minimizing the risk of an employee slipping and being injured" (Exs. 116.2; 120.1). However, a number of other commenters were opposed to the proposed requirement. Trident Seafoods Corporation, the U.S. Navy, Bath Iron Works, the Shipbuilders Council of America, American Shipbuilding Association, and Sound Testing, Inc., said it is extremely difficult in shipyard-employment worksites to ensure that snow and ice are immediately eliminated (Exs. 104.1; 106.1; 107.1; 114.1; 115.1; 117.1; 118.1; 119.1; 121.1; 125; 132.2; 168, p. 68; 199, pp. 55, 80–83). For instance, Atlantic Marine said: "It is not practical to eliminate snow and ice as they occur" (Exs. 115.1; 118.1). Roy Martin testified that the proposed requirement "represents an unrealistic expectation. Removing snow and ice as they occur is not practical, considering, as I well know [from] firsthand experience on the Great Lakes, conditions such as this may last several days, making constant attention a major burden, if not infeasible" (Ex. 168, p. 57). Dale Myer of Arctic Storm Management Group testified that requiring employers to clean slippery conditions as they occur would be impossible because such conditions were "almost impossible to define. When is a surface slippery? * * * So is one flake going to be snow occurred? Is one inch going to be snow occurred? Is a trace of snow going to be as it occurs?" (Ex. 199, p. 82).

Stakeholders suggested alternative approaches. Atlantic Marine suggested that OSHA allow "a practical amount of time" to remove snow and ice (Exs. 115.1; 118.1). Dale Myer recommended:

> I believe that the phrases that you have in subsection D [proposed paragraph (d)], which talks about the dry conditions, as it reads it says, maintain so far as practical in dry conditions. I think that phrase, 'so far as practical,' should actually be incorporated into G [proposed paragraph (g)] (Ex. 199, p. 83).

To address stakeholders' concerns, OSHA has revised the language of the final rule to require that employers eliminate slippery conditions "as necessary." OSHA intends "as necessary" to mean that conditions are such that they can pose a hazard to employees. The revised language gives employers flexibility in determining whether the particular conditions may pose a hazard to employees or have deteriorated such that action is necessary. In addition, the performance-based approach gives employers flexibility in determining what method of eliminating slippery conditions will work most effectively for them.

During the hearings, participants described some of the methods and

procedures they use at their shipyard facilities. For instance, Roy Martin described how Manitowoc Marine Group deals with ice and snow:

> We will have someone come in the moment we do have an event, and they will start the cleanup process, as much as feasible. They will clean the main thoroughfares, and they will sand-salt as they are cleaning as well. We do have areas around the vessels which we train our employees to help utilize the salt-sand buckets, for lack of [a] better phrase, at these areas as well. We utilize a lot of employee assistance in that, because, as you well know, there are instances where we have days of extensive weather (Ex. 168, p. 93).

Some stakeholders stated that, in certain severe weather conditions, it was not always possible to eliminate slippery conditions (Exs. 115.1; 116.1; 118.1). The final rule recognizes that, in some circumstances, weather conditions may make it impracticable for employers to eliminate slippery conditions. In such cases, employers must take alternative action to ensure that employees are not injured. Accordingly, the final rule specifies that when it is impracticable for employers to eliminate slippery conditions, they must either (1) restrict employees to designated walkways and working surfaces where the employer has been able to eliminate slippery conditions, or (2) provide employees with slip-resistant footwear. This footwear must be provided in accordance with 29 CFR part 1915, subpart I. In particular, § 1915.152(f) specifies whether the employer must provide personal protective equipment (PPE) at no cost to employees.

OSHA does not think that employers will have difficulty in complying with the alternative methods. For example, Dale Myer stated that their company already has incorporated slip-resistant footwear in their housekeeping program:

> Another thing that we do is we have bought our crew slip-on, you know, we call them toggles. What they are is they're just, they slip right over the rubber boots and stuff like that. They're like grippers. And when we have been working on the dock and the dock is slippery, we provide those to our crew members (Ex. 199, pp. 87–88).

Paragraph (a)(3) requires that employers store materials in a manner that does not create a hazard for employees. Proposed § 1915.91(h) would have required that "construction materials" be stacked in a manner that does not create a hazard to employees. Information in the record, including site visits to shipyards and on fishing vessels (Ex. 207), support expanding the final rule to cover more than construction materials and address additional storage methods. Shipyard employment activities involve large amounts of materials, including construction materials, drums filled with hydraulic fluid, pallets (empty and full), and equipment such as welding machinery. If any of these materials are not properly stored or stacked, they could create a hazard for employees. For instance, if hydraulic drums are not properly stacked, they could topple over and injure workers. Scaffolding material could cause trips and falls if they are not stored properly when not in use. Therefore, the final rule expands the scope of this provision to cover all materials used in shipyard employment, including materials for constructing or repairing vessels and vessel sections, as well as any materials used in daily shipyard operations.

In addition, the final rule specifies that the employer must "store" materials safely, which is more comprehensive than the proposed requirement to "stack" materials safely. OSHA believes that requiring materials to be stored safely will protect employees from injury no matter whether the employer chooses to stack them or use another storage method.

Paragraph (a)(4) requires that employers maintain easy and open access to fire alarm boxes, fire call stations, all fire-fighting equipment, and exits, including ladders, staircases, scaffolds, and gangways. Proposed § 1915.81(f) contained a similar requirement, but the provision referred generally to maintaining easy access to "exits." In shipyard-employment workplaces, there are many types of exits and methods of egress, including gangways, ladders, staircases, and scaffolds. OSHA believes that employees must have immediate access to all means of egress in the event of an emergency. Therefore, the final rule clarifies additional types of exits in shipyard-employment workplaces to which the employer must maintain easy and open access.

Paragraph (a)(5) requires that all flammable and combustible substances, such as paint thinners, solvents, rags, scrap, and waste, be disposed of or stored in covered fire-resistant containers. The final rule combines proposed paragraphs (j) and (k) into one provision. Proposed § 1915.81(j) would have required that all oils, paint thinners, solvents, waste, soaked rags, or other flammable substances be kept in fire-resistant covered containers when not in use. Similarly, proposed § 1915.81(k) would have required that combustible scrap be removed from work areas as soon as possible.

Several commenters, including Bath Iron Works, the Shipbuilders Council of America, and Atlantic Marine, recommended that OSHA delete both proposed paragraphs (j) and (k), saying 29 CFR part 1915, subpart P, Fire Protection in Shipyard Employment, covers these issues (Exs. 106.1; 108.2; 114.1; 115.1; 117.1; 118.1). To the extent that subpart P covers the hazards of flammable and combustible substances, the requirements only apply to work areas where hot work is performed. Section 1915.81(a)(5), on the other hand, addresses flammable and combustible substances wherever they are used, located, or stored in shipyard-employment worksites. Therefore, OSHA believes it is necessary to retain the proposed requirements in the final rule. The Agency believes that the removal or proper storage of flammable and combustible substances is important to ensure that employees have safe working conditions.

Paragraph (a)(5) also requires that flammable and combustible substances be disposed of or stored at the completion of a job or end of a workshift, whichever occurs first. Proposed § 1915.81(j) would have required that flammable substances be stored "when not in use," while proposed § 1915.81(j) would have required that combustible scrap be removed from work areas "as soon as possible."

Trident Seafoods Corporation raised concerns about when employers must store or dispose of substances (Exs. 104.1; 107.1; 199, pp. 136–137):

> Does 'when not in use' mean that closed paint thinner cans must be placed in covered fire resistant containers during short breaks? It would be better if this requirement read along the lines of 'at the end of the shift, when no longer needed for [on] the particular portion of the job being performed or end of the work day whichever comes first' (Exs. 104.1; 107.1).

OSHA agrees with the commenter's recommendation. OSHA did not intend to require that employers store flammable substances while employees are at lunch or on break. OSHA used performance-based language in proposed paragraphs (j) and (k) to give employers flexibility in how to best comply with the requirements. OSHA believes the commenter's recommendation provides clearer direction to employers, while ensuring adequate protection for employees. Accordingly, the final rule requires that employers dispose of or store flammable and combustible substances at the end of each workshift or when the job is completed, whichever occurs first.

Paragraph (b)—Walkways

Paragraph (b) sets forth requirements to protect employees from hazards when they are using walkways. OSHA has included in paragraph (b) those requirements from the proposed rule that were intended to apply primarily to walkways, as well as requirements that address issues that are unique to walkways.

Paragraph (b)(1)(i) requires that all walkways provide adequate passage. The proposed rule contained a similar requirement (proposed § 1915.81(b)). This requirement is intended to be read in conjunction with paragraphs (b)(1)(ii)–(iv), which address keeping walkways clear of debris, materials, hoses, and cords. Taken together, these provisions provide employers with directions for ensuring that walkways provide safe and adequate passage.

Paragraph (b)(1)(ii) requires that walkways be clear of debris, including solid and liquid wastes, that may create a hazard for employees. The proposal included a similar provision (§ 1915.81(e)). Sound Testing, Inc., requested that OSHA define "solid and liquid waste" (Ex. 121.1). OSHA believes that employers understand that "solid and liquid waste" includes any materials unused and rejected as unwanted, such as trash, used materials, scraps, studs, welding rod tips, nuts or bolts, broken equipment, empty containers, or other items that will be thrown away. OSHA intends that the term have only the normal definition of "waste"; therefore, the Agency does not believe it is necessary to add a definition to the regulatory text.

Paragraph (b)(1)(iii) specifies that employers ensure walkways are free from tools, materials, equipment, and other objects that may cause a hazard to employees. Proposed § 1915.81(c) would have required that only tools, materials, and equipment necessary to perform the job in progress may be kept on walking and working surfaces, and that all other tools, materials, and equipment be stored or located in an area that does not interfere with walking and working surfaces.

General Dynamics Electric Boat and Sound Testing, Inc., recommended that the provision be applied only to walkways, not working surfaces (Exs. 108.2; 121.1). For example, Phil Dovinh, of Sound Testing, Inc., stated:

> Walking surfaces should be kept clear of all tools and equipment at all times—portable welding machines, generators, blowers and ventilation equipment, gas cylinders and fire extinguishers, welding leads, cables and hoses, pressure washers, pumps, etc * * * all are necessary during hot work, repair or maintenance operations, and could easily block a walkway—hence potentially hindering an emergency escape. A walking surface can become a working surface when the repair is required—only then tools and equipment may be placed on the walking surfaces as needed to successfully complete the job (Ex. 121.1).

OSHA believes that walkways must be clear from tools, materials, and equipment at all times. If materials and equipment are placed in walkways, employees passing through the area are at risk of injury. OSHA recognizes that workers need to have the necessary tools, materials, and equipment at hand to perform their jobs. However, if employees place materials or equipment in a walkway, that walkway becomes a working surface and the employer must prevent the area from being used as a walkway (see discussion of paragraph (b)(2)).

Paragraph (b)(1)(iv) requires that walkways be clear of hoses and electrical service cords, and identifies acceptable means to meet that requirement. The purpose of the proposed and final provisions is to prevent injury to employees and damage to the hoses and cords.

The proposed rule (proposed § 1915.81(i)) contained a similar requirement, but it did not include a general provision allowing employers to use other suitable means to keep hoses and cords out of walkways. Stakeholders suggested that OSHA allow employers to use additional methods to prevent employee contact with hoses and cords. For example, Trident Seafood Corporation recommended "the option of ensuring that hoses and electrical cords are kept to the side of a walkway or working surface provided they are not trip hazards or in danger of being damaged" (Exs. 104.1; 107.1). General Dynamics NASSCO recommended that:

> Hoses, cords and leads shall be routed in a manner that prevents employee exposure to trip hazards and damage to the hoses, cords, and leads. Walkways shall be kept free of trip hazards by routing hoses, cords and leads overhead, through crossovers or by other suitable means (Ex. 119.1).

OSHA agrees with the commenters' statements that there are additional safe ways to protect employees from contact with hoses and cords in walkways. Accordingly, OSHA has modified paragraph (b)(1)(iv) to provide employers alternatives to comply with this provision. Employers may either place hoses and cords above walkways, underneath walkways, or on walkways, provided they are covered by crossovers or other means. In addition, OSHA has added a performance-based alternative that allows the employer to protect each hose and cord by another suitable means, provided that the "suitable means" provides equivalent protection for employees and prevents damage to the hoses and cords. OSHA believes that this revision gives employers greater flexibility in complying with the requirement of paragraph (b)(1)(iv).

Several commenters raised an issue about applying this provision to both walking and working surfaces. Northrop Grumman Shipbuilding—Newport News argued that the provision was not feasible for working surfaces: "Employees may perform job tasks in tight, confined or otherwise awkward areas on ships where there is limited overhead to hang a line or room to cover the line" (Exs. 116.2; 120.1). Based on these comments, the Agency has changed the final rule so it applies only to walkways.

In paragraph (b)(2) of the final rule, OSHA is adding a new requirement that specifies what action employers must take if they use a walkway as a working surface. Paragraph (b)(2) requires that employers cordon off any portion of a walkway they are using as a working surface to prevent the area from being used as a walkway.

As mentioned, many stakeholders said using walkways as working surfaces is a common occurrence in shipyard employment (Exs. 108.2; 121.1; 199, p. 122). Philip Dovinh, from Sound Testing, Inc., commented: "A walking surface can become a working surface when repair is required—only then tools and equipment may be placed on the walking surfaces as needed to successfully complete the job" (Ex. 121.1).

The new requirement ensures that this common occurrence in shipyard employment does not injure or endanger workers. If workers are allowed to walk through a walkway that is also being used as a working surface, they could bump into employees working in the area or disturb equipment or materials that are being used to perform the job in that area. OSHA believes that this new requirement protects not only workers who otherwise would use the walkway as a thoroughfare, but also employees who are working in the cordoned-off section.

OSHA notes that even if the employer uses a portion of a walkway as a working surface, the employer is still required to ensure that each walkway provides adequate passage (§ 1915.81(b)(1)(i)). If the remaining portion of the walkway does not provide adequate passage, the employer must provide other means of access.

Paragraph (c)—Working Surfaces

Paragraph (c) specifies the requirements that employers must follow, in addition to those in paragraph (a), to protect employees on working surfaces. Paragraph (c)(1) requires that employers ensure that each working surface is cleared of tools, materials, and equipment that are not necessary to perform the job in progress. The proposed rule contained a similar requirement (proposed § 1915.81(c)). OSHA understands that some jobs may require a large amount of tools, materials, or equipment, and that workers should be able to access these items as they are needed. However, excess tools, materials, and equipment pose a risk of slips, trips, falls, or other injuries. In addition, excess materials take up precious space in what stakeholders say are small, tight working areas in shipyard employment (Ex. 116.2; 120.1). OSHA did not receive any comments opposing this requirement as it applies to working surfaces.

Paragraph (c)(2) requires employers to ensure that each working surface is cleared of debris, including solid and liquid waste, at the end of each workshift or job, whichever occurs first. Proposed § 1915.81(e) would have required that both walking and working surfaces be kept clear of debris at all times. OSHA has modified that requirement as it applies to working surfaces in this final rule. In active work areas, OSHA recognizes that the job may produce debris. OSHA did not intend to require employers to stop the job to clear the area every time debris is produced. Rather, OSHA intended that at the end of each workshift, the employer shall clean up and remove debris from the work area. If a job is completed before a workshift ends, the final rule requires that the employer clear debris from the work area at that time. The Agency believes that the revised language in paragraph (c)(2) provides greater clarity than the proposal.

Paragraph (c)(3) specifies that each working surface be maintained, so far as practicable, in a dry condition. When wet processes are used, the final rule requires that the employer implement measures so workers have dry standing places. If that is not practicable, the final rule requires that the employer provide footgear that protects the employee from the wet process. Proposed § 1915.81(d) contained a similar requirement.

A number of commenters said the language in the proposed rule implied that employers would be required to provide waterproof footgear to all workers any time the floor or deck of a work area became wet. Atlantic Marine stated that:

> The way this paragraph reads, employers would have to provide waterproof foot gear every time it rains because the surface may not dry immediately. Atlantic Marine assumes that OSHA did not intend rain gear to be required PPE since it is specifically excluded in the recent payment for PPE final rule; however, the way that this section is worded, it becomes required PPE. Please remove or reword this section (Exs. 115.1; 118.1).

American Shipbuilding Association added:

> Paragraph (d) is problematic due to the breadth of its scope[;] however[,] the proposal retains the existing requirement that employers must provide waterproof boots to workers in every work area where wet processes take place if keeping the floor or deck of that work area dry is not practicable. Because every location in a shipyard and on a vessel is a potential working area and many of those areas are located outdoors, the proposal should be more specific in defining work areas and should explicitly exclude walking areas. Otherwise, it could be interpreted to mean that employers must provide waterproof boots to all employees in the event of rain at the facility. Among wet processes, the proposal explicitly includes painting and cleaning. Those two processes should be removed as examples because waterproof footgear does not necessarily provide the best protection when painting and cleaning. Many waterproof rubbers will dissolve in solvents used in the painting process. Cleaning a tank containing acid, for example, requires more than waterproof footgear for adequate protection (Ex. 117.1).

Other commenters raised the same concerns (Exs. 104.1; 106.1; 107.1; 199, pp. 80–81, 106).

OSHA believes it is important for employers to maintain working surfaces in dry condition when possible to protect employees from injury. Keeping working surfaces dry will help to prevent slips, trips, and falls, which constitute a significant portion of injuries in shipyard employment (Ex. 69). Therefore, OSHA is retaining this general provision in the final rule.

Paragraph (c)(3) also requires that employers take additional actions if they cannot keep working surfaces in a dry condition. However, these additional actions only apply in work areas where employers are using wet processes. Shipyard employment involves various wet processes, including hydroblasting, gas-freeing, and cleaning. Employers do not have to implement the additional actions in non-wet processes or operations or where working surfaces are wet because of weather conditions. OSHA has revised the language in paragraph (c)(3) to clarify that the additional actions only apply in work areas where wet processes are used.

If employers cannot keep working surfaces in a dry condition when using wet processes, they will need to maintain drainage and implement measures, such as false floors, platforms, mats, or other types of dry standing places, to prevent employees from being exposed to contaminated water or from standing for prolonged periods of time in water, both of which may result in adverse health effects.

When the employer demonstrates that this procedures is not practicable to implement measures in wet processes that will provide dry standing places for workers, paragraph (c)(3) requires that employers provide footgear that protects employees from exposure to contaminants (for example, standing in water to perform job tasks). Paragraph (c)(3) also requires employers to provide protective footgear in accordance with the requirements of subpart I. Among other requirements in subpart I, § 1915.152(f) establishes requirements for when employers must provide personal protective equipment at no cost to the employee.

In addition, OSHA has revised the language in paragraph (c)(3) specifying what type of footgear employers must provide when it is not practicable for the employer to keep the working surface dry. The final rule requires employers to provide "protective footgear" in such cases. The proposed rule, on the other hand, would have required that employers provide "waterproof footgear, such as rubber overboots." As noted earlier, one stakeholder pointed out a problem with the proposed requirement to provide waterproof or rubber boots in certain wet processes:

> Among wet processes, the proposal explicitly includes painting and cleaning. Those two processes should be removed as examples because waterproof footgear does not necessarily provide the best protection when painting and cleaning. Many waterproof rubbers will dissolve in solvents used in the painting process. Cleaning a tank containing acid, for example, requires more than waterproof footgear for adequate protection (Ex. 117.1).

OSHA believes that the revised language in the final rule addresses the commenters' issue and ensures that employers provide the type of footgear that will protect employees in the particular wet process they are using or working.

Section 1915.82—Lighting

This section sets forth lighting requirements in shipyard-employment

workplaces. OSHA reorganized this section into four paragraphs: (1) General requirements; (2) temporary lights; (3) portable lights; and (4) explosion-proof, self-contained lights.

Paragraph (a)—General Requirements

Paragraph (a) establishes general lighting requirements that apply in all areas of shipyard employment, regardless of whether permanent or temporary lights are used. Adequately lit workplaces are essential in preventing employees from being injured or killed because they can't see and avoid hazards that might be present. As discussed in the preamble to the proposed rule, there have been fatalities in shipyard employment that may have been prevented if the employer had provided adequate lighting (72 FR 72452, 72459–60, Dec. 20, 2007). In one case, an employee was electrocuted while performing repair work in a poorly lighted area. In another case, an employee was killed when he stepped into a dark cargo deck and fell through an opening in the floor to the bottom of the cargo hold. These types of worker fatalities clearly indicate that employers need to provide lighting that is sufficient for employees to see where they are, where they are going, and what job tasks they are performing.

Paragraph (a)(1) requires that employers adequately illuminate each work area and walkway whenever a worker is present. This requirement is the same general requirement as the existing rule and the proposed rule. OSHA received no comments opposing this requirement and, therefore, is retaining the requirement in the final rule.

In paragraph (a)(2), OSHA carries over from the proposal the table of lighting intensity levels (Table F–1) for landside areas. For vessels and vessel sections, paragraph (a)(3) allows employers either to provide lighting that achieves the levels in Table F–1 or to meet the requirements of ANSI/IESNA RP–7–01, "Recommended Practice for Lighting Industrial Facilities" (incorporated by reference as set forth in § 1915.5). The proposed rule would have required employers to provide lighting on vessels and vessel sections that meets the levels in Table F–1.

Table F–1 sets forth the minimum illumination requirements for designated areas in shipyard employment. For instance, Table F–1 specifies that general landside areas, such as corridors and walkways that employees pass through, must have an illumination intensity of at least five lumens (foot candles). Higher illumination levels (for example, 10 lumens) are required for landside areas such as machine and carpentry shops where employees use hazardous tools and equipment and perform precision work. Likewise, higher illumination levels are required in warehouses, where employees read signs and warning labels and operate forklift trucks and other heavy equipment where controls or instructions must be seen and understood. OSHA developed the illumination levels in Table F–1 from the requirements in its Construction Illumination (§ 1926.56) and Hazardous Waste Operations (§ 1910.120) standards, and from the American National Standards Institute (ANSI) standard, Recommended Practice for Lighting Industrial Facilities (ANSI/IESNA RP–7–01) (Ex. 38). The Agency believes illumination requirements at these levels will help to ensure that workers have sufficient lighting to safely move about and perform work tasks.

Table F–1 of the final rule includes a note indicating that the required illumination levels in the table do not apply to emergency or portable lighting. The final rule carries over the note in proposed Table F–1 with minor revisions. OSHA did not receive any comments on the note.

OSHA developed proposed Table F–1, in large part, because SESAC recommended that OSHA revise the lighting standards to include specific illumination levels (Docket SESAC–1992–1, Ex. 100X, 1992, p. 113). Some stakeholders, such as General Dynamics NASSCO, generally agreed with requiring employers to meet the illumination levels in Table F–1 (Ex. 119.1). However, OSHA also received mixed reaction to the proposed Table F–1. During the hearing John Killingsworth, representing the Puget Sound Shipbuilders Association, testified:

> [T]he numbers in this table on lumens for specific work areas are somewhat reasonable and they're achievable. But in my 43 years of work experience, I've never had to carry a light meter into any work area I've been in. In order to comply with this section, however, I guess I'll have to. Will it reduce risk? I don't think so (Ex. 198, p. 86).

OSHA also received several comments opposing the application of proposed Table F–1 on vessels (Exs. 105.1; 112.1; 131.1; 132.2; 168, pp. 286–287; 198, pp. 20–22). For instance, Northrop Grumman Shipbuilding—Newport News stated:

> We agree that adequate lighting is important to ensure employees can access and perform work safely. However, we have conducted numerous lighting measurements on ships and do not believe that a prescriptive table of lighting intensities is practical. Our findings indicate that it is extremely difficult to obtain uniform lighting due to interferences associated with ship's components and materials. Our results indicate that passageways and decks, in general, are visible at lighting levels below those listed in the table. We recommend that Table [F–1] be removed and that performance-oriented language be provided along with a non-mandatory reference to ANSI/IESNA [RP–7–01–2001]. We recommend the following or similar language, 'The employer shall ensure that areas where employees will work or must pass through to access their work are adequately illuminated.' ANSI/IESNA [RP–7–01–2001] should be used as a non-mandatory reference to assist in determining the adequacy of lighting (Exs. 116.2; 120.1).

The American Shipbuilding Association (ASA) stated:

> Our findings indicate that it is extremely difficult to obtain uniform lighting [on vessels] due to the variety of shipboard configurations encountered. Equipment and smaller internal compartments obstruct lighting and cause shadows even in the best-lit work environments. Unlike in buildings, where lighting is usually level with the ceiling or only slightly recessed, on ships, lighting is often not the lowest fixture in the overhead. It is therefore often subject to obstruction by other ship's structures (Ex. 204.1).

In sum, many commenters found the illumination levels in proposed Table F–1 problematic for vessels and vessel sections.

Although OSHA believes that the minimum levels specified in Table F–1 provide useful and clear assistance for employers, the Agency also is persuaded by stakeholders who expressed that it may be difficult for them to maintain uniform lighting levels on vessels and vessel sections using permanent lighting, particularly when the vessel is old or when the employer does not own the vessel. Therefore, in final paragraph (a)(3), OSHA is allowing employers to either follow the illumination levels set forth in Table F–1 for lighting vessels and vessel sections or comply with the appropriate values specified in ANSI/IESNA RP–7–01 (2001). For example, an employer could follow Table F–1 or ANSI/IESNA RP–7–01 (2001) for a fabrication area in a shipyard. By following Table F–1, the employer would be required to ensure that the area was illuminated to 10 fc. Figure A2–2, Recommended Illuminance Values for Industrial Areas/Activities—Outdoor, in ANSI/IESNA RP–7–01 requires 30 fc for the same area. Additionally, for changing rooms (locker rooms) Table F–1 would require the employer to ensure that the area was illuminated to 10 fc, while Figure A2–1, Recommended Illuminance Values

for Industrial Areas/Activities—Interior, in ANSI/IESNA RP–7–01 requires 7 fc for the same area.

OSHA believes that paragraph (a)(3) gives employers greater flexibility in providing lighting that is adequate for workers to safely move and work on vessels and vessel sections. OSHA also believes that allowing employers the option of complying with Table F–1 or the values specified in the ANSI standard will help alleviate stakeholder concerns that the proposed rule would require them to obtain costly personnel and equipment to verify lighting levels (Exs. 116.2; 120.1). In particular, stakeholders were concerned about the costs associated with verifying lighting levels, particularly on vessels undergoing constant change during construction and repair (Ex. 204.1). (See Section IV, Final Economic Analysis, for further discussion.)

Based on the record and site visits, OSHA recognizes that permanent lighting on vessels and vessel sections may be limited. In some circumstances and areas, it may not be possible for employers to install permanent lighting that meets the required illumination levels. This may be particularly true for older vessels. To address this issue, OSHA added a new requirement (paragraph (a)(4)) specifying that, when it is impracticable for employers to provide permanent lighting on vessels or vessel sections that meets the requirements in paragraphs (a)(2) and (a)(3), employers must supplement the permanent lighting with temporary lights. OSHA believes this additional requirement is necessary to ensure that employees have adequate lighting to move about and work safely, while giving employers additional flexibility in meeting the lighting requirements.

In paragraph (a)(5), OSHA carries over from the proposed and existing rules the provision prohibiting the use of matches and open-flame devices for lighting, including during emergencies. OSHA believes that matches and open flames can never be a safe method to light a dark area. This rule requires that employers provide employees with portable lights to ensure safe movement when there is no lighting, or when lights are not working (1915.82(c)(1)).

Paragraph (b)—Temporary Lights

Paragraph (b) sets forth the requirements for temporary lighting, including light guards, grounding, insulation, and splicing. For the most part, the final rule carries forward the requirements in proposed § 1915.82(b).

Several commenters suggested that the provisions in paragraph (b) more properly belong in 29 CFR part 1910 subpart S, Electrical (Exs. 106.1; 108.2; 114.1; 168, p. 75). However, others requested that OSHA have one standard on temporary lighting dedicated to the maritime industry (Ex. 105.1). Although some of the requirements in paragraph (b) address electrical issues, they only address electrical issues to the extent they are associated with temporary lighting. The electrical standards in part 1910, on the other hand, are much more comprehensive and focus primarily on more complex electrical issues. As such, OSHA believes that including the requirements in § 1915.82(b) ensures that the provisions receive appropriate focus.

Paragraph (b)(1) requires that temporary lights be guarded if they do not have "completely" recessed bulbs to prevent employees from accidentally coming into contact with the hot bulb. The final rule is identical to the proposed provision. As noted in the preamble to the proposed standard, unless a temporary light is completely recessed, there is a risk that the light could be damaged or broken, thus creating a hazard for employees (for example, electrical shock, laceration, burn) (72 FR 72460). The requirement to have guards or completely recessed lights will prevent employees from accidentally contacting the hot bulb. These safeguards also will help to prevent combustible materials from igniting.

Northrop Grumman Shipbuilding—Newport News supported the proposed provision (Exs. 116.2; 120.1). One stakeholder suggested that OSHA more clearly define what is meant by "completely recessed" and recommended that OSHA replace the term with the following language: "extend beyond the plane of the lighting fixture opening" (Ex. 132.2). OSHA believes that the term "completely recessed" is clear and self-explanatory, and that the recommended language would add unnecessary complexity without providing significant additional benefit or clarity.

Paragraph (b)(2), like the proposed rule, requires that employers equip temporary lights with electric cords "designed with sufficient capacity to carry the electric load." The final rule updates the existing standard requiring employers to use "heavy duty" electrical cords. OSHA believes that the language in the final rule more clearly and accurately identifies the type of cord employers must provide to ensure that employees are protected from electrical, fire, and other hazards. OSHA recognizes that heavy-duty, hard, and extra-hard cords have accepted meanings in industry standards; however, the use of a heavy-duty cord does not ensure that it has sufficient capacity to carry the particular electric load. OSHA believes the final rule provides clearer direction while giving employers flexibility in choosing what type of cord to use so long as it can safely carry the electric load.

Paragraph (b)(3), like the proposed rule, specifies that connections and insulation for electric cords for temporary lights must be "maintained in a safe condition." To ensure that connections and insulation are "maintained in a safe condition," employers must check insulation and connections to determine whether they continue to be in proper working order and replace those that are broken, cracked, or damaged. If insulation and connections are damaged, workers can be exposed to electrical, fire, and other hazards. OSHA remains convinced that this maintenance requirement is necessary for employee safety. OSHA did not receive comments opposing the requirement.

Paragraph (b)(4) prohibits temporary lights and light stringers from being suspended solely by their cords unless the manufacturer has designed them to be hung that way. Improper suspension of lights by their electric cords places the cords under tension that they were not designed to withstand. Such tension could cause the cords to fray, break, or become damaged and expose employees to electrical and other hazards. The only change the final rule makes in the existing rule is to clarify that lights may only be suspended by the cord if the manufacturer designs the cord to be used that way. OSHA did not receive any comments opposing the proposed change.

Paragraph (b)(5) specifies that lighting stringers must not overload branch circuits, while paragraph (b)(6) requires that branch circuits be equipped with over-current protection with a capacity that does not exceed the rated current-carrying capacity of the cord used. Both provisions were contained in the proposed and existing rules. OSHA believes that both measures are necessary to provide an adequate measure of safety from electrical and fire hazards associated with circuit overloading. Stakeholders did not oppose the proposed requirements.

Paragraph (b)(7) specifies that splices must have insulation that "exceeds" that of the original insulation of the cord. When a splice is necessary on an electrical cord, the current may create a surplus of energy or "hot spot" at the splice junction that is greater than the current for which the cord was designed. Requiring that the rated

capacity of the new insulation exceed the capacity of the cord's insulation ensures that employees will be protected if they touch or come into contact with the cord at the splice. The additional insulation capacity also ensures that hot spots do not start burning or ignite combustible materials in the area.

In the proposal, OSHA requested comment on paragraph (b)(7), including whether the Agency should require a more specific requirement. In particular, OSHA requested comment on whether OSHA should require splices to have insulation that is 1½ times greater than that of the cord. NIOSH expressed a preference for such language, saying such a requirement "could be objectively evaluated and may facilitate compliance and enforcement" (Ex. 129.1). Trident Seafoods Corporation made two recommendations. First, they recommended that OSHA provide guidance on determining when splice insulation "exceeds" the original insulation. They also said that OSHA should reference a "recognized standard for determining appropriate splices insulation such as NFPA [National Fire Protection Association] NC70" standard (Ex. 198, p. 72). On the other hand, the U.S. Navy said that the existing rule requiring that splices have insulation "equal" to that of the cord was adequate, and that it complies with the requirements on splices in the NFPA NC70 national consensus standard (Ex. 132.2).

OSHA decided to adopt the proposed requirement for two reasons. First, OSHA believes that requiring splice insulation to exceed the capacity rating of the insulation on the original cord ensures that employees are fully protected from electrical and other hazards. OSHA notes that employers who use splices with insulation that is 1½ times greater than the original will be in compliance with the final rule.

Second, OSHA believes that the performance-based language in the final rule will give employers greater flexibility. OSHA believes that providing employers with such flexibility will be beneficial, especially since different capacities of splice insulation may be needed depending on the use and location of each temporary light cord.

Paragraph (b)(8) requires that exposed, non-current-carrying metal parts of temporary lights be grounded. It also requires that grounding be provided either through a third wire in the cord that contains the circuit conductors, or through a separate wire that is grounded at the source of the current. In addition, it requires that grounding be done in accordance with the electrical standards in 29 CFR part 1910, subpart S. The proposed rule would have required that grounding be done in accordance with the requirements of § 1915.132(b) (subpart H, Tools and Related Equipment). Since publication of the proposal, OSHA promulgated 29 CFR 1910, subpart S, which supersedes § 1915.132(b). Therefore, OSHA updated the reference in the final rule. No comments were received that opposed paragraph (b)(8).

Paragraph (c)—Portable Lights

Paragraph (c) sets forth requirements for providing and using portable lights, including emergency lights. The proposed rule referred to "handheld" portable lights. A number of stakeholders urged OSHA either to define the term "handheld portable lights" used in proposed paragraph (c), or replace it with either "portable light" or the common term "flashlight" (Exs. 101.1; 121.1; 124; 126; 128; 130.1; 168, pp. 72, 353; 198, pp. 86–87). Several stakeholders pointed out that there are various types of portable lights available and used in the industry, not all of which are handheld. For example, some employers provide portable lights affixed to head protection; one stakeholder strings emergency lighting through the vessel in case of a power outage; and another has a generator linked with permanent lighting systems that transfers power in the event that a power outage occurs (Ex. 168, p. 242).

OSHA's intention in the proposed rule was to ensure that workers do not enter unlighted areas or do not have to move about in dark spaces if lights stop working. OSHA believes stakeholder recommendations that employers be permitted to supply employees with other types of portable lights, as well as handheld ones, will provide greater flexibility while ensuring that workers are protected. Accordingly, the final rule allows employers to use handheld lights as well as other types of portable lights.

Paragraph (c)(1) requires that employers provide, and ensure that employees use, portable lights before they enter a dark area if that area does not have permanent or temporary lights, if the lights do not work, or if permanent or temporary lights are not readily accessible. OSHA believes that workers are at great risk of harm when they enter dark areas, especially on vessels. The IMIS database reports several fatalities in shipyard employment in which workers fell to their deaths in dark areas on vessels (72 FR 72452, 72459–60, Dec. 20, 2007).

For purposes of paragraph (c)(1), the term "not readily accessible" means that fixtures for turning on permanent or temporary lights are not located at, or in close proximity to, the entrance to the dark area. For example, when an employee would have to walk across a dark work area or climb steps in the dark to turn on the lights, OSHA would not consider such lights to be readily accessible. In such cases, the employer would have to provide, and ensure that the employee uses, a portable light to enter the area.

OSHA does not believe that employers will have difficulty complying with this requirement. Some stakeholders said it was "common practice" to provide flashlights to workers (Ex. 114.1). Other stakeholders commented that they already require that workers have portable lights when they go below deck on vessels or enter any area where they cannot see the walking surface (Exs. 116.2; 120.1).

Paragraph (c)(2) requires employers to provide portable or emergency lights for the safe movement of employees on a vessel or vessel section when the only means of illumination comes from off-vessel light sources. The proposed rule contained a similar requirement. Like paragraph (c)(1), this provision is needed because off-vessel lighting could fail, making it hazardous for employees to move around or exit a dark area on the vessel or vessel section. If off-vessel lights stop working when employees are working below deck on a vessel, the workers could be injured or killed if they try to move around or exit the space.

Final paragraph (c)(2) changes the proposed rule in two respects. First, the final rule allows employers to provide either emergency or portable lights. The proposed rule would have required employers to provide portable lights. OSHA is expanding the final rule because some stakeholders said they use back-up generators that activate if off-vessel lights go out (Ex. 168, p. 243).

Second, the final rule deletes the proposed language requiring that employers ensure that portable lights are available in "the immediate work area." Some stakeholders questioned what the immediate work area is when lights go out and asked OSHA to define the term in the final rule (Ex. 168, p. 297). After reviewing the record, OSHA finds that what constitutes an immediate work area on a vessel varies based on factors such as the size of the vessel and its work areas, the number of employees working on the vessel and in specific work areas, and the type of portable or emergency lights being provided. OSHA believes employers

need to examine those factors to determine where portable and emergency lights need to be located to ensure each employee is able to move safely.

Also implicit in paragraph (c)(2) is the requirement that employers provide an adequate number of portable or emergency lights to ensure that each employee is able to move about and exit the dark areas safely. The factors employers use to determine where portable lights need to be located are the same factors for determining the number of portable or emergency lights necessary to ensure that each worker can safely move about if the lights go out.

A number of commenters, including Puget Sound Shipbuilders Association, American Seafoods Company, Trident Seafoods Corporation, and Bath Iron Works, also questioned whether OSHA was requiring each worker to carry a flashlight or portable light at all times (Exs. 104.1; 105.1; 106.1; 107.1; 124). OSHA is not requiring that every worker have a portable light when working on a vessel. For instance, if a number of employees work in the same area on a vessel, one portable light may be sufficient to allow them to move around safely and exit the vessel. However, when an employee is working alone, especially in an isolated area or confined space, the employer must ensure that the worker has a portable or emergency light.

OSHA does not believe that employers will have difficulty complying with this provision. A number of stakeholders commented that they already provide portable or emergency lights to employees working on vessels so they can move safely if the lights go out (Exs. 99; 104.1; 107.1; 114.1; 116.2; 120.1).

Some stakeholders said that they have other procedures they follow when power outages occur on vessels, including having workers stay in place in the dark area until lights are reenergized or someone comes with portable or emergency lights (Exs. 119.1; 125; 168, pp. 242–43). These stakeholders said their "stand fast" policies were safe and adequate, and they should be allowed to continue those practices instead of following paragraph (c)(2) (Exs. 119.1; 125). OSHA does not consider such a practice, by itself, to be sufficient to ensure the safety of workers. For example, it could take hours for lights to be restored, making it difficult for workers to stand fast in dark areas. In addition, if lights have gone off because a situation requires workers to evacuate the vessel immediately, a stand-fast policy could endanger not only the workers waiting in dark areas on the vessel, but also any worker who comes with a light to help them exit the vessel.

The American Shipbuilding Association requested an exception to paragraph (c)(2) when natural sunlight provides sufficient illumination (Ex. 117.1). OSHA's intention was to require that employers provide portable or emergency lights to help workers exit dark areas if off-vessel lights go out. If natural sunlight is sufficient to allow a worker to move safely or exit the vessel, employers do not have to provide portable or emergency lights. The Agency has included language in paragraph (c)(2) clarifying this point.

Paragraph (d)—Explosion-Proof, Self-Contained Lights

Paragraph (d) specifies what type of portable lights employers must provide for use in areas that are not gas-free. The final rule, like proposed paragraph (c)(3), requires employers to ensure that only "explosion-proof, self-contained" portable lights or other electrical equipment approved by a nationally recognized testing laboratory (NRTL) are used. Existing provision § 1915.92(e) also sets forth the same requirements for lights in non-gas-free areas, but does so by referencing § 1915.13(b)(9). Both the proposal and the final rule added the pertinent language from § 1915.13(b)(9) to paragraph (d) thus eliminating the need for employers to reference another standard.

Several stakeholders requested OSHA to clarify that the provision applies to areas with the potential for a flammable atmosphere (Exs. 112.1; 116.2; 120.1; 121.1; 198, pp. 87, 162). OSHA agrees that it is important that employers clearly understand the types of atmospheres in which explosion-proof, self-contained portable and temporary lights are needed. Therefore, OSHA added language to paragraph (d) stating that explosion-proof, self-contained lights are required in any area where the atmosphere is determined to contain a concentration of flammable vapors that are at or above 10 percent of the lower explosive limit, as specified in part 1915, subparts B and C.

Section 1915.83—Utilities

Section 1915.83 of the final rule addresses requirements to protect workers from hazards associated with the unchecked release of steam or electricity, excessive wear and tear of steam hoses that could compromise their integrity, and burns and fires from unguarded heat lamps.

Paragraph (a)—Steam Supply System

Paragraph (a)(1) requires that employers ensure that the vessel's steam piping system, including hoses, is designed to safely handle the working pressure prior to supplying steam from an outside source to the vessel. Paragraph (a)(1) revises the term "responsible vessel's representative" in the existing provision (§ 1915.93(a)(1)) to "responsible vessel's representative, contractor, or any other person who is qualified by training, knowledge, or experience," and requires this individual to determine whether the working pressure is safe.

The proposed rule would have required employers to ensure that the steam supply system has a safe working pressure, but did not carry forward the existing requirement to ascertain that information from a vessel's representative. Instead, the proposed rule would have given employers flexibility in determining the most effective way to ensure that the steam system's working pressure is safe before supplying steam from an outside source.

In the preamble to the proposal, OSHA explained that its intention in proposing to revise the requirement for a vessel's representative was to give employers greater flexibility in determining who they could use to ascertain whether the working pressure was safe—for example, a vessel's representative, contractor, or any other person qualified to make such a determination (72 FR 72452, 72462, Dec. 20, 2007). Trident Seafoods Corporation requested that OSHA make this point clear by adding the preamble language to the final regulatory text (Exs. 104.1; 107.1; 198, p. 73). OSHA agrees with the commenter that including the preamble language in the regulatory text will provide employers with clear and useful information about the various qualified persons whom they can use to comply with the requirement to ensure that the working pressure of the steam system is safe. OSHA also believes that requiring employers to ascertain from a qualified person whether the working pressure is safe will enhance worker safety because it builds regular safety checks into the process.

Atlantic Marine expressed concerns that paragraph (a)(1) would require employers to have written documentation that steam supply systems have safe working pressure and that other requirements in paragraph (a) have been met (Exs. 115.1; 118.1). OSHA does not intend to require employers to document in writing that a qualified person has determined that

the working pressure of the steam supply system is safe. Hence, the Agency has revised the language in paragraphs (a)(1) and (c)(3) to clarify that employers do not have to maintain written documentation.

Paragraph (a)(2) sets forth several requirements regarding relief valves and pressure gauges for a steam supply connected to the vessel's steam system. Several commenters asked OSHA to clarify in paragraph (a)(2) whether "each steam supply system" is limited to those systems connected to a vessel's steam piping system (Exs. 106.1; 115.1; 117.1; 118.1). OSHA intended that the requirements in paragraph (a)(2) apply only to outside steam supply systems connected to the vessel's steam piping system, and has added language to the final rule to clarify that intention.

Paragraph (a)(2) carries over a number of the requirements from the existing rule. Paragraph (a)(2)(i) requires that both the pressure gauge and relief valve be installed at the point where the steam pipe or hose from an outside steam source joins a vessel's steam piping system. Paragraph (a)(2)(ii) requires that the relief valves of outside steam systems be set to relieve excess steam, and be capable of relieving steam, at a pressure that does not exceed the safe working pressure of the vessel's steam piping system in its present condition. Paragraph (a)(2)(iii) requires that there be no means of inadvertently disconnecting the relief valve from the system that it protects. OSHA did not receive any comments on these provisions.

Paragraph (a)(2)(iv) specifies that pressure gauges and relief valves of steam supply systems be legible and located so that they are visible and readily accessible. This additional language will address SESAC's concerns that workers cannot read gauges and valves because they are too dirty or the print is too small (Docket SESAC 1992–2, Ex. 102X, pp. 94–96). OSHA believes that illegible pressure gauges can be hazardous. Employees working in or walking through the area need to be able to readily identify whether pressure is increasing to a hazardous level or continues to be at a safe level. Therefore, OSHA has retained the proposed requirement that pressure gauges be visible, accessible, and legible to allow employers and employees to determine accurately whether the working pressure of the steam supply system is safe.

Paragraph (a)(2)(v) requires that relief valves be positioned so they will not be likely to cause injury if steam is released. The proposed rule (paragraph (a)(5)) would have required that relief valves be "located or positioned" where workers would not be injured if steam were released.

One commenter suggested that the provision in proposed paragraph (a)(5) (paragraph (a)(2)(i) of the final rule), requiring pressure gauges and relief valves to be installed at the connection point between the outside steam hose and the vessel's steam piping system, would not work. Sound Testing, Inc., stated:

> The requirement of having a relief valve installed right next to the pressure gauge might endanger the worker each time he or she approaches to check the pressure. If the pressure were too high, and the pressure relief valve ruptured just as the worker was reading the gauge, the superheated steam would burn his or her face instantly. The pressure gauge and the relief valve should be located at least 15 to 20 feet apart (Ex. 121.1).

OSHA believes it is the positioning of the relief valve that protects workers against injury if steam is released. For example, the relief valve should not be positioned so that, if an employee is walking by and the steam is released, the employee would be injured. Therefore, in the final rule OSHA requires the employer to position the relief valve so that it is not likely to cause injury if steam is released, regardless of where the valve is located.

Paragraph (b)—Steam Hoses

Paragraph (b)(1) requires that employers ensure that steam hoses and their fittings are used in accordance with manufacturers' specifications. The proposed rule (proposed paragraph (b)(1)), similar to the existing standard (§ 1915.93(a)(2)), would have required that the employer ensure that all steam hoses and fittings have a safety factor of at least five.

Northrop Grumman Shipbuilding—Newport News and Alaska Ship and Drydock opposed the proposed requirement and recommended that OSHA specify that steam hoses and their fittings be used in accordance with manufacturers' specifications (Exs. 116.1; 120.1). They pointed out that manufacturers use a safety factor of 4, not the 5 as OSHA proposed. Northrop Grumman added that there are issues in addition to safety factors that are important in ensuring that steam hoses and fittings are safe. For example, manufacturers also specify the temperatures, in addition to pressure ratings, that must not be exceeded (Exs. 116.1; 120.1).

Kim Hodne, of Alaska Ship and Drydock, testified that his company contacted vendors and found that steam hoses for feed lines with a safety factor of 5 do not exist, and that all of the hoses his facility uses are rated at 250 psi (Ex. 198, pp. 111–112).

In light of these comments, OSHA has modified final paragraph (b)(1) to require that steam hoses and their fittings be used in accordance with manufacturers' specifications. The change gives employers flexibility, and ensures that steam hoses meet all critical specifications necessary to protect employees from injury.

Paragraph (b)(2) requires that employers hang steam hoses tightly with short bights to prevent chafing and to reduce tension on the hose and its fittings. The proposed rule contained an identical requirement.

Commenters requested that OSHA define the term "short bight" (Exs. 129.1; 132.2). For example, the U.S. Navy recommended defining the term to mean "when a steam hose is hung in a bight or bights, the weight shall be received by appropriate lines that are spaced not to exceed eight feet maximum along the entire run" (Ex. 132.2). In response, OSHA defined "short bight" in the final rule (§ 1915.80(b)) as a loop made in a line or rope that is used to tie back or fasten hoses, piping, wiring, or fittings. OSHA did not adopt the Navy's recommendation that bights not be spaced further than eight feet apart along the entire run (Ex. 132.2). In this regard, OSHA believes that the performance-based requirement in paragraph (b) adequately ensures that bights will be placed so they "prevent chafing and reduce tension," while giving employers flexibility in determining how best to space the bights so they prevent damage to hoses. Moreover, the Navy did not provide any information or explanation demonstrating that a maximum distance of eight feet between bights was appropriate and would adequately protect hoses on vessels.

Paragraph (b)(3) requires that steam hoses be protected from damage. The proposed rule contained an identical provision. OSHA believes that preventing damage to steam hoses is necessary to protect employees working or walking near steam hoses. In walking and work areas, steam hoses can be damaged when equipment and materials are moved or operated nearby. Employees could be seriously injured if a damaged hose suddenly releases steam. Stakeholders did not submit comments on the proposed provision.

Paragraph (b)(4) requires that employers shield steam hoses and temporary steam piping, including metal fittings and couplings (hereafter collectively referred to as "hoses"), if they pass through walkways or work

areas. OSHA believes that shielding hoses is necessary to protect workers from accidentally contacting hot elements and getting burned. The proposed rule (proposed § 1915.83(a)(4)) contained a similar requirement that would have updated the existing rule, which only required that hoses be shielded if they passed through "normal work areas," but did not require shielding for hoses passing through other work areas or walkways.

Several commenters opposed the shielding provision and suggested various revisions (Exs. 106.1; 116.1; 117.1; 120.1). For instance, Bath Iron Works opposed the requirement because vessels contain thousands of feet of steam hoses and "installing shielding the entire run isn't practical" (Ex. 106.1). They also said shielding was "not a good practice" because it would compromise the physical integrity of the hoses, which "tend to become brittle when they are not allowed to breathe" (Ex. 106.1).

OSHA does not find that either of these arguments supports deleting or revising paragraph (b)(4) (proposed § 1915.83(a)(2)(iv)). First, although OSHA agrees that vessels contain thousands of feet of steam hoses, not all of them pass through walkways or work areas. In fact, Bath Iron Works said they try to re-route hoses so they will not be in walkways or work areas (Ex. 106.1). As such, only a portion of the hose, not the entire run, will need to be shielded. Second, the final rule gives employers flexibility in determining what types of shielding to use or install. The only requirement is that the shielding protects workers from contacting hot steam hoses. Employers are free to select shielding that protects against contact while still allowing the hoses to "breathe."

American Shipbuilding Association (ASA) said OSHA should revise paragraph (b)(4) to allow shipyards to re-route hoses as an alternative to shielding them (Ex. 117.1). Paragraph (b)(4) does not prohibit employers from protecting workers from contact with hoses by re-routing the hoses and piping so they do not pass through walkways or work areas. The intention of paragraph (b)(4) is to prevent workers from getting burned by accidentally contacting hot steam hoses. Paragraph (b)(4) gives employers flexibility in determining how best to meet the requirement. If employers elect to re-route hoses so they do not pass through walkways or working areas, the requirement will be met, and workers will not come into contact with hot steam hoses. In this instance, the hoses will not pass through walkways or working areas, and employers will not be required to shield them. Accordingly, since ASA's recommended method of preventing contact with steam hoses is permitted under paragraph (b)(4), there is no need to revise the provision.

Paragraph (b)(4) also would allow employers to comply by re-routing walkways and work areas away from the hoses. Once again, if workers do not pass through or work in areas where steam hoses are present, paragraph (b)(4) would not require employers to shield those hoses. To ensure that employees are fully protected from accidental contact with hot steam hoses, employers could block or cordon off areas where unshielded steam hoses are present, post appropriate warning signs, or instruct workers that they are prohibited from entering the blocked-off areas.

Some commenters recommended that OSHA limit the requirement for shielding hoses to those areas where "contact is likely" (Exs. 106.1; 117.1; 168, pp. 299–300). The commenters do not contend, or explain why this recommendation would increase protection of workers. OSHA believes, to the contrary, that this recommendation may increase the risk of injury to workers from contact with hot elements. Limiting shielding to areas where contact with hoses is likely may leave workers unprotected if the employer does not shield hoses when changes in work or the workplace occur. For example, if a walkway needs to be used as a temporary work space and the walkway must be reconfigured or re-routed, workers could be at risk of injury if the hoses and piping in the temporary walkway are not shielded. In addition, determining whether and when "contact is likely" adds complexity and ambiguity to the provision. By contrast, the requirement to shield hoses that pass through walkways or work areas is clear and unambiguous. In conclusion, OSHA believes the requirement in paragraph (b)(4) is necessary because the potential for worker injury from contact with hot steam hoses is great, especially in light of the number of tight and confined areas on vessels (Ex. 116.1).

Finally, some stakeholders recommended that OSHA also require "metal fittings and couplings" on steam hoses to be shielded (Exs. 106.1; 117.1; 168, pp. 300–301). ASA said that metal couplings are "a much more serious burn hazard" than steam hoses or piping (Ex. 117.1). Bath Iron Works added that "the temperature on a coupling is somewhere between 210 to 230 degrees, which is very, very hot versus the outer shielding [of hoses], which * * * is roughly 120 to 150 degrees" (Ex. 168, p. 300). As mentioned, Bath Iron Works tries to re-route steam hoses to prevent workers from getting burned by metal parts (Ex. 106.1). OSHA intended that paragraph (b)(4) carry over the existing shielding requirement for steam hoses and piping systems, which OSHA has interpreted to include the fittings and coupling for those systems. However, to clarify paragraph (b)(4), OSHA added "metal fittings and couplings" to those items that employers must shield if they pass through walking or working areas.

Paragraph (c)—Electric Shore Power

Paragraph (c) addresses precautions employers must take prior to energizing a vessel's circuits when electricity is supplied from a landside power source. The required actions will protect employees from the hazards of remote power carried by electric cables or wires onto a vessel, which differ from other electrical hazards such as the hazards associated with hand-held powered tools.

Paragraph (c)(1) requires employers to ensure that vessels are grounded prior to energizing any of the vessel's circuits. The proposed and existing rules would have required that vessels be grounded only when in dry dock, which is a standard practice in shipyards. However, OSHA believes that a vessel should be grounded whether or not it is in dry dock, such as when the vessel is on a marine railway or pierside. OSHA did not receive any comments on the proposed rule. The language in the final rule simply clarifies that a vessel should always be grounded prior to energizing its circuits.

Paragraph (c)(2) requires that, prior to energizing any vessel circuit, employers equip the circuit to be energized with over-current protection that does not exceed the rated current-carrying capacity of the conductors. Proposed § 1915.83(c)(3) and existing § 1915.93(b)(1)(iii) contain the same requirement, which also is standard practice in shipyards. OSHA notes that the existing rule requires that the over-current protection not exceed the rated current-carrying capacity of the "cord." In the proposed and final rules, OSHA changed "cord" to "conductors" to make the provision more inclusive and protective. Conductors include connections in addition to cords. OSHA did not receive any comments on the proposed provision.

Paragraph (c)(3) requires employers to ensure that vessel circuits are in a safe condition prior to energizing any circuit with landside power. Employers must obtain a determination that vessel circuits are in a safe condition from a

responsible vessel's representative, a contractor, or any other person qualified by training, knowledge, or experience to make that determination. Paragraph (c)(3) expands the flexibility of the existing rule, which requires that employers ascertain that circuits are in safe condition from "responsible vessel's representatives" (existing § 1915.93(b)(1)(ii)).

To make the requirement more flexible, OSHA proposed to eliminate the existing requirement in § 1915.93(b)(1)(ii) that employers consult with a person qualified to determine that vessel circuits are in safe condition (proposed § 1915.83(c)(3)). In the preamble to the proposed rule, OSHA explained that eliminating the existing requirement to ascertain the information from vessel's representatives would allow employers to obtain the information from other persons who were qualified to make a determination about the condition of vessel circuits (72 FR 72452, 72462, Dec. 20, 2007). Commenters requested that OSHA make its purpose clear in the text of the final rule (Exs. 104.1; 107.1); therefore, OSHA included the preamble language in the final rule.

Several commenters, including Lake Union Drydock Company, Puget Sound Shipbuilders Association, and Dakota Creek Industries, said that the proposed requirement was too vague and appeared to require that all junction boxes and panels on each vessel be covered before providing shore power (Exs. 101.1; 124; 126; 128; 130.1). OSHA believes that the proposed and final requirement is clear—only circuits "to be energized" need to be checked to determine whether they are in a safe condition. Therefore, if shore power will be supplied to only a portion of the vessel, the final rule requires employers to ascertain that only the circuits affected by the energization are in a safe condition. A good safety practice would be to check the wires and connectors on the vessel to ensure that they are not damaged before providing landside power to the vessel. Since landside power has high amperage, energizing wires and connectors that are damaged could cause an explosion or electric arc that could electrocute or burn workers on the vessel.

Paragraph (d)—Heat lamps

Paragraph (d), as did the proposed rule, requires that employers ensure that heat lamps, including the face, be equipped with surround-type guards to prevent contact with the lamp and bulb. Heat lamps present risks of burns and fire if employees or combustible materials come into contact with the hot elements and surfaces. Fires are a hazard in shipyard employment, especially onboard vessels. Accordingly, paragraph (d), as did the proposed rule, expanded the existing rule in two ways. First, paragraph (d) applies to all heat lamps used in shipyard employment. The existing rule only applied to "infrared electrical heat lamps" (§ 1915.93(c)) even though other types of heat lamps also are used in shipyard employment. The revision ensures that these contact hazards are addressed so employees are fully protected from being burned by accidental contact, and the risk of igniting combustible materials is reduced.

Second, paragraph (d) requires that the entire heat lamp, including the face, be guarded to prevent contact with hot surfaces of the heat lamp. The existing rule did not require that the face be guarded. The face of heat lamps, as with other parts of heat lamps, can become extremely hot. Contacting the lamp face can burn workers and ignite combustible materials. Guarding the face of the lamp will control these hazards. OSHA did not receive any comments on the proposed requirement, including the language expanding the existing provision to make it more protective.

Section 1915.84—Working Alone

Section § 1915.84 addresses the hazards associated with working alone, such as in isolated or confined spaces. As discussed in the preamble of the proposed rule, between 1987–2002 there were 13 fatalities reported in the OSHA IMIS system involving employees working alone and not discovered until after they had died from their injuries (72 FR 72452, 72463, Dec. 20, 2007). The purpose of § 1915.84 is to ensure that employers account for employees working alone, thereby enhancing the safety of these employees. However, if an injury occurs, OSHA believes the requirements in § 1915.84 will reduce the severity of the injury and increase survivability because the requirements will ensure rapid detection and treatment of the injury.

OSHA revised the scope of the final rule to focus on the hazards associated with an employee working alone in an area where others cannot see or hear if the employee is safe or needs assistance. The proposed and existing rules (existing § 1915.94) cover: (1) Employees working in confined spaces, and (2) employees working alone in isolated spaces.

A number of commenters said the rule should only cover employees working alone, while others said the rule should not apply to confined spaces (Exs. 106.1; 115.1; 117.1; 118.1; 132.2; 198, p. 73). With regard to confined spaces, some commenters said the rule was not necessary because they rarely assigned employees to work alone in confined spaces (Exs. 115.1; 118.1; p. 168, pp. 81–84). Other commenters said they use a "buddy system" to ensure that workers are constantly monitored and provided with immediate assistance if an injury or other problem occurs. The U.S. Navy also said the confined space requirements in § 1915.84 were not needed because 29 CFR 1915, subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres, adequately addresses the same hazards (Ex. 132.2).

Electric Boat Corporation added that the requirements in § 1915.84 pertaining to confined spaces should be moved to subpart B (Ex. 108.2). They stated, "This confined space requirement [in § 1915.84] is often overlooked in its current location and moving it to subpart B would consolidate the maritime confined space regulations in one area" (Ex. 108.2). On the other hand, Bath Iron Works said that the requirements in § 1915.84 "have been known to reside in the General Working Conditions section," and, therefore, there was no need to address them in subpart B (Ex. 106.1).

Subpart B addresses work conducted in dangerous atmospheres and in spaces that are confined and enclosed, regardless of the number of employees entering and conducting work in those areas (§ 1915.11(a)). Its primary purpose is to protect workers from atmospheric hazards associated with confined spaces and dangerous atmospheres, including exposure to atmospheric hazards such as toxic or oxygen-deficient atmospheres. Subpart B is narrower in scope and more specific regarding the hazards it addresses than § 1915.84. By contrast, the confined space hazards that § 1915.84 addressed in the proposal, and now in this final, are broader than the hazards addressed by subpart B. Section 1915.84 covers the hazards of employees working alone in confined spaces, regardless of whether atmospheric hazards are present. To ensure that an employee working alone is protected against all of the hazards associated with confined spaces, OSHA believes it is necessary to retain coverage of the confined spaces provisions in § 1915.84.

That said, OSHA agrees with stakeholders that the primary focus of § 1915.84 is to address the hazards of employees becoming injured or ill working alone in areas where others cannot see or hear them, such as in a confined space or isolated location.

Because of this danger, some stakeholders said they use a "buddy system" for work in confined spaces, which involves assigning two workers for the confined space task—one employee who works in the confined space and the another worker who remains outside the confined space and maintains constant communication with the employee inside the space. Using buddy systems, which some stakeholders refer to as "tank watchers" or "hole watchers," serves to emphasize the need to monitor an employee who is in a confined or isolated space and is working alone as specified by § 1915.84 (Exs. 108.1; 202.1). Accordingly, OSHA notes that the buddy system described above is an effective and reliable method employers can use to meet the requirements of § 1915.84. OSHA does not believe employers in shipyard employment should have trouble complying with this requirement because many already use this method to monitor employees working alone in confined or isolated spaces (Exs. 108.1; 202.1).

Northrop Grumman Shipbuilding—Newport News said the focus of § 1915.84 should be on work in isolated or confined spaces on vessels and should not apply to landside facilities and office areas. They added that working in isolated and confined spaces at landside locations "do[es] not present the same risk as shipboard work" (Ex. 116.1). OSHA's existing rule at § 1915.94, which has been in place since 1972, applies to isolated and confined spaces both on vessels and landside. OSHA believes it is necessary for the final rule to apply wherever the hazards of working alone in isolated or confined spaces may occur. OSHA's IMIS data includes reports of many fatalities involving employees working alone in isolated landside locations (Ex. 69). Employees working alone in isolated work locations, whether they are on the end of a distant pier or working in the hold of a vessel, may not be able to summon help if they are injured. In both cases, these workers are at risk of harm if they are not accounted for during, and at the end of the workshift or job. Therefore, the final rule continues to apply to employees working alone, including working in isolated or confined spaces landside or on vessels.

A number of commenters said the rule was not clear about what constitutes an "isolated location," and asked OSHA to define and give examples of the term in the final rule (Exs. 101.1; 105.2; 114.1; 115.1; 118.1; 124; 126; 128; 130.1; 198, p. 73). To address stakeholders' concerns, in § 1915.80(b) OSHA defined "isolated location" as "an area in which employees are working alone or with little assistance from others due to the type, time, or location of their work. Such locations include remote locations or other work areas where employees are not in close proximity to others." The following examples describe work that OSHA considers to be in isolated locations: A lone oiler checking a forward bilge on a vessel; an employee working alone "below deck" or "in the bowels of the ship"; and an employee working alone in a side or ballast tank (Exs. 168, pp. 102–103).

Section § 1915.84 retains the language in the existing rule specifying that the provision does not apply to § 1915.51(c)(3). Section 1915.51(c)(3), which addresses welding, cutting, or heating in a confined space when sufficient ventilation cannot be maintained without blocking its means of access, requires that an employee be stationed outside the confined space to maintain communication with the employee inside the confined space to provide aid in an emergency. OSHA believes that the serious hazards that such working conditions present warrant the specific requirements in § 1915.51(c)(3). OSHA did not receive any comments on the exception.

Paragraph (a)

Paragraph (a) requires that employers account for each employee working alone (1) at regular intervals throughout the workshift, and (2) at the end of the job assignment or at the end of the workshift, whichever occurs first. The proposed rule would have required that employees be "checked frequently." In the final rule, OSHA replaced this term with the term "account for" because OSHA believes that employers may misinterpret checking employees frequently as limiting them only to a visual check. In this regard, OSHA added new language to the final rule that allows employers to account for each employee working alone either by a visual check or through verbal communication. Therefore, OSHA used the term "account for" in this provision of the final rule, which it believes will avoid misinterpretation by more accurately describing the additional means available to employers for monitoring these employees than the term "checked frequently" does.

Paragraph (a)(1) requires that employers account for employees working alone, such as in a confined space or at an isolated location, throughout the workshift at "regular intervals appropriate to the job assignment" to ensure the employees' safety and health. Proposed paragraph (a) would have required that employers check on employees "frequently during each workshift."

A number of stakeholders stressed the importance of checking throughout the workshift on employees working alone (Exs. 114.1; 115.1; 118.1; 125). Other commenters said the requirement to "frequently" monitor employees was too subjective (Exs. 101.1; 124; 126; 128; 198, pp. 73, 99–100; 199, pp. 137–38). Sound Testing, Inc., commented:

> How often is 'frequently'? How often should we check during each work shift? Is the inspection of the confined or isolated spaces performed each work shift or each day by the Shipyard Competent Person 'frequently' enough? (Ex. 121.1).

Some stakeholders said the requirement to frequently check employees posed foreseeable enforcement difficulties stating: "[H]ow do we convince an enforcement officer that we are conducting checks frequently enough?" (Ex. 101.1; 124; 126; 128; 130.1), and "We'll be required to convince an OSHA field inspector that our frequently is as good as or better than his or her concept of frequently?" (Ex. 199, pp. 137–38).

Stakeholders also said the frequency with which they check on employees working alone depends on various factors, including whether the employee is working in a confined space or isolated location, the type of isolated or confined space in which the employee is working, and the type of work the employee is performing (Exs. 168, pp. 97–103, 303–306; 198, pp. 19–20). For example, Roy Martin, of the Shipbuilders Council of America and Manitowoc Marine Group, testified:

> [I]f we are talking about general cargo holds and things of that nature, they are checking on it at least on an hourly basis. If they are in an area which is isolated, such as some of these older vessels, in their side tanks and what have you, they will check on them more frequently, within a 30-minute time frame (Ex. 168, pp. 97–98).

When employees work alone in confined spaces, Bath Iron Works said they may check on the employee as often as every 15 minutes (Ex. 168, p. 305). John Killingworth of Dakota Creek Industries added, "In our case we can pretty much check on employees four times a day, but in confined spaces * * * the need is to be very diligent and perhaps more frequently would be adequate" (Ex. 198, p. 100).

Stakeholders' comments indicate that the proposed rule's approach to the frequency of accounting for employees that are working alone may not be the most protective approach. The stakeholders' comments and discussion of their practices convince OSHA that

requiring employers to account for employees at intervals that are appropriate for the job being performed provides better protection for employees. It ensures that employers will consider all relevant factors in determining what frequency is appropriate for specific jobs requiring employees to work alone, such as in isolated or confined spaces. Accordingly, OSHA revised the final rule so it requires employers to make an individualized, job-specific determination as to what intervals or frequency of monitoring will be adequate to ensure the safety and health of the employee working alone. The factors discussed above will assist employers in making this determination.

OSHA believes that employers will not have difficulty complying with the final rule. The existing rule already requires employers to conduct frequent checks on employees working in confined spaces and alone in isolated locations. Moreover, the record indicates that a number of employers in shipyard employment already are performing job-specific assessments for determining monitoring frequency (Exs. 114.1; 115.1; 118.1; 125; 168, pp. 97–98, 305; 198, p. 100).

Paragraph (a)(2) requires that employers account for each employee working alone at the end of a job assignment or at the end of the workshift, whichever comes first. The proposed rule would have required that employers account for each employee at the end of the workshift (proposed § 1915.84(b)).

Several stakeholders commented that OSHA should revise § 1915.84 to require employers to account for employees at the end of an assignment (Exs. 114.1; 115.1; 118.1; 125; 168, p. 74). For example, Shipbuilders Council of America said:

> Given the nature of this work, accounting for employees is an extremely important procedure. * * * [W]ork in confined space sometimes does not last the span of an entire workshift. * * * Workers should be accounted for when they leave a confined space, which may occur well before the end of a designated shift (Ex. 114.1).

Atlantic Marine Florida said, "[I]f employees are working alone, they are assigned a supervisor, even if he/she is from another craft, to report to when they complete their task and are no longer working alone" (Ex. 115.1).

Stakeholders' comments clearly demonstrate the safety and health benefit of requiring employers to account for employees at the end of any job assignment that involves working alone. This requirement provides employers with timely information that employees working alone are safe, as well as timely warning that they may be injured and need assistance. Because end-of-assignment checks are common practice in shipyard employment, OSHA believes that employers will comply readily with this requirement.

When job tasks extend beyond a workshift, paragraph (a)(2) requires employers to check on employees who are working alone at the end of such a workshift. In the preamble to the proposed rule, OSHA explained that this provision would ensure that employers ascertain that each employee working alone has returned safely. If this is not the case the employer must take immediate action to locate the missing employee (72 FR 72452, 72463, Dec. 20, 2007). Review of shipyard employment fatality data indicates that some employees working alone were not discovered until long after their shifts ended and the time for effective medical intervention had passed. *Id.* Requiring an end-of-workshift check if the job assignment has not been completed will ensure that employees who are assigned to work alone will not be unintentionally deserted at the end of their workshift if they are injured and need help.

Paragraph (b)

Final paragraph (b) adds the requirement that the employer account for each employee by sight or verbal communication. Neither the proposal nor the existing rule has such a requirement. Through comments submitted and testimony heard, the Agency received information that stressed the importance of communication methods used in accounting for employees that are working alone, such as in a confined space or an isolated location. Electric Boat stated that "a verbal response from a worker inside a confined space to a person checking on them should be an acceptable method to verify an employee's safety" (Ex. 108.2).

In proposed § 1915.84, OSHA requested information pertaining to specific methods for checking on employees who are working alone. The regulated community responded with many examples (Exs. 106.1; 108.2; 114.1; 115.1; 116.2; 117.1; 118.1; 119.1; 120.1; 129.1; 168, pp. 101–103, 234–235, 304–305; 198, pp. 19–20, 50–51, 101–102, 114–115; 202.1). Similar to other commenters, Electric Boat explained that at one of their facilities, "tank monitors in combination with a radio type system is used to monitor tank entrants" (Ex. 108.2). Both the tank monitor and the entrant are issued hand-held radios, which the entrant uses to not only notify the monitor that they entered the space, but to respond to frequent checks at twenty-minute intervals. Similar to Electric Boat, Atlantic Marine uses verbal radio communication to verify the safety of its employees, or has employees physically climb into the space to observe employees who are working alone (Exs. 115.1; 118.1). Manitowoc Marine Group explained that they use a combination of verbal checks through radio communication, as well as visual checks during muster held at the end of each job assignment or workshift (Ex. 168, pp. 98–100).

Alternative methods of communication that have low reliability, such as noise from power tools, whistles, or tapping on tank walls, bulkheads, or decks, would not comply with paragraph (b). To illustrate, if a supervisor accounting for an employee in a confined space hears power-tool noise coming from the confined space, that noise cannot be relied on to verify that the employee is safe. The tool noise may indicate that the employee is safe or it might mean that the employee is unconscious or injured, and the power tool is still running. Hence, OSHA has determined that, when employers use verbal communication to check on employees working alone, communication must include both parties speaking.

In the proposed rule, OSHA requested comment on whether the Agency should add a provision to § 1915.84 requiring employees to establish a system of leaving a picture identification or other signal (for example, a flag) outside the entrance of a confined space, to indicate when an employee enters a confined space alone to perform work (72 FR 72463–72464, Dec. 20, 2007). A few stakeholders have such a system or support having one (Exs. 118.1; 129.1; 198, pp. 100–101). However, the majority of stakeholders who commented on this issue did not support adding that requirement to the final rule (Exs. 106.1; 114.1; 115.1; 116.1; 117.1; 120.1; 125; 132.2; 198, p. 101).

Some stakeholders said a photo identification or signal system would not be effective (Exs. 106.1; 108.1; 132.2). Electric Boat said that "badges or picture identification left at the entrance [of a confined space] may not be the best method due to their small size" (Ex. 108.1). American Shipbuilding Association agreed, saying that when "a single employee has to enter an isolated or confined space, there is usually no one else there to notice a flag, picture, or signal anyway, thus negating the

purpose of such a requirement" (Ex. 117.1). The Navy added that it believed frequent checks and proper supervision are an adequate and a more practical solution than a picture identification system (Ex. 132.2). John Killingsworth, of Dakota Creek Industries, raised a similar objection stating: "Personally, as [a Shipyard Competent Person], I'm going to tanks alone. It may be 20 [confined] spaces on a vessel that I visit every single day. I'm not going to hang a tag at every hatch as I go in and come out. That would be impractical" (Ex. 196, pp. 100–101).

Northrop Grumman Shipbuilding—Newport News said it evaluated whether to implement such a system but determined it was not desirable, noting:

> Many spaces have multiple means of access and it is not feasible or desirable to require an employee to use the same opening for access and egress. In particular, in the event of an emergency, employees are taught to use the closest means of safe egress. If this is not the same access as their "identifiable flag", an emergency responder may falsely believe someone is in the space and be placed in danger looking for the individual. We have found the combination of frequent checks and end of shift checks to be adequate (Exs. 116.1; 120.1).

After reviewing the record as a whole, OSHA decided not to require employers to establish a picture or signal identification system at entrances of confined and isolated spaces where employees are working alone. Rather, the Agency concluded that employers must account for each employee by either sight or verbal communication to ensure their safety.

Finally, OSHA reminds employers to ensure that, when employees discover a non-responsive employee in a confined space or isolated location, no one enters the area without taking appropriate precautions in accordance with 29 CFR part 1915, subpart B and other applicable existing OSHA standards. Paragraph (b) of the final rule requires that employers must account for each employee by sight or verbal communication, but safe entry practices set forth in other OSHA standards, such as 29 CFR 1915, subpart B, still apply when employers face an emergency rescue situation.

Section 1915.85—Vessel Radar and Communication Systems

Section 1915.85 specifies requirements to protect employees working on or near vessel radar and communication systems. If precautions are not taken, these workers may be exposed to radiation (for example, radio frequency radiation). They also may be electrocuted or struck by the antennas or other components if the system activates, energizes, or releases hazardous energy.

The final rule, like the proposed provisions, expands the scope of the existing rule, which solely addressed radiation hazards, to cover both radiation and other energy hazards. OSHA believes this change is necessary to ensure that employees are protected from other serious hazards associated with operating and servicing radar and communication systems. For example, employees working aloft on a system's antenna could be injured or killed if the system activates and the antenna moves, striking an employee and causing the employee to fall.

The proposed rule referred to radars and radio transmitters. For example, proposed paragraph (a) requires the employer to "secure each radar and radio transmitter so it is incapable of energizing or emitting radiation before any employee begins to work on it." Some stakeholders commented that the terms "radar" and "radio transmitter" were not clearly explained (Exs. 101.1; 121.1; 124; 126; 128; 130.1). For example, Philip Dovinh of Sound Testing, Inc. said:

> Are the little two-way handheld radios, CB radios, or heavy duty radars and sonar equipment capable of transmitting and receiving communication signals, such as those installed on large [fish processing vessels], container vessels, Navy and [U.S. Coast Guard] vessels all applicable under the requirements of this section? (Ex. 121.1).

American Seafoods Company and Northrop Grumman—Newport News were unclear whether proposed § 1915.85 also applied to hazards associated with sonar (Exs. 105.1; 116.2). Northrop Grumman recommended that § 1915.85 should not apply to sonar because sonar and radar are different technologies: "Sonar does not pose a radiation hazard. Sonar repair and testing may involve electrical or acoustical hazards" (Ex. 116.2; 120.1).

In response to stakeholder comments, OSHA has revised the language of § 1915.85 to more clearly indicate that this section addresses the radiation, electrical, and struck-by hazards associated with operating and servicing radar and communication systems. It is these system components, particularly antennas and transmitters, that emit radiation, may electrocute employees, or may move and strike employees working on or near them. However, if these components cannot emit radiation at levels that could injure workers in the vicinity, or cannot electrocute or strike workers if the system suddenly activates, the requirements of § 1915.85 would not apply. In addition, this section does not apply to sonar. OSHA agrees that the hazards associated with sonar are not the same as hazards associated with radar and communication systems.

Although the scope of § 1915.85 covers shipbreaking operations, OSHA notes that it is unlikely that radar and communication systems would be operational when workers perform shipbreaking operations. If the hazards associated with radar and communication systems are not present in these operations, then § 1915.85 does not apply. However, to the extent that radiation hazards or hazardous energy are present in shipbreaking operations, the employer must protect workers from the risk of injury.

Paragraph (a)

Paragraph (a) requires that employers service vessel radar and communication systems in accordance with the requirements of 29 CFR 1915.89, the lockout/tags-plus standard for shipyard employment. Under final § 1915.89, employers must implement a lockout/tags-plus program for all servicing operations when machinery, equipment, or systems could activate. Such a program requires the use of lockout/tagout applications; implementation of procedures for the safe servicing of machinery, equipment, and systems; and employer training of employees. In addition, final § 1915.89(a)(3) specifies that, when other standards in part 1915, and applicable standards in part 1910, require the use of a lock or tag to protect workers from the risk of equipment activation or energization, employers are required to supplement such protections with the procedural and training requirements in final § 1915.89.

The proposed rule contained the same requirement (proposed § 1915.85(b)). The existing rule, on the other hand, only required that employers put tags on radar and communication-system components prior to starting work. OSHA believes that requiring compliance with the procedural and training requirements of final § 1915.89 will provide greater protection for workers than the existing rule. It will require employers to use energy-isolating measures that provide a physical barrier to the hazards of equipment activation and also will ensure that all employees involved in the servicing operations follow consistent and uniform procedures in all servicing operations. As OSHA said in the preamble to the proposed rule:

> [M]ore detailed [control of hazardous energy] procedures are needed to ensure that employees are fully protected from the movement or start up of equipment and the

release of hazardous energy. Tagging the equipment without complying with the rest of the proposed [control of hazardous energy] program and procedures does not ensure that employees will be fully protected, especially those working in multi-employer worksites or in situations where ship's crew are present (72 FR 72452, 72464, Dec. 20, 2007).

OSHA simplified the language in paragraph (a) by using the term "servicing" in place of the proposed language (for example, "servicing, repairing, or testing"). OSHA made the same revision in final § 1915.89(a). As discussed in the summary and explanation of final § 1915.80(b), OSHA defines "servicing" to include a variety of activities including testing and repairing machinery, equipment, or systems, that may expose employees to the risk of injury from the startup, energization, or the release of hazardous energy. OSHA believes that using consistent language in § 1915.85 and § 1915.89 will make the provisions easier for employers to understand and facilitate compliance.

Paragraph (b)

Paragraph (b) requires employers to secure each radar and communication system so it is incapable of energizing or emitting radiation before an employee begins work:

- On or in the vicinity of the system (paragraph (b)(1));
- On or in the vicinity of a system equipped with a dummy load (paragraph(b)(2)); or
- Aloft, such as on a mast or king post (paragraph (b)(3)).

The proposed rule (paragraph (a)) contained a similar requirement. The existing rule is similar but only pertains to radiation hazards.

Northrop Grumman Shipbuilding—Newport News recommended that OSHA revise paragraph (b) to require that employers secure a system that is equipped with a "dummy load" prior to beginning work on or near the vicinity of the system's antenna (Exs. 116.2; 120.1). A dummy load is a device used in place of an antenna to aid in testing radio transmitters. It is substituted for the antenna that is being tested so that the transmitter does not interfere with other radio transmitters during the adjustments. The dummy load converts transmitted energy into heat so that little to no energy radiates outward or reflects back to its source during testing. Northrop Grumman explained:

Certain radar systems are designed to redirect energy into a dummy load in order to make adjustments to the system without emitting to free space. This is a necessary step in the maintenance of radar systems and this safety feature is built into the system to allow it to be performed safely (Exs. 116.2; 120.1).

Although dummy loads are designed to minimize radiation emissions, they still may emit some radiation. Therefore, OSHA agrees with Northrop Grumman that employers also need to secure systems equipped with dummy loads before employees begin work on or in the vicinity of these systems.

Paragraph (c)

Paragraph (c) requires that, when a vessel's radar or communication system is operated, serviced, repaired, or tested, employers must ensure that (1) no other work is in progress aloft, and (2) no employee is closer to the system's antenna or transmitter than the manufacturer's "minimum safe distance" for the type, model, and power of the equipment. The proposed and existing rules both require that employers schedule testing of radar and communication systems when no work is in progress aloft or when personnel are cleared to a minimum safe distance from the danger area, with employers following the minimum safe distances established for the type, model, and power of the equipment by the manufacturers of the equipment.

One stakeholder implied that the term "minimum safe distance" is vague and subject to misinterpretation. Philip Dovinh of Sound Testing, Inc., said:

Which safety parameters should be used in making the determination of minimum safe distance? "Minimum safe distance" in one operation may not be sufficient in another. Not only that, applying "minimum safe distance" alone does not guarantee complete worker safety (Ex. 121.1).

Many stakeholders recommended that OSHA revise paragraph (c) to require employers to follow the minimum safe distance established by the manufacturer for the particular type, model, and power of the vessel radar or radio-frequency-emitting system being operated or serviced (Exs. 101.1; 104.1; 105.1; 107.1; 124; 126; 128; 130.1; 199, p. 138). The Agency is persuaded that requiring employers to follow manufacturer's specifications on safe distances will provide greater protection for workers. The requirement will ensure that the safe distance that must be maintained will be specific and designed for the equipment installed. It also will guarantee that safe distances represent current manufacturing practices. In addition, the requirement establishes objective criteria, which should be easier for employers to understand and follow.

Paragraph (d)

OSHA is adding a new provision to § 1915.85 that requires employers to ensure that no worker enters an area designated hazardous by the manufacturer's specifications while a radar or communication system is capable of emitting radiation. OSHA added this provision in response to stakeholder comments that language in proposed § 1915.85 was unclear, ambiguous, and open-ended (Exs. 104.1; 105.1; 107.1; 121.1; 199, p. 138). For example, American Seafoods Company commented: " 'Near' is a subjective term; it would be better to specify that we follow the minimum safe working distance established by the manufacturer for the particular type, model and power of the equipment being worked on as is done in paragraph (c)" (Ex. 105.1).

Other stakeholders made a similar recommendation (Exs. 101.1; 104.1; 120.1; 124; 126; 128; 130.1). For the reasons specified above in the discussion of paragraph (c) of this section, OSHA believes that requiring employers to keep all employees outside the area designated as hazardous by the manufacturer's specifications until the systems are rendered incapable of emitting radiation will enhance worker protection.

Paragraph (e)

OSHA added a new paragraph (e) to the final rule to clarify that the requirements of this section do not apply when a radar or communication system is incapable of emitting radiation at levels that could injure workers in the vicinity of the system, or when the radar or communication system is incapable of energizing in a manner that could injure employees working on or in the vicinity of the system. This paragraph responds to comments noting that some small communication systems, such as two-way handheld radios or CB radios, may not expose employees to the hazards this section addresses (Ex. 121.1). This provision also makes clear that employers need not comply with this section when radar systems are inoperative, such as radar systems aboard vessels being dismantled, as discussed above.

Section 1915.86—Lifeboats

Paragraph (a)

Paragraph (a) requires the employer to ensure that, before employees work in or on a stowed or suspended lifeboat, the lifeboat is secured independently of the releasing gear to prevent it from falling or capsizing. Securing the lifeboat in such a manner will prevent

it from falling if the releasing gear is accidentally tripped or the davits move. It also prevents lifeboats that are stowed on chocks from capsizing. The proposed and existing rules contained the same requirement, and OSHA did not receive any comments on the proposal.

Paragraph (b)

Paragraph (b) requires that employers prohibit employees from being inside a lifeboat while it is hoisted or lowered. The final rule also adds two exceptions to the prohibition. Employees may be in a lifeboat that is being hoisted or lowered (1) when the employer demonstrates that it is necessary to conduct operational tests or drills over water, or (2) in the event of an emergency. Proposed paragraph (b) did not include any exceptions to the prohibition against employees being in a lifeboat while it is being hoisted. The existing rule at § 1915.96(b) only prohibits employees from being in lifeboats when they are hoisted into the "final stowed position," which allows employees to be in lifeboats while they conduct sea trials and drills over water.

Many commenters, including Trident Seafoods Corporation, American Seafoods Company, Northrop Grumman—Newport News, Lake Union Drydock Company, and Sound Testing, Inc., said that the complete prohibition in proposed paragraph (b) was impractical because there may be times when workers need to perform tasks in a lifeboat while it is being hoisted or lowered. For example, stakeholders said employees may need to be in lifeboats during sea trials and drills over water, particularly when the hoisting and lowering mechanism is inside the lifeboat, and during emergencies (Exs. 101.1; 104.1; 105.1; 107.1; 116.2; 120.1; 121.1; 124; 126; 128; 130.1; 199, pp. 274–275).

OSHA believes that there is an inherent danger in allowing employees to be in lifeboats when they are hoisted or lowered, and not just when they are hoisted into the final stowed position. As noted in the preamble to the proposal, several fatalities and serious injuries occurred when employees were working in lifeboats (72 FR 72452, 72464, Dec. 20, 2007). That said, the Agency recognizes that there may be some limited situations when employees need to be inside lifeboats as they are raised or lowered. However, OSHA believes that any exceptions to the prohibition must be specific and narrow. Therefore, the final rule provides an exception, but only for the limited situations of conducting operational tests or drills over water or in the event of an emergency.

Paragraph (c)

Paragraph (c) requires that employers prohibit employees from working on the outboard side of any lifeboat that is stowed on its chocks unless the lifeboat is secured to prevent it from swinging. As noted in the preamble to the proposed standard, if the lifeboat is not secured prior to employees working on its outboard side, the lifeboat could swing out and strike an employee, causing the employee to fall (72 FR 72452, 72464, Dec. 20, 2007). The proposed and existing rule contained the same requirement, and OSHA did not receive any comments on the proposal.

Section 1915.87—Medical Services and First Aid

This section sets out requirements for medical services, first aid, and lifesaving equipment. Shipyard employment involves many workplace activities that are inherently dangerous, some of which take place on moving vessels or outdoors during harsh weather conditions. The potential for severe or even fatal injuries is supported by data of actual injuries and fatalities, described in the preamble to the proposal (72 FR 72452, 72453, Dec. 20, 2007). The provisions in this section will ensure that workplace accidents are responded to in a manner that mitigates the severity and increases survival from life-threatening injuries/illnesses.

The final rule combines, as necessary, the existing standards on medical services and first aid that are applicable to shipyards (§ 1910.151 and current § 1915.98). OSHA adopted both standards in 1971, pursuant to section 6(a) of the OSH Act, from the established Federal occupational safety and health standards in effect at the time. Medical services, first aid practices, and related supplies and equipment have changed over the last four decades. Therefore, a revision of the current standards was necessary. The provisions in § 1910.151 apply to shipyards to the extent that those provisions address hazards and working conditions that this final rule does not (see Ex. 81, OSHA's "Shipyard Employment 'Tool Bag' Directive").

Paragraph (a)—General Requirement

Paragraph (a) requires employers to ensure that emergency medical services and first aid for employees are readily accessible. The purpose of this provision is twofold. First, it establishes uniform criteria applicable to all of the first aid and medical services specified in the section, ensuring that these services are available and close enough to the injured/ill employee so that appropriate intervention can be provided. Second, in the case of a serious or life-threatening injury/illness, it requires employers to have steps in place to ensure that additional emergency medical intervention is readily accessible. The provision also addresses SESAC's concerns that first aid providers be able to reach injured employees quickly enough to render effective assistance.

For this final rule, OSHA has included requirements for employers to deliver first aid or medical services in the event of illnesses as well as injuries. OSHA recognizes that first aid and medical services may be required at a worksite to treat not just work-related injuries but also acute illnesses that are often work-related, such as asthma attacks, heart attacks, heat-related illnesses, or severe reactions to contaminants or fumes.

Uniform criteria for all first aid and medical services are necessary because their components, primarily first aid providers and first aid supplies, are interrelated. They both must be readily accessible for intervention to be effective. It is not effective to require that first aid kits be situated at every worksite without a parallel requirement to have trained employees at the worksite who are capable of using those supplies. Conversely, on-site trained first aid providers cannot provide effective assistance if first aid supplies are too far away to be accessed quickly. Thus, establishing uniform criteria ensures that the components of first aid and medical services are in place to provide effective intervention when needed. Uniform provisions simplify the section and make understanding and compliance easier for employers.

With regard to the second purpose, the provision requires employers to ensure that additional emergency medical services such as rescue squads and ambulances are readily accessible. OSHA notes that some shipyards, primarily larger ones such as Northrop Grumman Shipbuilding—Newport News, Manitowoc Marine Group, and Bath Iron Works, already have taken these steps by establishing their own on-site medical clinics and ambulance or rescue squads (Exs. 116.2; 120.1; 168, pp. 87–89, 258–261). This provision does not require shipyard employers to have on-site clinics, ambulances or rescue squads, but it does require employers to implement a system to ensure that emergency medical services such as local rescue squads or ambulance services are readily accessible when needed. The employer, in determining how to meet the

requirements of § 1915.87, needs to factor in reasonably foreseeable delays, such as railroad tracks that could be blocked when rescue squads need to access injured/ill employees in the shipyard.

Comments were received on proposed paragraph (a) requesting a definition for "readily accessible" (Exs. 105.1; 115.1; 118.1; 121.1; 199, pp. 138, 263, 272). In response to those comments, and for purposes of this section, "readily accessible" is defined in final § 1915.80(b)(23) as capable of being reached quickly enough to ensure that medical services and first aid interventions are effective. Whether originating in the shipyard or provided by an outside service, medical services and first aid must be provided in a timeframe that will ensure their effectiveness in treating an injured or ill employee. Medical services that can be delivered quickly enough to the employee to be effective would be considered readily accessible.

Paragraph (b)—Advice and Consultation

Paragraph (b), which carries over the same language from the proposal, requires employers to ensure that healthcare professionals are readily available for advice and consultation to the employer on matters of workplace health. Implicit in this provision is the necessity for employers to fully understand what hazards are present in their workplace. For example, employers must understand that some materials that their employees work with may contain hazardous components. Although material safety data sheets (MSDSs) provide the employer with an abundance of health-related information on various materials that employees may be working with, this provision ensures that if the employer has any questions that cannot be answered by MSDSs or similar resources, they will have a healthcare professional at their disposal with whom to discuss specific workplace health issues. OSHA received limited comments on this provision and is carrying the provision forward in this final standard as proposed.

American Seafoods Company requested a clear definition for "healthcare professional" (Ex. 105.2). The Agency believes that the definition of "healthcare professional" provided in the "Scope, application, and definitions" section of this subpart (§ 1915.80(b)) clarifies whom employers should consult. As defined, "healthcare professional" means a physician or other licensed healthcare provider whose legally permitted scope of practice allows the provider to independently provide, or be delegated the responsibility to provide, some or all of the advice or consultation this subpart requires. This definition includes doctors, nurses, nurse practitioners, osteopaths, EMTs, or other health care providers whose license, registration, or certification authorizes them to provide such assistance and advice. A safety professional, unless he or she was also a licensed healthcare provider, would not meet the criteria set forth in this definition. The key to meeting this requirement is that the healthcare professional must be readily available to provide advice and consultation when needed.

American Seafoods Company also questioned what kind of consultative availability OSHA expects of the healthcare professional (Ex. 105.2). Rather than impose prescriptive requirements on employers, this provision allows employers to seek the information from the appropriate source in a timely manner, given the circumstances. For instance, if an employee complained about headaches and dizziness at the workplace while working with a chemical compound, and the MSDS sheet for that compound did not address the particular symptoms, the provision ensures that the employer would have a readily available healthcare professional to consult for additional advice.

The employer should not wait until the need arises before beginning the search for a healthcare professional. A facility that has an on-site medical service staffed by a healthcare professional could consult with that individual. Facilities that do not have on-site healthcare providers may consult with local physicians who have knowledge of workplace health issues, contact their insurance companies, or request assistance from organizations such as medical schools or state departments of health to locate a healthcare professional who is familiar with workplace health hazards. The employer should acquaint the healthcare professional with the particular conditions of the workplace, including the size of the facility, the types of materials employees are using, and potential health hazards that are present.

Paragraph (c)—First Aid Providers

Paragraph (c) sets forth the requirements for the number and availability of first aid providers; training; and certification.

Paragraph (c)(1) requires an adequate number of employees trained in first aid at each worksite on each workshift unless the employer either (a) has an on-site clinic or infirmary that is staffed with first aid providers during each shift, or (b) can demonstrate that outside first aid providers can reach the worksite within five minutes of a reported injury or illness.

The final rule uses the word "worksite" rather than the proposed term "work location." The Agency received many comments that the term "work location" was vague and/or undefined (Exs. 101.1; 105.2; 114.1; 115.1; 118.1; 121.1; 124; 125; 126; 128; 130.1). In response to these concerns, and to clarify the terms used in the final rule, OSHA has adopted the term "worksite" and defined it to mean a general location where one or more employees are performing work, such as a shipyard, pier, barge, vessel or vessel section (§ 1915.80(b)(38)). The term does not mean a single "work area," which is also defined in the final rule and means a specific area such as a machine shop, engineering space, or fabrication area where one or more employees are performing job tasks. A shipyard may have hundreds of work areas, with only one or a few employees working in any one of those areas. In this final rule, a shipyard "worksite" refers to a group of work areas that are in near proximity to each other. For instance, all of the work areas in a small, concentrated shipyard may constitute a single worksite, even though some areas may be located on a vessel and others landside. By contrast, a large shipyard that has multiple piers, docks, large vessels, and landside facilities that are spread across a wide area would be considered to have multiple worksites. In these shipyards, it is unlikely that a first aid provider located in one worksite would be able to reach all worksites within the shipyard quickly enough to provide effective intervention. Accordingly, OSHA believes that each worksite must have an adequate number of first aid providers to ensure that timely intervention is provided to injured/ill employees working at a work area within that worksite. By comparison, a single work area distantly located from other work areas may, of necessity, be considered a worksite because first aid providers in other work areas would not be able to reach the area quickly enough to effectively aid an injured/ill employee.

Several commenters questioned the meaning of "adequate number" (Exs. 104.1; 105.1; 107.1; 115.1; 118.1; 125). As Trident Seafoods stated, "The term 'adequate number' is subjective. What is adequate to one group may not be to another" (Exs. 104.1; 107.1). In contrast, another commenter, speaking about the word "adequate," stated: "I do like the

word adequate. It gives us a leeway of making some determination of what we feel is right for our particular situation" (Ex. 198, p. 228).

This final rule provides employers with guidance on how to make that determination rather than prescriptively require them to follow a formula. To that end, paragraph (c)(3), which was carried over unchanged from proposed paragraph (c)(1), sets forth several objective factors for employers to consider that should assist them in making a determination of how many trained first aid providers would be needed at their worksite. These factors are:

- The size and location of each shipyard worksite;
- The number of employees at each worksite;
- The hazards present at each worksite; and
- The distance of each worksite from hospitals, clinics, and rescue squads.

Employers applying these factors should bear in mind that accidents involving electrical shock resulting in heart or breath stoppage must be treated within a short time (optimally within three to five minutes) to increase the chances of a positive outcome. To the extent that these types of accident risks are present in shipyards, such as when servicing electrical systems where there is a risk of electrical shock, it is necessary to have first aid providers located at the worksite so cardiopulmonary resuscitation (CPR) can be started quickly. Similarly, when work tasks involve a risk of injury that could result in severe bleeding, first aid must be quickly administered to maximize the injured employee's survivability. OSHA believes that while the list of factors provided in this provision of the regulatory text is not an exhaustive one, it should assist employers in determining an adequate number of first aid providers.

The Agency received several comments from employers regarding the number of employees trained in first aid. Roy Martin testified that approximately 35 of 600 employees at the Manitowoc Marine Group are trained in first aid (Ex. 168, p. 150). James Thornton testified that, at the Northrop Grumman Shipbuilding—Newport News facility, approximately 1,000 of 20,000 employees are trained to provide first aid (Ex. 168, pp. 356–357). Kim Hodne from Alaska Ship and Drydock testified that "probably 15 to 20 percent of our workforce is first aid/CPR trained" (Ex. 198, p. 103). Doug Dixon of Pacific Fishermen Shipyard and Electric, LLC, noted that his shipyard, which employs 50 to 70 union and 17 non-union workers, has 15 first aid providers (Exs. 168, pp. 162–163; 198, p. 232). OSHA does not mean for these numbers to represent a preferred percentage of employees who should be trained in first aid. Rather, these examples illustrate that, even under the current § 1915.98(a) rule requiring a single first aid provider, shipyards have assessed their needs for first aid providers, and have trained multiple employees accordingly.

The final rule adds flexibility to proposed paragraph (c)(1), which required employers simply to ensure that each work location and each shift have an adequate number of employees qualified to render first aid, including cardiopulmonary resuscitation (CPR). Paragraph (c)(1)(i) permits the employer to have an on-site clinic or infirmary with first aid providers during each workshift as an alternative to the requirement to have an adequate number of employees trained in first aid.

Several large shipyards described their on-site medical facilities and their capacity to deliver first aid and other medical services. Bath Iron Works testified:

> We have an on-site physician that is there 40 hours a week along with six nurses. We also have a physical therapy ward along with two physical therapists on site. We have five emergency medical technicians that are trained on site in the facility, and I have got two on night shift and three on day shift. We have an ambulance on site. We also have a fire department, we have 35 fire brigades, employees that provide support if need be (Ex. 168, pp. 258–259).

Northrop Grumman Shipbuilding—Newport News stated that, in addition to having first aid-trained employees:

> We operate an onsite medical clinic with licensed medical practitioners, as well as a 24/7 emergency medical and fire response organization equipped with ambulances and Advanced Cardiac Lifesaving equipment (Ex. 116.2; 120.1).

OSHA recognizes that this alternative to having an adequate number of first aid-trained employees is, for the most part, practical only for larger shipyards that have the physical space and budget to provide an on-site clinic or infirmary. For smaller shipyards, or any shipyard that does not have an on-site clinic or infirmary staffed by individuals able to provide first aid, paragraph (c)(1)(ii) permits employers to demonstrate that outside first aid providers can reach the worksite within five minutes of a report of injury/illness. The employer is also required to take appropriate steps to ascertain that emergency medical services will be readily available if an injury/illness occurs. These conditions are a shipyard employer's second alternative to ensuring an adequate number of first aid-trained employees.

Several employers commented that they either rely solely on outside emergency medical services or use a combination of first aid-trained employees and outside emergency medical services. Fishing Vessel Owners Marine Ways, Inc. testified:

> Yes, when we rely on 911, we have dock 1 [and] 2 and 3 is the cement dock on the left, dock 4 is the one next to it on the left. At the end of that dock is a fire department, and that's the proximity of medical services for us, emergency medical services (Ex. 198, p. 212).

Petersburg Shipwrights, Inc., stated: "At least half of our staff are trained in first aid [and] CPR" (Ex. 198, p. 212). This employer also described an accident where they called in the local fire department: "They were at the site within three minutes. A person with a cell phone on the dock called immediately. * * * He's fine. He's pretty well stitched up * * * He's got a nice little slice on his neck from a grinder" (Ex. 198, p. 213).

The proposed rule did not require arrival of first aid services within a set timeframe. However, the proposal discussed the types of severe injuries, such as electrical shock resulting in heart or breath stoppage, that require near-immediate treatment. Thus, the Agency solicited comments regarding the sufficiency or appropriateness of a maximum response time, such as three to five minutes, after discovery or report of an injury (72 FR 72452, 72465, Dec. 20, 2007).

Several commenters described their experiences with the response time of off-site services. Bath Iron Works reported that, while they rely on an on-site ambulance staffed with EMTs to provide emergency treatment during the first and second shift, "During the 3rd shift, BIW relies on a city ambulance that responds to emergencies within 3 to 5 minutes" (Ex. 106.1). Kim Hodne of Alaska Ship and Drydock testified that it takes less than three minutes for the closest EMT facility to respond to calls from the shipyard (Ex. 198, p. 128). John Killingsworth of Dakota Creek Industries stated that it takes five or six minutes for the EMT responders to reach a victim located on the bottom deck of the largest vessel (Ex. 198, p. 129). Dick Webster from Petersburg Shipwrights noted that it could take up to 10 minutes for a responder just to reach an injured employee if, for example, the employee was in the bottom of a 400-foot barge that required crossing 18-inch beams every six feet (Ex. 198, pp. 235–236).

To allow for the occasional difficulty of reaching an injured/ill employee below deck or in a confined space, the final rule sets a five-minute limit for off-site responders to reach the worksite, not the victim. This provision acknowledges that, even under the best of circumstances with an EMT service located within a few blocks of the shipyard, there are times when it would be impossible for the off-site service to reach an injured/ill employee within five minutes. Dakota Creek Industries described a system of working with off-site responders when an employee is injured in a confined space on a vessel:

> We've come to an agreement [with off-site responders] that the shipyard will, through its, you might say its confined space rescue team, handle the victim, as it were, from the vessel to the ground, and then we would rely on the paramedics to provide the victim care during that period. When the victim hits the ground, however, the paramedics take over using their own equipment and provide whatever is necessary from there (Ex. 198, p. 105).

Notwithstanding the leeway that OSHA gives employers by requiring off-site first aid providers to reach the worksite, rather than the victim, within five minutes, paragraph (c)(2) states that employers must ensure that a first aid provider is able to reach an injured employee within five minutes of a report of serious injury/illness, such as one involving cardiac arrest, acute breathing problems, uncontrolled bleeding, suffocation, electrocution, or amputation. Prompt, properly administered first aid may mean the difference between rapid or prolonged recovery, temporary or permanent disability, and even life or death. For example, the American Heart Association found that when resuscitation and automatic external defibrillation are delivered within three to five minutes, reported survival rates from sudden cardiac arrest are as high as 48 to 74 percent (Ex. 58). Studies have shown that for each minute sudden cardiac arrest is not treated, the probability of reviving the heart decreases by 7 to 10 percent (Exs. 57; 58). These data indicate that having responders at the worksite promptly could significantly increase the survival rates for injured/ill employees. Thus, if there is a possibility of a life-threatening injury/illness occurring somewhere in the shipyard, including aboard vessels, where the injured/ill employee could not be reached by an off-site responder or first aid providers from the employer's on-site infirmary within five minutes, the employer must ensure that another first aid responder could reach the victim within five minutes of the injury being reported to assist the victim until other emergency personnel, who will have more expertise in treating emergencies, arrive.

For example, performing CPR immediately can help to preserve heart and brain function until local emergency services are able to provide further medical treatment, such as administering oxygen or using an automated external defibrillator (AED) to restore normal heart rhythm. According to OSHA's Integrated Management Information System (IMIS), there were 13 fatalities in shipyards that were deemed "heart attack" or "coronary" within a 15-year period. Out of those 13, only 4 reports documented any basic life support, such as CPR, prior to rescue squads arriving on the scene. Even for injuries that are not immediately life-threatening, timely first aid can reduce further injury and significantly aid recovery by, for example, immobilizing fractures, reducing blood loss, or providing warmth for shock victims.

The five-minute response time is consistent with an OSHA letter of interpretation (Ex. 212; OSHA letter of interpretation to Charles F. Brogan, Jan. 16, 2007) that explained what "reasonably accessible" means with regard to off-site emergency-response services:

> [T]he requirements that emergency medical services must be "reasonably accessible" or "in near proximity to the workplace" are stated only in general terms. * * * While the standards do not prescribe a number of minutes, OSHA has long interpreted the term "near proximity" to mean that emergency care must be available within no more than 3–4 minutes from the workplace, an interpretation that has been upheld by the Occupational Safety and Health Review Commission and by federal courts.

Paragraph (c)(3), listing the factors that an employer must use in determining the number and location of employees who must have first aid training, is discussed above under paragraph (c)(1).

Paragraphs (c)(4) and (c)(5) require the employer to ensure that its first aid providers are trained to render first aid, including cardiopulmonary resuscitation (CPR), and maintain current first aid and CPR certification from the Red Cross, American Heart Association, or other equivalent organization. Although some shipyard employees may have received training in the past, appropriate and up-to-date training is necessary to ensure that injured employees receive correct intervention, since lack of training can also result in a lack of treatment when it is needed.

This provision is designed to give employers maximum flexibility in developing a first aid training program that is appropriate for the types of working conditions and hazards in their workplaces. With one exception, CPR training, the standard does not establish the specific content of the required first aid training program that employers must follow. As long as the certificate is issued by a responsible organization, such as the American Red Cross, the American Heart Association, or other equivalent organization that requires successful course completion as evidence of qualification, the requirements of the final rule would be met. Likewise, the final rule does not specify a frequency for first aid refresher training. The employer must comply with the frequency the certifying organization requires for retaining certification, usually two years.

In the proposal (72 FR 72452, 72467, Dec. 20, 2007) OSHA requested comments on whether the Agency should include in the final rule an appendix on the requirements of a first aid training program, similar to that in § 1910.266 or 1918.97, to ensure that employees are fully trained by qualified instructors. Topics under consideration included respiratory arrest, cardiac arrest, lacerations/abrasions, shock, burns, and loss of consciousness. Only the U.S. Navy commented on this issue: "A non-mandatory appendix outlining basic first aid training in CPR, assessing and stabilizing injured personnel[,] and wound treatment would be helpful" (Ex. 132.2). Due to the minimal comments received on this issue and the requirement in this final standard that employers must ensure that first aid providers are trained to render first aid (including CPR), as well as maintain current first aid and CPR certifications such as those issued by the Red Cross, American Heart Association, or other equivalent organization, an appendix will not be included in the final standard. These organizations (for example, Red Cross and American Heart Association) already have specific training modules in place that the Agency believes are effective, and that offer the same guidance that an appendix would provide.

Paragraph (d)—First Aid Supplies

Paragraph (d)(1) requires employers to provide and maintain adequate first aid supplies that are readily accessible to each worksite. The rule also specifies that an employer's on-site infirmary or clinic containing first aid supplies that are readily accessible to each worksite will comply with this requirement.

OSHA received many comments on using the term "adequate" as a modifier. For example, Trident Seafoods Corporation commented:

> The term "adequate first aid supplies" is a subjective term. What may seem adequate to us may not seem adequate in the eyes of others regardless of the objective factors considered. We work with our suppliers to stock the 1st aid kits with items appropriate for a given work location (Exs. 104.1; 107.1).

Because first aid needs can vary from worksite to worksite, an employer must be able to decide what is needed at each worksite. For example, while a small first aid kit might be all that a small shipyard or vessel needs, it might be completely insufficient for a large facility. OSHA has concluded that requiring "adequate" supplies will give employers the flexibility of determining which first aid supplies they need for their particular worksites. To assist employers in determining what is "adequate," OSHA is bringing forward the criteria set forth in proposed paragraph (d)(2) for determining the adequacy of first aid supplies. Those same criteria are specified in paragraph (c)(3) to help employers determine an adequate number of first aid providers.

Comments were received from several employers expressing a concern that requiring that first aid supplies be available for employees would lead to ineffective self-treatment. Atlantic Marine Florida, LLC, stated:

> [We maintain] first aid supplies on our in-house medical cart staffed by EMTs, and at our Medical treatment facility. The medical cart has less than a 3 minute response time throughout the shipyard. We do not provide first aid kits at each work location inside the shipyard, since this tends to support self-treatment, which can lead to larger issues if employees treat themselves incorrectly (Ex. 115.1).

The American Shipbuilding Association had similar concerns, stating:

> Paragraph (d)(1) proposes to revise existing requirements for first aid supplies. We are concerned that making it mandatory to have first aid kits at each work location would promote self-treatment on the part of employee[s] and enable treatment by untrained individuals. Such a mandate would also discourage employees from reporting minor injuries. We request that OSHA consider adding an exemption to this section if a shipyard utilizes an in-house ambulance service or has access to immediate response from an external ambulance service (Ex. 117.1).

In contrast, several commenters stated that, while they have in-house medical services, they also utilize first aid kits throughout their worksites. Manitowoc Marine Group explained that they have "a full medical facility on both sides. And there are some areas, some of the buildings, that will have smaller first aid kits for minor injuries, illnesses" (Ex. 168, pp. 106–107). When asked if they had first aid kits in their shipyard, Todd Pacific Shipyard confirmed that they did have first aid kits throughout their worksite. They explained that they allow employees to use the first aid kits as needed:

> Our injury program requires that any injuries more than a Band-Aid, the employee, the affected employee and his supervisor must both come to the medical facility and fill out our accident reports. The medical officer determines what the classification is, what the necessary treatment is and if we need any additional support at that time.
>
> But yes, we do have the first aid kits out there, and yes, they can put a band-aid on (Ex. 198, p. 49).

OSHA agrees that employers should use in-house medical services as a first resort if those services can be accessed in a timely manner, given the circumstances. However, there may be times when an employee is injured/ill at a shipyard when there is no on-site clinic, first aid providers are not readily available, or a first aid provider needs ready access to supplies. At such times, employees should have access to adequate first aid supplies. These supplies must be readily accessible to each worksite. This revision gives employers more flexibility and guidance about where first aid supplies need to be located. In addition, this provision clarifies that first aid supplies need to be located at all worksites throughout the shipyard, which include worksites on and near vessels, as well as those landside. Employers who have on-site medical facilities have the choice to maintain all first aid supplies at the medical facility, or to place them throughout the worksite. Employers who rely solely on outside medical assistance are required to provide first aid supplies so they are readily accessible to each worksite. OSHA concluded that, by requiring employers to provide first aid supplies through the worksite, employees would have access to these supplies until a trained first aid provider or healthcare provider arrives to assist them.

The Agency received several comments requesting that it provide employers flexibility in tailoring the type, amount, and location of supplies to the specific needs of the workplace (Exs. 104.1; 107.1; 113; 115.1; 118.1). Paragraph (d)(2), which carries forward the same language from the proposal, lists four objective factors, which are identical to those factors specified for determining the number and location of first aid providers. These factors will assist employers in meeting the requirements for placement, content, and amount of first aid supplies without prescribing a specific parameter. The four factors include:

- The Size and Location of Each Worksite

The size of the shipyard worksite is an important consideration. It is likely that large worksites contain many work areas that are spread out and, as such, need more first aid kits to ensure they are readily accessible if an employee gets injured. Employers also need to consider the locations of where employees are working throughout shipyards when determining the number, content, and positioning of first aid kits. For example, remote work areas or other shipyard work areas that are far away from rescue squads or hospitals may need to have more first aid supplies or a broader range of supplies to care for an injured/ill employee until additional help arrives or the employee can be transported for advanced care. Work areas that may be cut off by passing railcars also may need more first aid supplies in case access roads are blocked when an injury/illness occurs.

- The Number of Employees at Each Worksite

The employer needs to evaluate the ratio of employees to first aid kits and ensure that there are sufficient supplies for all employees. In general, when there are a great number of employees, or a surge in contract or temporary workers at a worksite, the employer would need to provide more first aid supplies to prepare for the possibility of multiple employee injuries/illnesses, or that several accidents could occur within a short period of time.

- Hazards Present at Each Worksite

Employers must assess the hazards present in each worksite to ensure that first aid kits contain the types and quantity of supplies needed to effectively treat the injuries and illnesses that could be expected for these hazards. For example, in shops where hot work is performed, first aid supplies for burns would be necessary, and in outdoor areas, first aid items for insect or animal bites may be needed.

- The Distance of Each Worksite From Hospitals, Clinics, and Rescue Squads

The distance from, and the time needed to get to, hospitals or clinics (on-site or off-site), and the time needed for rescue squads to respond, are also important factors in determining the location, amount, and type of first aid

supplies employers need to provide. A single first aid kit may be adequate for small worksites that are close to on-site infirmaries or local emergency services. However, additional kits and types of supplies may be necessary when medical services are farther away.

In addition to the four factors described above, non-mandatory Appendix A, "First aid kits and automated external defibrillators," has been added to the final rule. Appendix A references the most recent consensus standards regarding first aid supplies, consistent with the recently revised general industry standard (§ 1910.151). For example, Appendix A refers readers to ANSI/ISEA Z308.1–2009, "Minimum Requirements for Workplace First Aid Kits and Supplies" (incorporated by reference as specified in § 1915.5), for assistance in purchasing or assembling first aid kits that would be adequate for small worksites. The appendix also gives guidance to employers having large or multiple operations, or unique needs. OSHA believes that adopting a performance-based approach on the contents of first aid kits will give employers flexibility in tailoring their first aid supplies to the conditions and hazards present in their workplace and to changing the supplies as warranted by new developments in first aid.

Paragraph (d)(3) requires that first aid supplies be placed in a weatherproof container. Paragraph (d)(4) specifies that employers must maintain first aid supplies in a dry, sterile, and serviceable condition. The proposal included only the requirements of paragraph (d)(4). Taken together, paragraphs (d)(3) and (d)(4) require that any first aid kit that may be used at any time outside a clinic-type setting must be protected from the elements.

Although comments were not received about this particular requirement, OSHA believes that first aid supplies should be kept in a weatherproof container. While discussing the provisions in § 1915.81, Housekeeping, that specifically referenced weather, for example, § 1915.81(a)(2), OSHA heard testimony regarding some of the weather conditions in shipyards. Atlantic Marine stated: "In this region, rainfall averages 6 inches per month, with an inch or more common for a single rain event" (Exs. 115.1; 118.1). While discussing snow and ice conditions, Manitowoc Marine Group stated: "[A]s I well know [from] firsthand experience on the Great Lakes, conditions such as this may last several days" (Ex. 168, pp. 68–69). Given that shipyard employment often takes place outdoors, sometimes in wet conditions, and that injuries could occur under those conditions, OSHA believes that adding a requirement for first aid supplies to be in waterproof containers is reasonable. In addition, most industrial or commercial type first aid kits are constructed of weatherproof materials.

Further, some first aid supplies may degrade if exposed to the elements (sun, hot temperatures, extreme cold, and humidity), dirt, exhaust, grease, paint, solvents, and other contaminants common to shipyard work. Thus, OSHA is retaining the proposed requirement that first aid supplies be kept in a dry, sterile, and serviceable condition. For purposes of this provision, OSHA defines "serviceable condition" to mean the state or ability of supplies or goods to be used as intended by the manufacturer. Thus, if the first aid supplies contain instructions from the manufacturer on how to store them, the employer should comply with those instructions to ensure that the supplies remain effective for use.

Paragraph (d)(5) requires the employer to replenish first aid supplies as necessary to ensure an adequate supply when needed. This requirement was not expressly stated in the proposal, although it was implicit in proposed paragraph (d)(1) requiring the employer to provide and maintain adequate first aid supplies at each work location, and in proposed paragraph (d)(3) requiring the employer to ensure that first aid supplies are in a dry, sterile, and serviceable condition. Explicitly requiring replenishment of first aid supplies as necessary will protect workers by ensuring that there will be an adequate number of serviceable first aid supplies available in the event of an injury. That is, employers have an obligation to replace supplies that are found to be deficient or missing. This requirement also responds to the National Institute for Occupational Safety and Health's (NIOSH) suggestion that OSHA "add a sentence stating that any supplies that have been utilized shall be replaced as soon as possible" (Ex. 129.1).

Paragraph (d)(6) requires employers to inspect first aid supplies at sufficient intervals to ensure that the supplies are adequate and in a serviceable condition. This paragraph is nearly identical to proposed paragraph (d)(3), which would have required employers to inspect first aid supplies at intervals that ensure the supplies remain in a "dry, sterile and serviceable condition." This provision gives employers the flexibility to determine what inspection procedures would be most effective for ensuring that supplies remain in a serviceable condition and adequately replenished. For example, it allows employers to opt for stocking worksites with an appropriately sized supply of first aid supplies and to establish a maintenance and inspection schedule that is suitable for the particular shipyard, whether it be weekly or monthly. It also allows employers to stock a variety of suitably sized kits, such as small portable first aid kits for mobile work crews. Depending on the size of the first aid kits, they may need to be inspected and replenished frequently or, for larger, stationary kits assigned to a particular shop or location, less frequently.

NIOSH commented: "It would be useful for the written safety plan to state explicitly the first aid supply inspection interval" (Ex. 129.1). OSHA agrees that employers who establish a set inspection interval will be able to determine when depleted or defective supplies need to be replenished. However, OSHA believes that employers are in the best position to know what interval supplies should be replenished at their worksites and thus did not include an explicit inspection interval in the final standard.

Paragraph (e)—Quick-Drenching and Flushing Facilities

Paragraph (e) requires employers to provide quick-drenching or flushing facilities when the potential exists for an employee to be splashed with a substance that could result in an acute or serious injury. Under this paragraph, the employer must ensure that the quick-drenching or flushing facility is located for immediate emergency use within close proximity to the operations where such substances are being used. Proposed paragraph (e) would have required that quick-drenching or flushing facilities be provided where employees could be injured from being splashed with "hazardous or toxic substances" and that the facilities be "located within each work area for immediate use." Proposed § 1915.95 defines "hazardous or toxic substances" to include substances regulated by subpart Z of 29 CFR part 1915; materials listed in the Department of Transportation's hazardous materials regulations (49 CFR parts 171 through 180); any corrosive substance; or any environmental contaminant that could expose employees to injury, illness, or disease. OSHA reasoned that shipyard employees involved in operations such as cleaning, painting, and stripping were at risk of being splashed with solvents or other chemicals. Although these substances may not necessarily be corrosive, they can injure or burn the skin or eyes or be absorbed rapidly through the skin, causing harmful

surface and internal health effects (72 FR 72452, 72469, Dec. 20, 2007).

OSHA received many comments on the proposed provision and on the proposed definition of "hazardous or toxic substances." Several employers, including American Seafoods Company, the U.S. Navy, Bath Iron Works, Northrop Grumman Shipbuilding—Newport News, the American Shipbuilding Association, and International Safety Equipment Association, commented that the proposed language was too broad and would require an inordinate number of quick-drenching facilities in a shipyard (Exs. 105.2; 106.1; 116.2; 117.1; 120.1; 132.2). Atlantic Marine commented: "It can be inferred that a quick-drench facility would be required anywhere painting is occurring. Since painting occurs all over the shipyard, providing quick-drench facilities at these locations is not practical" (Exs. 115.1; 118.1). Trident Seafoods stated:

> Installing quick-drenching/flushing facilities wherever hazardous or toxic substances are located is not economically feasible when following the proposed definition of "hazardous or toxic substances" in the proposed rule 1915.95. This is a change from the current requirement of providing quick drenching or flushing stations where corrosives are used. It seems shipyards, vessel maintenance facilities, and vessels will be required to purchase numerous portable quick-drenching/flushing facilities in order to comply (Exs. 104.1; 107.1).

The Shipbuilders Council of America commented:

> Using the language *toxic* or *hazardous substances* greatly broadens the scope of applicability, and would include paint operations into the proposed rule jurisdiction, which we hold is unnecessary. Exposure to hazardous material within a paint shop can vary, especially considering the amount of [personal protective equipment] worn to prevent such exposures (Ex. 114.1).

Although Northrop Grumman Shipbuilding—Gulf Coast provides emergency flushing facilities for employees performing cleaning, painting, and stripping operations, the company stated:

> NGSB–GC believes the proposed definition is exceedingly broad and offers the employer minimal guidance in providing effective employee protection against contact/absorption hazards. * * * As written, 1915.87(e) would require quick drenching facilities at virtually every work area since even common commodities, such as copier cartridges and household-variety cleaners and disinfectants contain ingredients legally classified as "hazardous" (Ex. 112.1).

OSHA has considered these comments and, in the final rule, limited the requirement for quick-drenching and flushing facilities to those instances when employees may potentially be splashed by substances that could cause an acute or serious injury. Thus, if paints or other materials used by the shipyard could not cause an acute or serious injury if splashed on an employee, either because of the chemical components of the material or because the employee is wearing PPE that would eliminate the risk of splashes to the eyes or body, the employer need not provide quick-drenching or flushing facilities pursuant to paragraph (e). However, if PPE is not worn, and any material being used could cause an acute or serious injury if splashed on the employee, the employer must provide a quick-drenching or flushing facility within close proximity to where the work involving the material is occurring. Furthermore, the facility must be available for immediate emergency use; that is, it should work as soon as it is activated and should not require replenishment of water at the time of the emergency.

In work areas where it is impracticable to place permanent (for example, plumbed) quick-drenching facilities, such as confined spaces, the employer would need to provide portable facilities. OSHA does not believe this requirement should pose a problem for employers since many employers already have these portable facilities. The ANSI Z358.1 standard includes specifications for self-contained eyewash equipment, as well as personal quick-drenching equipment that could be used in such locations (Ex. 38, ANSI Z358.1–2009, "Emergency Eyewash and Shower Equipment," incorporated by reference as specified at § 1915.5). OSHA believes the requirement to have quick-drenching facilities within close proximity to workers using substances that could cause acute or serious injury is appropriate. Employees who may be splashed must be able to reach a quick-drenching or flushing facility in time to prevent an acute or serious injury from occurring. OSHA believes that this language will provide employers with flexibility in determining the number and location of quick-drenching or flushing facilities while addressing their concerns that some substances that may have been included in the definition of hazardous or toxic substances did not warrant the use of a quick-drenching or flushing facility.

The North Pacific Fishing Vessel Owners' Association (Ex. 197.1) suggested that OSHA permit the use of water from bottles or hoses in confined spaces or hazardous locations or in freezing temperatures. The Agency has considered this suggestion for times when it may be impossible for an injured employee to get out of a confined space or hazardous location in time to treat a splash injury at a quick-drenching or flushing facility. During the few situations when an employee would be working in a location where it would be impracticable to provide quick-drenching facilities and employees would be exposed to hazardous or toxic substances, an appropriate option would be for the employer to provide water bottles or a hose.

Several employers commented about the costs for installing quick-drenching or flushing facilities pursuant to proposed paragraph (e). American Seafoods Company stated:

> As difficult as it is for a shoreside facility to meet the requirements for volume and pressure, it is far more difficult and costly on ships and commercial fishing vessels that are designed from the outset to conserve potable water as much as possible. 30 gallons per minute for even the largest vessels can be an expensive challenge (Ex. 105.1).

Bath Iron Works commented: "OSHA's proposal will provide additional cost to employers to comply with this regulation adjustment, which is in opposition to Table [2] of the regulatory analysis" (Ex. 106.1). Northrop Grumman Shipbuilding—Newport News noted: "Costs associated with purchasing, transporting and maintaining significantly more eyewash and drenching facilities are not included in the Preliminary Economic and Regulatory Flexibility Analysis (PEA)" (Ex. 120.1).

OSHA believes that the revisions to the final rule that limit the types of materials requiring quick-drenching or flushing facilities in close proximity to these materials should not impose additional costs. Shipyard employers already must provide such facilities, pursuant to § 1910.151(c), which requires these facilities when employees may be injured by "corrosive materials."

Paragraph (f)—Basket Stretchers

Paragraph (f) requires that an adequate number of basket stretchers, or the equivalent, be readily accessible. It also requires that this equipment have permanent lifting bridles that enable the stretcher to be attached to hoisting gear that is capable of lifting at least 5,000 pounds. In addition, these basket stretchers must be capable of securely restraining the injured employee and must provide a blanket or other suitable covering. Finally, the basket stretchers must be stored in a clearly marked location, be protected from damage, and

be inspected to ensure they remain in a safe and serviceable condition.

Paragraph (f)(1) is a performance-based provision requiring that employers provide an adequate number of basket stretchers or the equivalent that are readily accessible to locations where work is being performed on a vessel or vessel section. Employers have several ways to comply with this provision. The requirement recognizes that, in some situations, having just one basket stretcher at a location where work is being performed on vessels or vessel sections may be adequate to ensure ready accessibility. A SESAC member stated that, if a crane is available to hoist a basket stretcher from any one of several barges docked together, then one stretcher may provide ready accessibility for that group of vessels (Docket SESAC 1993–1, Ex. 100x, p. 155). OSHA also believes that when a shipyard crane mounted on rail tracks can move back and forth to hoist a basket stretcher from one of several vessels or vessel sections, one stretcher may be adequate to remove injured employees from any of those vessels or vessel sections.

In other situations, however, one basket stretcher may not be adequate. In large shipyards that have several work areas with hundreds, if not thousands, of employees working far apart on vessels and vessel sections, more than one basket stretcher may be needed to ensure that one is readily accessible to each work area. Some SESAC members also said additional stretchers should be provided when it is necessary to speed up removal of injured employees (Docket SESAC 1993–1, Ex. 100X, p. 159). Having additional stretchers allows first aid providers to prepare other injured employees for removal while another employee is being lifted to shore.

OSHA believes that paragraph (f)(1) is a reasonable approach for providing effective protection for employees. In some circumstances, basket stretchers must be provided even when fewer than 10 employees are working on a vessel, an issue that concerned SESAC (Docket SESAC 1993–1, Ex. 100X, p. 147). At the same time, it gives employers flexibility to tailor their efforts to the specific conditions and equipment present at the work area.

In paragraph (f)(1), OSHA permits the use of basket stretchers "or the equivalent." Several commenters requested that OSHA include Skeds® in this provision because they believed Sked® stretchers are more useful on ships than other types of stretchers (Exs. 101.1; 104.1; 105.1; 107.1; 124; 126; 128; 130.1). A Sked® is a stretcher used for confined space, high-angle, or technical rescue, or for landside applications. For purposes of paragraph (f), OSHA concludes that a Sked® would be the equivalent of a basket stretcher.[1]

Paragraph (f)(1) contains an exception to employer-provided stretchers or equivalent if an emergency response service has the stretchers or equivalent that otherwise meet the requirements of paragraph (f). Proposed paragraph (f)(1) deleted language in existing § 1915.98(d) stating that the requirement to provide basket stretchers does not apply when ambulance services are available and carry such stretchers. OSHA believes this language was no longer necessary since the proposed language in paragraph (f)(1) requires that basket stretchers be "readily accessible." This term gives employers flexibility to provide their own stretchers or rely on stretchers provided by local emergency squads if they are readily accessible.

Two commenters questioned OSHA's removal of this exception from paragraph (f)(1). Trident Seafoods stated: "The allowance to count local emergency squad basket stretchers as being 'readily [accessible]' should be included in the regulation not only in the preamble" (Exs. 104.1; 107.1). Sound Testing, Inc., requested: "Could the requirements of § 1915.87(f) be substituted with the availability of a public professional emergency responder, such as the local fire department, paramedics, or HazMat response team?" (Ex. 121.1).

OSHA requested comment on whether local emergency squads are readily accessible to vessel worksites and whether they have basket stretchers that meet the proposed requirements. Many commenters explained that their local emergency medical services will not use the shipyard's basket stretchers, but instead will only use their own stretchers (Exs. 101.1; 121.1; 124; 126; 128; 130.1 198, pp. 81–82, 105–106). Seven Seas Fishing Company noted:

> For transporting employees off the ship, most medical service providers want to use their stretchers to move the injured off the ship. Also, if our stretcher is used, it may be difficult to get it back due to the distance the employee is transported away from the vessel and the logistics of getting that stretcher returned (Ex. 199, p. 206).

American Seafoods stated: "No outside agency will use our Basket Stretchers. Not the USCG, not any professional (paid or volunteer) fire department. Since they will never trust our equipment to lift an injured worker, how much should be invested for this type of equipment?" (Ex. 105.1). OSHA acknowledges that these comments have merit. Thus, the final rule clarifies that employers may provide their own basket stretchers (or equivalent), or they may rely on emergency response services to provide them. This exception applies to both in-house responders and outside responders, so long as the basket stretchers or equivalents are "readily accessible."

Paragraph (f)(2)(i) requires that basket stretchers, or the equivalent, have permanent lifting bridles that enable the stretcher or equivalent to be attached to hoisting gear capable of lifting at least 5,000 pounds (2,270 kg). Paragraph (f)(2)(ii) requires that basket stretchers, or equivalent, have restraints that are capable of securely holding the injured/ill employee while the stretcher is lifted or moved. These paragraphs are based on the Marine Terminals and Longshoring standards (§§ 1917.26(d)(4) and 1918.97(d)(4)) and are carried over unchanged from the proposal. OSHA deems it appropriate to apply the Marine Terminals and Longshoring provisions to shipyard employment because the use of basket stretchers and the working conditions are similar in all three industries. These requirements should not pose a problem for shipyard employers because most, if not all, basket stretchers or equivalents already meet the specified criteria. No comments were received on these two provisions.

Paragraph (f)(2)(iii) requires that each basket stretcher or equivalent have a blanket or other suitable covering to cover injured employees, thus protecting them from environmental conditions. General Dynamics NASSCO requested that this provision not be a requirement, but instead be added to Non-Mandatory Appendix A, stating, "Storage that prevents damage to a stretcher and bridle may not be sufficient to keep a blanket in a condition that is appropriate for use during a medical emergency" (Ex. 119.1). The Agency agrees with this commenter but, rather than moving this provision to Non-Mandatory Appendix A, has added a requirement to paragraph (f)(3) of the final rule to ensure that basket stretchers, or the equivalent, and related equipment (for example, blankets) are protected from the environment. OSHA concluded that equipment related to the use of basket

[1] The approval of this or any other product for purposes of this standard does not constitute an endorsement by OSHA of the product. The variable working conditions at jobsites and possible alterations or misapplication of an otherwise safe product could easily create a hazardous condition beyond the control of the manufacturer. However, when appropriate, OSHA provides guidance to help employers assess whether products are appropriate to use in light of Agency requirements.

stretchers must be kept with the basket stretcher to ensure quick access to, and efficient use of, the entire system in the event of an injury, and that all parts of the system should be protected when stored. Thus, paragraph (f)(2)(iii) is retained as proposed.

Paragraph (f)(3) requires that basket stretchers, or the equivalent, and related equipment be stored in a clearly marked location in a manner that prevents damage and provides protection from environmental conditions. This language is based on similar requirements in the Marine Terminals and Longshoring standards (§§ 1917.26(d)(7) and 1918.97(d)(7)). This provision would accomplish two goals. First, requiring storage areas to be clearly marked helps to ensure that stretchers are easy to locate when they are needed. Second, storing stretchers so they are protected from damage and environmental conditions prevents deterioration of the equipment. As Atlantic Marine pointed out, "Mounting stretchers on or near drydocks and piers exposes them to paint and the elements which break down the material that the stretcher is constructed of" (Exs. 115.1; 118.1). OSHA believes that, by requiring related equipment to be stored with the basket stretcher, deterioration or damage will be reduced significantly. For example, related equipment such as blankets and lifting bridles may deteriorate or become damaged if exposed to weather or impact. Thus, for this final standard, paragraph (f)(3) requires that basket stretchers and related equipment be stored to prevent damage and to protect them from environmental conditions.

Paragraph (f)(4) requires the employer to inspect stretchers and related equipment at intervals that ensure this equipment remains in a safe and serviceable condition, but at least once a year. General Dynamics NASSCO agreed with the need for inspection and suggested that this paragraph should read: "The employer shall inspect emergency baskets, stretchers and related lifting bridles at intervals that ensure they remain in [a] safe condition" (Ex. 119.1). Although the Agency is giving employers the flexibility to inspect stretchers and related equipment at intervals to ensure they are adequate in terms of safety and service, OSHA believes that the inclusion of the one-year interval is necessary, as basket stretchers are not used nearly as often as first aid kits, and, in fact, might not be used for over a year. This provision will ensure that lifesaving equipment functions properly when needed in an emergency and is particularly important if basket stretchers are not used frequently. In response to the comments received, OSHA retained the proposed language, but added the requirement that related equipment also must be inspected. Thus, OSHA is requiring that the employer inspect the basket stretcher and related equipment at intervals, but at least once a year, to ensure the equipment remains in a safe and serviceable condition. OSHA believes that this requirement will ensure that, in the event of an emergency, all of this equipment will be in a serviceable condition and ready to be used.

Non-Mandatory Appendix

Section 1910.151 includes a recently revised non-mandatory appendix to provide information on the contents of first aid kits (70 FR 1112, 1141, Jan. 5, 2005). OSHA is incorporating the § 1910.151 appendix, with revisions, and a new paragraph (4) on AEDs. The appendix provides guidance to employers on the contents of first aid kits, assessing workplace risks, OSHA's requirements for protecting first aid providers from possible exposure to bloodborne pathogens, and the use of AEDs. The appendix references the ANSI standard Z308.1–2009, "Minimum Requirements for Workplace First Aid Kits" (incorporated by reference as specified at § 1915.5) (Ex. 213). The ANSI standard should be of assistance to employers seeking guidance on classification and performance of containers, appropriate contents, and recommendations and cautions regarding the use and maintenance of first aid kits. The Agency has concluded that this non-mandatory guidance will help employers comply with first aid requirements.

The proposed Appendix referenced ANSI Z308.1–2003 (Ex. 84). However, since publication of the proposal, this ANSI standard has been updated. The Agency has determined that the most current version of ANSI Z308.1–2009 is as effective as the 2003 version, and will be incorporating this most recent version for this final rule.

Although OSHA received no comments on the proposed appendix, quite a few employers responded to the Agency's request for comments on whether shipyards should be required to have AEDs as part of their first aid and medical services (72 FR 72452, 72471, Dec. 20, 2007). These comments are discussed below. Based on those comments, OSHA has added a new paragraph (4) to the non-mandatory appendix to provide information and guidance to employers who are currently using AEDs and those who are contemplating installing them.

According to the American Heart Association, over 300,000 individuals die from cardiac arrest each year, with most occurring outside hospitals (Ex. 58). In 2001 and 2002, there were 6,628 work-related fatalities reported to OSHA—1,216 of these deaths were from heart attack, 354 from electric shock, and 267 from asphyxia (Ex. 56). Survival rates for out-of-hospital cardiac arrest are only one to five percent, but treatment of ventricular fibrillation (for example, chaotic beating of the heart) with immediate defibrillation (for example, within one minute) has achieved survival rates as high as 90 percent (Ex. 57). Therefore, fast and immediate defibrillation is the most critical step in the treatment of cardiac arrest because it is the definitive therapy for ventricular fibrillation.

AEDs restore normal heart rhythm with electrical shock (defibrillation). AEDs have been shown to significantly increase survival rates where they are used immediately after the event (for example, within three to five minutes). For example, in the first 10 months after Chicago's O'Hare and Midway Airports installed AEDs, 9 of 14 (64 percent) cardiac victims were revived and survived (Ex. 57).

In the past decade, there have been significant advances in AED technology, including advances in miniaturization and improvements in their reliability and safety. Today, AEDs are small, lightweight units in portable carriers; run on rechargeable batteries; analyze the heart rhythm; and automatically indicate when to shock with easy-to-follow audio prompts. These improvements have also greatly minimized the training needed to operate them. Many studies have shown that AEDs are nearly error free and effective when used by non-medical first aid responders in the workplace (Ex. 57).

OSHA's existing medical services and first aid standards do not require that AEDs be provided in workplaces or that employees be trained in their operation. However, many employers, concerned that local emergency services cannot respond quickly enough to medical emergencies, have been equipping their workplaces with AEDs and training employees in their use. While the cost of AEDs has dropped dramatically in recent years, it is still a significant cost. In 2001, for instance, AEDs cost $3,000–$4,500 on average. Now they are widely available for less than $1,500 (Ex. 55). OSHA anticipates that AED costs will continue to decline as the use of AEDs increases.

The Agency received several comments on this subject, both in

support of and in disagreement with the requirement to have AEDs in shipyard employment. Trident Seafoods stated:

> Shipyards should not be required to have AEDs as part of their 1st aid and medical services. While it is a good practice to have AEDs available, and many of us do, it should not be mandatory. Small independently owned vessels and maintenance facilities may not be able to afford AEDs. While the price may have decreased for AEDs constructed for use inside office spaces and controlled climates, it remains fairly expensive to purchase models designed to withstand exposure to the elements (Exs. 104.1; 107.1).

Several employers, including Bath Iron Works, Foss Maritime, Manitowoc Marine Group, Northrop Grumman—Newport News, Pacific Fishermen Shipyard, Todd Pacific Shipyard, and Trident Seafoods testified that they currently have AEDs at their facilities or on their vessels (Exs. 168, p. 313; 198, p. 10; 168, p. 58; 168, pp. 87–88; 168, p. 315; 198, p. 45; 198, p. 74; 199, pp. 195–196). Other commenters stated that AEDs, while useful, should not be mandatory. The U.S. Navy stated: "The Navy does not believe that AEDs should be 'required' as part of their first aid and medical services. Rather, Naval Shipyards have the discretion to decide whether AEDs should be installed at their shore facilities" (Ex. 132.2). Similarly, American Seafoods testified: "At this point we would encourage OSHA not to require AEDs and perhaps to recommend and suggest that they be considered. The industry is actually getting into this on its own" (Ex. 199, p. 267).

Despite the benefits of AEDs, the Agency has determined that costs may be overly burdensome to some, especially small, employers. However, since many employers, especially large and medium-sized shipyards, stated that they are currently using them, OSHA is addressing the use of AEDs in the non-mandatory Appendix A. Employers should use the same objective criteria listed in § 1915.87(c)(3) to determine if they need AEDs at their facility. In fact, Northrop Grumman Shipbuilding—Newport News advocated a similar approach:

> NGSB–NN believes shipyards should include provisions for the use of AEDs in their assessment of requirements for medical and first aid services. The proximity to outside emergency medical services, demographics, and types of work performed all need to be considered when determining the need for AED[s] (Ex. 116.2).

While OSHA believes that providing AEDs at all worksites, including shipyards, is an excellent safety precaution that can save lives, it is not requiring that employers provide them at this time. There is significant medical evidence that supports the use of AEDs. Employers who have AEDs should designate who will use AEDs and provide training to those designated employees. Proper training will ensure that the designated employees use the AEDs correctly. In addition, AEDs should be located so they can be used within three to five minutes of a report of an accident or injury, and they should be used, inspected, tested, and maintained in accordance with manufacturers' specifications. OSHA encourages all employers, large and small, to consider voluntarily providing AEDs.

Section 1915.88—Sanitation

In this section, OSHA updates and consolidates sanitation requirements applicable to shipyard employment. OSHA recognizes that, due to unique working conditions in shipyard employment, ensuring that sanitation needs and requirements are met may be somewhat difficult. For example, some work areas are in remote locations, without adequate piped water and sewer facilities. Also, much shipyard work is performed outdoors, often in extreme conditions.

OSHA believes that the sanitation needs of workers must be met in shipyard employment because the adverse health effects associated with the lack of appropriate sanitation facilities are well recognized and documented. They include communicable diseases, heat-related illness, health effects related to the delay of urination and defecation, and effects associated with ingestion or absorption of hazardous substances. These health hazards were discussed at length in the preamble to the final field sanitation standard for agriculture (52 FR 16050, May 1, 1987). OSHA updated that discussion and placed it in the docket of this rulemaking (Ex. 62). Although the adverse health effects associated with sanitation hazards may be more difficult to quantify than some other hazards, OSHA IMIS data has reported the death of a shipyard worker from heat exhaustion and heat stroke possibly due to not having enough drinking water readily accessible at his worksite (72 FR 72452, 72481, Dec. 20, 2007).

In developing the final rule, OSHA has carefully considered the working conditions observed during site visits, the comments received, and other information in the record in developing requirements that will take into account that workers need to have ready access to adequate and properly maintained sanitation facilities.

The final rule consolidates into § 1915.88 the existing sanitation requirements in § 1915.97 and the applicable general industry sanitation requirements in § 1910.141 (see Ex. 81, OSHA's Tool Bag Directive). The applicable § 1910.141 requirements cover those conditions that the existing 29 CFR part 1915 sanitation standards did not address. OSHA adopted both sections in 1972 pursuant to section 6(a) of the OSHA Act (29 U.S.C. 655(a)), and they have not been significantly updated since. Therefore, in addition to consolidating the applicable sanitation requirements, the final rule updates the sanitation requirements to reflect improvements in workplace sanitation that have been developed, such as single-use bottled water and waterless handwashing agents.

OSHA drew some of the updated requirements from sanitation standards the Agency developed for other industries, such as marine terminals (§ 1917.127), agriculture (§ 1928.110), and longshoring (§ 1918.95). In addition, pursuant to section 6(b)(8) of the OSHA Act (20 U.S.C. 655(b)(8)), OSHA also reviewed the ANSI national consensus standards on sanitation (ANSI Z4.1–1995 and Z4.3–1995 (Ex. 38 at Ex. 3–6 and 3–8)), and incorporated relevant provisions into proposed § 1915.88. ANSI Z4.1 addresses general sanitation in workplaces, while ANSI Z4.3 covers non-sewered waste disposal systems.

As mentioned, most of the changes in § 1915.88 reflect changes in technology and sanitation practices that have developed since the original standards were adopted. Further, the standard is designed to be more flexible than the existing requirements. The final rule also introduces a new term, "sanitation facilities" (defined in § 1915.80), to cover the wide range of facilities that employers must provide to ensure that employees' "health and personal needs" are met. Sanitation facilities include drinking water, toilets, handcleaning facilities, showers, changing rooms, and eating and drinking areas. The term also includes the supplies for those facilities, such as toilet paper, towels, soap, and waterless cleaning agents.

Paragraph (a)—General Requirements

Paragraph (a) incorporates a series of general requirements on the accessibility, adequacy, and maintenance of sanitation facilities in shipyards. It simplifies the existing standards, and makes them apply more uniformly throughout the shipyard.

A sanitation facility cannot meet employees' health needs unless it is

accessible, adequate, and properly maintained. For instance, if toilets are provided but are located far away from the worksite, employees may have to refrain from using the facilities or from drinking an adequate amount of liquids during the workshift. Employees may refrain from using toilets, particularly portable ones, that are dirty, not serviced regularly, or require a long wait. These actions can result in significant adverse health effects (Ex. 62).

Paragraph (a)(1), like the proposed rule, requires that sanitation facilities be (a) adequate and (b) readily accessible. Employers must provide sanitation facilities that meet both requirements in order to be considered in compliance with this paragraph.

Adequate sanitation facilities. This final standard at § 1915.88 specifies a general requirement regarding the minimum number of facilities that employers must provide (for example, 1 toilet for every 15 employees per sex, 1 shower for every 10 employees per sex, handwashing facilities at each toilet facility). OSHA included this general requirement in the final standard for several reasons. First, employers will be in compliance with the requirement to provide sanitation facilities only if they provide facilities that are adequate for the number of employees in the workplace. Second, as discussed in § 1915.80, the definition of "sanitation facilities" includes supplies for those facilities, such as toilet paper, towels, soap, and waterless cleaning agents. Paragraph (a)(1) reinforces the requirement that supplies for sanitation facilities also must be adequate. Third, sanitation facilities must be clean and well maintained to be considered adequate for the use of workers. This requirement for adequate sanitation facilities covers, generally, the specific requirements that are described in more detail below.

Readily accessible. Ready access to sanitation facilities helps to protect employee health and reduce the risk of adverse health effects by increasing the likelihood that workers will use the facilities. For example, a lack of ready access to drinking water can result in dehydration, which can be fatal, especially in hot and humid working conditions.

The existing sanitation rules that are applicable to shipyard employment, unlike the sanitation standards for marine terminals, longshoring, and agriculture (§§ 1917.127, 1918.127, 1928.110), do not directly address the accessibility of sanitation facilities. Paragraph (a)(1) remedies this omission with a performance-based requirement.

For sanitation facilities to be considered "readily accessible," employees must be able to reach the facilities quickly without facing obstacles. OSHA recognizes that ready accessibility depends on the type of sanitation facility, the sizes and locations of worksites, and the physical characteristics of the shipyard. In small shipyards, sanitation facilities may be readily accessible if they are located in one area. However, in cases where worksites are large and spread out, sanitation facilities (for example, toilets, handwashing facilities, drinking water) located in only one location likely would not be considered readily accessible.

Sanitation facilities also must be readily accessible to employees who work on vessels as well as landside. When employees work on small vessels, sanitation facilities may be readily accessible if they are located dockside. However, when employees work on a large vessel, they may not be able to get to facilities quickly enough if such facilities are located only on the dock. Sanitation facilities may need to be located on deck, or in various places throughout the vessel, to ensure that employees have ready access when they need to use them. When the ship's toilet and handwashing facilities are not available to shipyard employees working on vessels (for example, the ship is being built or systems are turned off during repair), the employer needs to make other arrangements to ensure that such facilities are readily accessible.

A number of stakeholders said they make sanitation facilities readily accessible to employees working on vessels, particularly when workers are not able to use the vessel's plumbed facilities (Exs. 101.1; 119.1; 124; 126; 128; 130.1). General Dynamics, for instance, said their "long standing practice is to provide portable toilets aboard ships" (Ex. 119.1). Other stakeholders said they provide portable toilets on vessels "precisely because we can't use the plumbed systems onboard a vessel" (Exs. 101.1; 105.1; 124; 126; 128; 130.1). Allen Rainsberger of Foss Maritime said that, to ensure toilet facilities are readily accessible for employees working on vessels, especially when vessel plumbing is tagged out, they provide portable toilets "out on the piers that are away from the main facility where the majority of toilets are" (Ex. 198, pp. 22–23).

Determining whether sanitation facilities are readily accessible is also related to how frequently they must be used during a workshift. For example, changing rooms and eating areas that are used only once or twice during a workshift may not need to be as close to the work area. By contrast, drinking water should be located at or in close proximity to the employee's immediate work area, especially during hot and humid weather. Employees who perform heavy manual labor, work with heat-producing equipment, or must spend time in spaces that are not well ventilated or air conditioned need to have enough drinking water close at hand to prevent dehydration. Northrop Grumman Shipbuilding—Newport News said that they make special arrangements to ensure employees working in insolated areas have enough drinking water:

> Ensuring * * * water is available and consumed by employees is an important factor in preventing heat-related injuries. * * * For more isolated work or jobs with a greater heat burden, we provide large thermoses for ice and water from onsite commercial sized ice makers and potable water sources (Exs. 116.2; 120.1).

As mentioned, the requirements in paragraph (a)(1) are stated in performance-based language. One stakeholder said the language in this provision was unclear and ambiguous and requested that OSHA define "readily accessible" (Ex. 121.1). However, when OSHA requested comment on whether the final rule should contain more specific requirements for the location of sanitation facilities such as the ¼-mile maximum distance for portable toilets in the field sanitation standard for agriculture (29 CFR 1928.110(c)(2)(iii)) or the 200-foot requirements in the ANSI Z4.1 standard (Ex. 38, §§ 5.1.1 and 6.1.2), only the National Institute of Occupational Safety and Health supported that approach (Ex. 129.1). Other stakeholders, including Northrop Grumman—Newport News, stated that OSHA should not specify locations or travel distances for sanitation facilities, such as toilets:

> Toilets are already installed per local and state building and plumbing codes. In the case of non-fixed facilities, such as ships and modules, toilets are located as close to where employees are working as feasible.* * * We recommend that OSHA maintain performance based language relative to placement * * * of toilet[s] (both sewered and portable) (Exs. 116.2; 120.1).

After reviewing the record and considering the comments received, OSHA believes that the performance-based approach will enable employers, who are in the best position to assess the needs of their particular worksites, to determine where to install sanitation facilities so that they are readily accessible. Thus, OSHA decided not to

specify a minimum time or distance to sanitation facilities.

Paragraph (a)(2) clarifies OSHA's longstanding policy that employers must supply and maintain sanitation facilities at the worksite in a clean, sanitary, and serviceable condition. OSHA defines "serviceable condition" in § 1915.80 as the state or ability of a device to operate as prescribed by the manufacturer. Obviously, toilets that do not flush, water faucets that do not turn on, and water fountains that do not dispense a suitable stream for drinking are examples of facilities that are not in a "serviceable condition." The current general industry standard specifies that employers must keep all places of employment clean (§ 1910.141(a)(3)(i)). Paragraph (a)(2) incorporates the existing general industry language that lavatories must be maintained in a sanitary condition (§ 1910.141(d)(1)). Paragraph (a)(2) also adds the requirement for employers to maintain sanitation facilities in a serviceable condition.

Regarding how often sanitation facilities are serviced, the U.S. Navy stated:

> The frequency of servicing and cleaning varies from daily to weekly, based on the type of facility, number of employees serviced and location and is addressed via contracts with janitorial services and portable toilet vendors (Ex. 132.2).

Sound Testing, Inc., stated:

> It's a fact that the toilets in any institution, facility or industry may become 'unclean' or 'un-sanitary' after one use! We hope that OSHA doesn't intend to require the employers be responsible for cleaning these toilets immediately after each use, or each time they become not 'clean' or not 'sanitary'. It's more practical and applicable to encourage the employers to maintain a regular housekeeping schedule of some sort (Ex. 121.1).

OSHA considered the above comments from the U.S. Navy and Sound Testing, Inc., and revised the language in paragraph (a)(2) to require that employers establish and implement a schedule for servicing, cleaning, and supplying each facility to ensure that it is maintained in a clean, sanitary, and serviceable condition. Sanitation facilities, especially toilet facilities, will become unsanitary if cleanings are spaced too far apart. Thus, employers need to ensure that they establish cleaning schedules sufficient to provide employees with clean and sanitary facilities. This requirement may mean adjusting schedules to add cleaning if the sanitation facility receives an increased level of usage. The Agency believes that a non-prescriptive approach that permits each employer to determine the necessary cleaning schedule is entirely appropriate, given that employers are in the best position to know how often and to what degree their sanitation facilities are used and, thus, how often they need to be cleaned, whether by in-house staff or an outside janitorial service.

Paragraph (b)—Potable Water

The current requirements found in the general industry standard at § 1910.141(b)(1) have been simplified and incorporated into subpart F in paragraph (b), which requires that employers provide adequate potable water from sanitary dispensers at all worksites. Paragraph (b)(1) of this final rule requires that employers provide potable water for all employee health and personal needs. In addition, the employer must ensure that only potable water is used for these purposes. Paragraph (b)(2) requires the employer to provide an adequate amount of potable water for all employees' health and personal needs. Paragraph (b)(3) requires that employers dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. Further, the employer must not permit the use of shared drinking cups, dippers, or water bottles.

Since the adoption of the general industry standard for potable water, the use of single-use water bottles has become commonplace. OSHA understands that some employers provide bottled water in single-use size for employees who work in mobile crews or in areas where it is not possible to install water fountains, such as on vessels and vessel sections. Provided that bottles of water are not shared among employees, OSHA believes this method of dispensing water is at least as effective in preventing contamination as dispensing water from water fountains or covered containers. The U.S. Navy supported the addition of using single-use bottles:

> Single use drinking water bottles should be a recognized option. Single use drinking water bottles are provided to supplement permanent facilities on a case by case basis as needed (for example, in remote locations during dry-docking evolutions during summer months) (Ex. 132.2).

OSHA believes that allowing employers to provide single bottles of water gives them greater flexibility in complying with the potable water requirement and, therefore, is carrying forward the language as proposed.

OSHA considered adding a provision to the final standard requiring employers to ensure that drinking water is "suitably cool," a requirement from OSHA's field sanitation standard for agricultural work (§ 1928.110(c)(1)(ii)). The preamble to that standard explained that, in hot and humid conditions, the temperature of drinking water needs to be low enough to encourage employees to drink and cool their core body temperature (52 FR 16050, 16087, May 1, 1987). Some shipyard employees also work in extremely hot and humid environments. Cool water could help promote adequate hydration and reduce the risk of heat-related illnesses. OSHA requested comment on this issue in the proposal, and three stakeholders responded. Northrop Grumman Shipbuilding—Newport News stated:

> Ensuring cool water is available and consumed by employees is an important factor in preventing heat-related injuries. We utilize plumbed drinking water fountains that provide cool water. For more isolated work or jobs with a greater heat burden, we provide large thermoses for ice and water from onsite commercial sized ice makers and potable water sources. Employees use individual containers to obtain water from these thermoses. Employees are also encouraged to bring and consume personal drinks, such as water and sports drinks. We hold an emergency contract for bottled water in the event of a power outage (Exs. 116.2; 120.1).

The U.S. Navy commented: "The term 'suitably cool' is too subjective and should not be part of the requirement. Water is supplied for fluids replenishment and is kept shaded or in thermal coolers to prevent overheating prior to use" (Ex. 132.2). NIOSH commented: "It would be useful to include in this rule the definition for 'suitably cool' " (Ex. 129.1).

While there is little doubt that water should be "suitably cool" for health and palatability reasons, OSHA believes that employers are already providing cool water or have a means to keep water cool for their employees working in hot or humid conditions. Therefore, OSHA is not adding a specific requirement that drinking water be maintained suitably cool. No other comments were received regarding paragraph (b).

Paragraph (c)—Non-Potable Water

Paragraph (c) combines and simplifies the current general industry provisions on non-potable water, found in §§ 1910.141(b)(2)(i) and (iii). OSHA condensed and incorporated these current provisions into subpart F as §§ 1915.88(c)(1) and (2). OSHA will not carry forward § 1910.141(b)(2)(ii), which addresses the construction of non-potable water systems, since State and local codes currently address this issue.

Paragraph (c)(1) permits employers to use non-potable water for purposes such

as firefighting and cleaning outdoor premises, so long as it does not contain chemicals, fecal matter, coliform, or other substances at levels that may create a hazard for employees. Sound Testing, Inc., commented:

> Non-potable water used for other purposes such as firefighting and cleaning outdoor premises might be pumped up from rivers, lakes, ponds, canals, bayous, bays, etc. * * * (Some city ordinances, USCG, and state environmental laws do not permit this practice.) The water from many of these sources most likely contains low doses of various kinds of chemicals, drugs, hormones, heavy metals, organics, FOGs, and possibly fecal matter and coliform from humans or animals. Hence, the term non-potable water.
>
> The contaminants in these waters may vary by the minute. It might be costly if the employers were not allowed to use these waters in non-potable operations. It would definitely be more costly and almost impossible for the employers to have to test for all of the contaminants in the water prior to each use.
>
> Would you consider allowing the use of gloves, or appropriate PPEs and the use of proper decontamination for those employees affected? We believe it would be much more effective, feasible, and realistic (Ex. 121.1).

OSHA recognizes that contaminants may be found in water pumped from rivers and lakes and that the use of PPE, in accordance with 29 CFR 1915 subpart I, Personal Protective Equipment, would be a good safety and health practice that employers should adopt when working with non-potable water. In fact, employees who are using non-potable water are most likely already utilizing PPE. During firefighting activities, for example, firefighting gear offers protection from both heat and exposure to potentially hazardous substances in non-potable water used to extinguish fires. However, while the use of PPE may protect the employees using the non-potable water, there is no guarantee that other affected employees will be protected as well. Should water particles become airborne, such as during a fire response, or if there is residue from contaminated water used to clean a surface where employees will be working, the potential still exists for those employees to be exposed to a hazardous substance present in the non-potable water. Therefore, to protect all employees engaged in shipyard employment, OSHA is carrying paragraph (c)(1) forward in this final standard as proposed.

Paragraph (c)(2) requires that the employer clearly mark non-potable water supplies and outlets as "not safe for health or personal use." The existing general industry standard that is applicable to shipyard employment, § 1910.141(b)(2)(i), requires that outlets for non-potable water, such as water for industrial or firefighting purposes, be posted or otherwise marked to clearly indicate that the water is unsafe and is not to be used for drinking, cooking, or washing the following items: people, clothes, food, cooking or eating utensils, food preparation or processing premises, and personal service rooms. This requirement is similar to some State and local laws that require the labeling of non-potable water. No comments were received on this paragraph. OSHA concluded that marking non-potable water supplies and outlets as "not safe for health or personal use" is necessary to protect workers from inadvertent ingestion of or exposure to contaminants in non-potable water and is therefore carrying this language forward as proposed.

Paragraph (d)—Toilets

Paragraph (d) adopts the existing requirements on sewered toilets found in the general industry standards, § 1910.141(c)(1)(i) and (ii), which are applicable to shipyard employment and which have been reorganized for clarity in this paragraph (d). In addition, and as proposed, OSHA included paragraph (d)(3), covering portable toilets, which are not addressed in the general industry standard.

Due to the addition of portable toilets in paragraph (d)(3), OSHA proposed to replace the existing term "toilet facility" with the terms "sewered toilet facility" and "portable toilet facility." However, this final standard adopts the simpler terminology "sewered toilet" and "portable toilet." These terms are used in the current ANSI Z4.1 and Z4.3 standards, respectively (Exs. 38 at Ex. 3–6, Sec. 2.4, and Ex. 3–7, Secs. 2 and 5). OSHA defines these terms in § 1915.80 as follows: a "sewered toilet" is "a fixture that is connected to a sanitary sewer, septic tank, holding tank (for example, bilge), or on-site sewage disposal treatment facility, and that is flushed with water," while a "portable toilet" is "a non-sewered portable facility that may be either flushable or non-flushable." In the final standard, toilet requirements are separated into four paragraphs: (d)(1) includes the general requirements that will be applicable to both sewered and portable toilets; (d)(2) includes the requirements for the number of toilets; (d)(3) covers the requirements for portable toilets; and (d)(4) includes an exception to provide toilets at normally unattended worksites.

Paragraph (d)(1)(i), which was proposed as (d)(1)(ii), requires the employer to ensure that both sewered and portable toilets provide privacy at all times. When a toilet facility contains more than one toilet, each toilet shall occupy a separate compartment with a door and either walls or partitions that are sufficiently high to ensure privacy. Paragraph (d)(1)(ii) requires that the toilets be separate for each sex, except as provided in (d)(1)(ii)(B). In paragraph (d)(1)(ii)(A), the number of toilets provided for each sex is based on the maximum number of employees of that sex present at the worksite at any one time during a workshift. A single-occupancy toilet room is counted as one toilet regardless of the number of toilets it contains. Paragraph (d)(1)(ii)(B) specifies that an employer does not have to provide separate toilets facilities for each sex if they will not be occupied by more than one employee at a time, can be locked from the inside, and contain at least one toilet. The requirements of paragraph (d)(1) are noncontroversial and do not represent a departure from current regulations in shipyard employment. They simply codify privacy and convenience conditions that have become well established in the workplace and contribute to employees' health and well-being. Therefore, these requirements are being carried forward in this final standard.

The Agency is adding a provision to this paragraph that requires the employer to establish and implement a schedule for maintaining toilets in a clean, sanitary, and serviceable condition. This requirement is included in paragraph (a)(2) but applies to all sanitation facilities. For emphasis, OSHA repeated this requirement for toilets in paragraph (d)(1)(iii). This provision requires each employer to set up and carry out a cleaning schedule to meet employees' health needs. Portable toilets that are not properly serviced can become unsanitary and foul, thereby exposing employees to contaminants or causing them to avoid using the facilities. OSHA believes this requirement will not impose an unreasonable burden on employers who are already cleaning toilets on a regular basis. Furthermore, it reinforces the employer's duty to maintain sanitary conditions for employees who must use the workplace toilet facilities.

Paragraph (d)(2) specifies, in Table F–2, the minimum number of toilets for each sex and allows for urinals to reduce the number of required toilets in men's facilities. Proposed paragraph (d)(2) retained the existing requirements of the general industry standard for the minimum number of sewered toilets employers must provide for each sex (see Table J–1 of § 1910.141). This provision raises two issues: first, the ratio of 1 toilet for every 15 employees;

and second, the proposed ratio being for sewered toilets only.

Regarding the first issue, the proposed provision required a basic ratio of 1:15 sewered toilets to employees. While the ratio slightly decreases with the number of employees at the worksite (see Table F–2 of paragraph (d)(2)), the basic requirement is commonly referred to as a ratio of 1 toilet for every 15 employees, and OSHA will use that convention. OSHA adopted the 1:15 ratio (Table J–1 of § 1910.141) from the 1968 ANSI Z4.1 standard through notice-and-comment rulemaking in 1973 (38 FR 10930, 10931 May 3, 1973). It has been the general industry standard since that time. In contrast, ANSI has revised the ratio to one toilet for every nine employees (ANSI Z4.1–1995).

In the proposal, OSHA requested comment on whether the Agency should retain the 1:15 toilet ratio from the existing standard, or adopt the 1:9 ratio from the current ANSI Z4.1 and IPC 2003 standards. The U.S. Navy stated that:

> In general, facilities (including industrial and support areas to which the standard applies * * *) are designed to meet or exceed the current version of the international plumbing code (IPC) and are upgraded accordingly during normal renovation cycles (Ex. 132.2).

The American Shipbuilding Association argued that OSHA should reference State or local codes:

> State or local building or plumbing codes should be utilized instead of the [1:9 toilet-to-employee ratio] proposed. This involves sewer and plumbing systems infrastructure. It is not just a matter of buying more toilets (Ex. 168, p. 236).

Other employers supported OSHA's current ratio. For example, Todd Pacific Shipyard testified that they believed the ratio of 1:15 was sufficient (Ex. 198, p. 31). Northrop Grumman-Newport News stated:

> Our review of this issue indicates that the existing number of toilets in 29 CFR 1910.141 and proposed Table [F–2] to Subpart F is adequate to meet employee needs. * * * Adopting the ANSI Z4.1 ratio would result in a 25 percent increase in toilets. This could pose significant costs in infrastructure, space utilization, and maintenance costs (Exs. 116.2; 120.1).

OSHA recognizes that State and local plumbing codes may differ from OSHA requirements. If those codes are more stringent than OSHA's regulations, employers may have a duty to comply with the more stringent requirements. However, where State or local codes are silent on the issue of toilet ratios, or where these codes are less stringent than OSHA's 1:15 ratio, employers must comply with OSHA's requirements. OSHA concluded that Table F–2 in paragraph (d)(2) sets forth the appropriate number of toilets for shipyard employment. These numbers have been the standard for nearly four decades, and OSHA did not receive any comments strongly disagreeing that the 1:15 ratio is inadequate. Thus, employers will be required to follow Table F–2 in subpart F to ensure that the minimum number of toilets is provided for employees. In addition, a note has been added to Table F–2 that clarifies that, when toilets will be used only by men, urinals may be provided instead of toilets. However, the number of toilets may not be reduced to less than two-thirds of the minimum specified. No comments were received on this note to Table F–2.

The second issue was that the proposal included only sewered toilets in the minimum number of toilets. Many employers challenged the Agency's proposal to limit the minimum number of required toilets to only sewered toilets. Further, commenters provided examples of situations in which the requirement for a fixed number of sewered toilets would be infeasible or impracticable, including: (1) Fluctuations in employee populations, making it difficult to plan for an adequate number of sewered toilets (Exs. 119.1; 132.2; 168, p. 236; 198, p. 202); (2) remote locations, such as graving or dry docks, piers, or other locations where it would be impracticable to run proper piping to install sewered toilets (Exs. 105.2; 168, p. 153; 198, p. 23); (3) ship's sewage systems that may be unavailable to workers because they are shut down for repair, use of the ship's sewage system would result in the discharge of waste directly overboard in violation of environmental laws, or employees are at a location on a vessel that is far from a working sewered toilet (Exs. 99; 107; 104.1; 116.1; 120.1; 198, p. 23); and (4) fishing vessels that do not have sewage holding tanks or adequate tank capacity for human waste, and that do not have moorages with sewered facilities, thereby requiring the vessel to discharge sewage directly over the side (Exs. 105.2; 199 p. 261).

Nearly all employers that commented or testified advocated flexibility for employers to provide portable toilets for employees when the installation of sewered toilets is infeasible or impracticable. General Dynamics commented:

> Sewered toilets can often not be placed in a position that is considered readily available on board ships in the water. The long standing practice is to provide portable toilets aboard ships. * * * Furthermore, the use of portable toilets accommodates the movement of employees within the shipyard (Ex. 119.1).

American Seafoods Corporation explained:

> For many small and medium vessels [meeting the minimum number of sewered toilets] is impossible as many moorages do not offer sewer connections, and the vessels do not have adequate tank capacity to store sewage and waste water onboard (Ex. 199, p. 261).

American Seafoods further commented:

> The reason ships, ship yards, ship repair facilities and fishing vessels use PORTABLE Toilet Facilities is that the "Sewered Facilities" are either shut down for repair or shut down because they are not permitted to be used due to environmental discharge issues. Many smaller vessels do not have sewage holding tanks and do not have the ability to connect to dockside sewer connections, should any such connections exist. Therefore the only "Sewered Facilities" available at what are often Municipal Docks are frequently a considerable distance away from the vessel (they tend to be built on shore). Portable toilets are used precisely because we cannot use the plumbed systems on a vessel (Ex. 105.1).

Todd Pacific Shipyard testified: "There are some [portable toilets] available out on the piers that are away from the main facility where the majority of the toilets are" (Ex. 198, p. 23).

OSHA's standards for marine terminals, longshoring, construction, and agricultural field sanitation all permit the use of portable toilet facilities (§§ 1917.127(a)(1)(iv); 1918.95(a)(1)(iv); 1926.51(c)(3); 1928.110(b); see also ANSI Z4.1 Sec. 2.9 and 6.4). In addition, OSHA issued an interpretation letter on May 18, 1999, indicating that the Agency would regard the substitution of portable toilets for water closets as a *de minimis* departure from § 1910.141(c)(1)(i) if the following circumstances were met: (1) The lack of water or the temporary nature of the installation makes water carriage systems impracticable; (2) the portable toilets are readily accessible by employees; (3) the portable toilets have adequate lighting, are secure, and have heating as necessary; and (4) they are well-maintained and properly serviced (Ex. 23; OSHA letter of interpretation to Michael G. Connors, May 18, 1999).

Based on comments and testimony in this rulemaking, as well as OSHA regulations and policy for other workplaces, the Agency amended proposed paragraph (d)(2) by including both sewered and portable toilets within the minimum requirements for toilets.

Sewered toilets that are already installed, such as in facilities and shops, must be maintained as long as the worksite is still in operation. It is not the purpose of this final rule to allow the employer to provide only portable toilets. In addition, shipyard employers should periodically reevaluate the number of employees using sewered toilets to determine if the number of toilets needs to be adjusted. For example, if employees on their way to a pier walk through a shop that has sewered toilets and use those facilities, the employer must accommodate any increased use of those toilets.

Proposed paragraph (d)(3) permitted employers to provide portable toilets in addition to the requirements for sewered toilets in Table F–2. However, several employers objected to this language, arguing, as discussed above, that there are times when it is not possible to install sewered toilets. For example, American Seafoods Company suggested, "Perhaps this section should read [,] 'In Lieu of the required sewered toilet facilities' instead of 'in addition to'?" (Ex. 105.1). Based on the many comments and testimony on the issue of portable toilets in shipyards, proposed paragraph (d)(3) has been revised and reorganized into two subparagraphs. Paragraph (d)(3)(i) requires that, any time the employer demonstrates that it is infeasible to install sewered toilets, or when there is a temporary increase in the number of employees for a short duration, the employer provide portable toilets to meet the minimum number of required toilets listed in paragraph (d)(2)(i) and table F–2 of this section. Such situations might arise when work is being performed at piers, on ships, in dry docks, or at remote work areas. Other circumstances might include when employers have an influx of temporary employees, where temporary employees are those employed for a limited time only, or whose performance is contemplated for a particular piece of work, usually of short duration. OSHA concluded that allowing the use of portable toilets when an employer demonstrates that it is infeasible to install sewered toilets in shipyard employment will enhance employee health and well-being because these sanitation facilities will be more accessible and, thus, more likely to be used. This option is particularly important in work areas on vessels, where a significant portion of shipyard employees work and where sewered facilities for workers may not be practicable. Therefore, new paragraph (d)(3)(i) will be carried forward in this final standard to require the employer to provide portable toilets when the employer demonstrates that it is not feasible to provide sewered toilets, or when there is a temporary increase in the number of employees.

This provision is further justified by the significant improvements in portable toilet technology in recent years. Portable toilets now contain the type of equipment necessary to provide for employee health needs at levels close to that of the existing standard for sewered toilets. For example, many portable toilets are now manufactured with handwashing facilities that include hand towels, waste receptacles, and either running water or waterless cleaning agents. In addition, some portable facilities have flushable toilets (Ex. 13). Allowing employers to provide portable toilets in certain situations will ensure adequate and readily accessible facilities without adding construction expenses and inconvenience.

Paragraph (d)(3)(ii) has been modified from proposed (d)(3), and requires that employers ensure that each portable toilet is vented and equipped, as necessary, with lighting. In the proposal, OSHA specified that portable toilets were required to be equipped with adequate venting and, as necessary, lighting and heating. The American Shipbuilding Association testified, "When is it necessary to provide heating and lighting in a portable toilet facility? I cannot recall ever seeing such a facility that is equipped to provide either heating or lighting" (Exs. 104.1; 107.1). American Seafood Corporation also objected to the venting and heating requirements for portable toilets:

> Adequate Venting?—We personally have never met a Portable Toilet Facility that was "Adequately Vented" and there were years of "Portable Toilet Facility Experience" in the rooms during the discussions. Adequate Lighting?—Again, we have personally never seen Portable Toilet Facilities that had extra lighting. Heating?—Again we are at a loss. What supplier provides pristine portable toilet facilities that have reading lights, vent fans, and heaters?" (Ex. 105.1).

While there are portable toilets that do have venting systems, heat, air conditioning, and lighting, they are expensive. Fishing Vessel Owners Marine Ways, Inc., testified:

> [T]he cost associated with portable toilets is a difference of $85 per week for a toilet that is unheated and equipped with hand sanitizer which includes regular inspections and servicing needs as compared to greater than $2000 a week for portable facilities equipped with heat and running water, plus additional costs for servicing (Ex. 198, p. 202).

OSHA will not impose these costs on employers or require that this type of facility be used in the workplace. Based on the comments received, OSHA revised this provision by eliminating the requirement for employers to ensure that portable toilets are equipped with heating. However, paragraph (d)(3)(ii) requires employers to provide portable toilets that are vented and equipped, as necessary, with lighting. Lighting would be necessary during workshifts occurring at night, or in areas where there is not sufficient lighting. While the standard does not require exhaust fans in portable toilets, some venting is necessary (for example, ceiling louvers and stovepipe vents) for employee comfort, health, and well-being.

Exception

Proposed paragraphs (d)(4) and (e)(3) exempted employers from providing toilet and handwashing facilities for mobile crews and for employees working in normally unattended worksites, provided that these employees have immediately available transportation to readily accessible sanitation facilities that meet the requirements of this section. Final paragraph (d)(4) retains the exemption for toilet facilities. This exemption implicitly extends to handwashing facilities in paragraph (e)(1), which requires employers to provide handwashing facilities at each toilet facility. The availability of vehicles at a worksite does not necessarily mean that the employees at that worksite are a "mobile crew." OSHA interprets the term "mobile crew" to be limited to employees who continually or frequently move from jobsite to jobsite on a daily or hourly basis, and to exclude employees who report to a single worksite for days, weeks, or longer (Ex. 31; OSHA letter of interpretation to Nicolas Mertz, June 7, 2002).

For purposes of these exceptions, "immediately available transportation" means that the vehicle is already at the specific worksite or can be summoned quickly enough so employees are able to get to facilities quickly. OSHA interprets "nearby" facilities as being within ten minutes of the employee's work area (Ex. 31). Nearby toilets must be in clean, sanitary, and serviceable condition, and adequate for the number of employees who need to use them. Nearby handwashing facilities must be equipped with waterless cleaning agents or soap, water (for example, hot and cold, or lukewarm), and hand towels or air blowers.

The U.S. Navy supported this provision, stating, "The proposed

exemptions are adequate" (Ex. 132.2). No other comments were received. OSHA has carried forward paragraph (d)(4) in the final standard.

Paragraph (e)—Handwashing Facilities

Paragraph (e)(1) requires that handwashing facilities be located at or adjacent to each toilet facility, sewered and portable toilets alike. This provision is necessary, in major part, to ensure that employees' health needs are met in those worksites where portable toilets are or will be used. Some portable toilets are not equipped with handwashing facilities, and separate or stand-alone facilities are not always placed next to or close to portable toilets, particularly on vessels and vessel sections. Often, employees must go to landside facilities, which may be located a significant distance from the work area, to clean their hands. As a result, employees may not be able to clean their hands when they are exposed to contaminants, after using a portable toilet, or before eating, drinking, or smoking, which puts them at risk of adverse health effects.

OSHA believes the use of performance-based language gives employers compliance flexibility, even at worksites where there is a lack of piped water or sewer lines. As stated previously, many portable toilets manufactured today contain either handwashing facilities or waterless cleaning agents. In addition, portable, stand-alone hand-cleaning facilities are readily available and can be placed adjacent to portable toilets. A single stand-alone handwashing facility may be able to serve several portable toilets that are placed in one location. The U.S. Navy supported this provision: "We agree that requiring provisions of handwashing facilities at or adjacent to toilet facilities is reasonable and appropriate" (Ex. 132.2). No other comments were received. OSHA has carried forward paragraph (e)(1) in this final standard as proposed.

Paragraph (e)(2)(i) requires employers to equip handwashing facilities with (1) soap and either hot and cold or lukewarm running water; or (2) waterless cleaning agents that can disinfect the skin or neutralize contaminants. Most of OSHA's other sanitation standards require that handwashing facilities have soap and running water (§§ 1910.141(d)(2)(ii) and (iii); 1910.142(f)(3); 1917.127(a)(1)(i) and (ii); 1918.95(a)(1)(i) and (ii); 1928.110(b)). However, the Bloodborne Pathogens (BBP) standard permits the use of alternatives (for example, antiseptic hand cleaners) in limited circumstances (§§ 1910.1030(d)(2)(iii) and (iv)).

Unlike the BBP standard, paragraph (e)(2)(i) does not restrict the use of waterless cleaning agents to situations in which the lack of water or the temporary status of the installation makes running water infeasible. Work covered by the BBP standard, which in some instances can require sterile conditions, is quite different from shipyard employment. OSHA does not believe the limitations in the BBP standard are necessary for this standard. Nearly all sewered toilets have handwashing facilities with running water, while waterless agents are usually used in conjunction with portable toilets. Moreover, whatever cleaning agents are used, the employer will be responsible for ensuring that the agents are effective in disinfecting the skin or removing the contaminants to which employees are exposed. In addition, the employer should select waterless agents that will not result in absorption of contaminants, sensitization of the skin, or other adverse health effects.

A number of shipyard operations are performed at worksites where it may be difficult to provide running water and soap. Therefore, OSHA believes there is a practical need to allow the use of waterless cleaning and decontamination products in shipyards. Northrop Grumman—Newport News supported this addition: "Waterless cleaners are provided whenever non-plumbed portable toilets are present. They have been received favorably and we have noted no problems" (Exs. 116.1; 120.1). In addition, the U.S. Navy stated: "The use of waterless cleaning agents is a viable option, enabling the provision of handwashing facilities at all toilet facilities. Some waterless hand cleaners are in limited use in the shipyards, but data is not currently available on employee's acceptance of this alternative" (Ex. 132.1). OSHA concluded that waterless cleaners have become widely accepted and used in workplaces across many industries, and their antibacterial qualities protect workers from health hazards when water and soap are not available. Therefore, the Agency is carrying this provision forward as proposed.

Paragraph (e)(2)(ii), identical to the proposal, requires that if the handwashing facility is equipped with soap and water, the employer must provide clean, single-use hand towels. These towels must be stored in a sanitary container, and the employer must provide a sanitary means for disposing of them. Alternatively, the employer may supply clean individual sections of continuous cloth toweling or an air blower. No comments were received on this paragraph. Because the requirements of this provision are noncontroversial, and are standard hygiene practice in shipyards pursuant to compliance with the general industry standards at § 1910.141(d)(2)(iv), OSHA is carrying paragraph (e)(2)(ii) forward with no changes.

Proposed paragraph (e)(3), an exception to providing handwashing facilities for mobile crews and at normally unattended work locations, has been deleted from the final regulation. As noted above, paragraph (d)(4) exempts employers from having to provide toilets for mobile crews or at normally unattended worksites. Because handwashing facilities must be provided at or adjacent to each toilet facility, any exception to the requirement to provide toilets automatically extends to handwashing facilities.

Paragraph (e)(3) in the final rule requires employers to inform each employee who is engaged in the application of paints or coatings, or in other operations in which hazardous or toxic substances can be ingested or absorbed, about the need for removing surface contaminants from their skin by thoroughly washing their hands and face at the end of the workshift and prior to eating, drinking, or smoking. This provision was proposed as paragraph (e)(4), but since proposed (e)(3) was omitted from the final rule, OSHA renumbered this paragraph as (e)(3). No comments were received on this provision. Because shipyard employment can require workers to handle various hazardous or toxic substances, OSHA continues to believe that employees must be informed of the need to wash their hands and faces after working with certain surface contaminants so they can protect themselves from dermal exposure or exposure through ingestion. Thus, OSHA is carrying forward this requirement as proposed.

Paragraph (f)—Showers

OSHA has set forth the requirements for showers in paragraph (f), which is substantially identical to the general industry standard found at 29 CFR 1910.141(d)(3). Paragraph (f)(1) specifies that when showers are required by an OSHA standard, the employer must provide one shower for each 10, or fraction of 10, employees of each sex who are required to shower during the same workshift. Paragraph (f)(2) requires the employer to ensure that each shower is equipped with soap, hot and cold water, and clean towels for each

employee using the shower. No comments were received on either provision. OSHA has concluded that the shower requirements are necessary for employee safety and health and have been a requirement for shipyards through the general industry standard. Carrying these requirements forward in the final standard thus responds to the shipyard employment industry's request to consolidate requirements for general working conditions in shipyard employment into one subpart.

Paragraph (g)—Changing Rooms

Paragraph (g) sets forth the requirements for changing rooms. When an employer provides protective clothing to employees to prevent exposure to hazardous or toxic substances, the employer must provide: A changing room that offers privacy for each sex (paragraph (g)(1)), and storage facilities for street clothes, as well as separate storage facilities for protective clothes (paragraph (g)(2)). Paragraph (g)(1) is a new requirement, but the provisions in (g)(2) are identical to the general industry standard, § 1910.141(e), which has applied to shipyard employment. No comments were received on these provisions. Therefore, OSHA concluded that the new provision for privacy for each sex is necessary for workers' health and well-being, as well as personal comfort and dignity. The rest of paragraph (g) addresses the shipyard employment industry's preference to consolidate requirements for general working conditions in shipyard employment into one subpart. Thus, OSHA is carrying these provisions forward in this final standard.

Paragraph (h)—Eating, Drinking, and Break Areas

Currently, there are five requirements that address eating, drinking, and break areas (§§ 1910.141(g), (g)(1), (g)(2), and (g)(4), and § 1915.97(c)). OSHA combined these requirements into a single provision in subpart F, and simplified the provision to prohibit food, beverages, and tobacco products from being consumed or stored in any area where employees may be exposed to hazardous substances. Proposed paragraph (h) prohibited food, beverages, and tobacco products from being consumed or stored in any area where hazardous or toxic substances may be present.

Many commenters argued that prohibiting eating, drinking, or using tobacco products whenever hazardous or toxic substances may be present unreasonably increased the number of areas where employees would not be able to eat, drink, or smoke (Exs. 105.2; 106.1; 112.1; 121; 101.1; 124; 126; 130.1; 125; 168, pp. 57–58, 245–247). OSHA responded to this concern in two ways. First, the Agency revised the definition of hazardous substances in the final rule to mean a substance that may cause injury, illness, or disease, or otherwise harm an employee by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful. The proposed definition was much broader, and raised concerns that eating or drinking would be prohibited near generally innocuous, but potentially harmful, substances such as common household cleaning products or copier cartridges (Ex. 112.1). The narrower definition that was adopted in the final rule substantially limits the universe of substances that would trigger the restrictions of this paragraph.

Second, OSHA deleted the proposed phrase "where hazardous or toxic substances may be present," and replaced it with "where employees may be exposed to hazardous or toxic substances." The change in wording was in response to commenters pointing out that, even if a toxic substance is present, it is not necessarily a hazard. For example, American Seafoods Company commented: "If an employee cannot smoke anywhere 'hazardous chemicals are present' does that mean employees cannot smoke in the same room in which there is a sealed can of some chemical?" (Ex. 105.1). The Shipbuilders Council of America commented:

> The proposed language directs that food, beverages, tobacco and etcetera may not be consumed or stored in areas where hazardous or toxic materials may be present. SCA believes this is too general. The nature of a shipyard is such that there is small potential that every location within the grounds may contain small levels of hazardous or toxic substances. * * * We believe OSHA should acknowledge this and alter the language in the section, for instance, that the employer shall ensure that food, beverages, and tobacco products are not consumed or stored in any area where hazardous or toxic substances exists in such a concentration that they have the ability to harm employees (Ex. 168, pp. 69–70).

Several other commenters agreed with adding language similar to that suggested by SCA, including Bath Iron Works, Atlantic Marine Florida, Atlantic Marine Alabama, American Shipbuilding Association, and Manitowoc Marine Group (Exs. 106.1; 115.1; 117.1; 118.1; 125). It is not OSHA's intent to prohibit employees from eating, drinking, or smoking in areas where unopened cans or containers of hazardous substances are present. However, employees should not be eating, drinking, or smoking in areas where they could consume, inhale, or otherwise ingest hazardous substances. The final provision requires employers to ensure that employees do not eat, drink, or smoke, or store food, beverages, or tobacco products in any area where employees or these items may be exposed to a hazardous substance that is airborne, on an eating surface, in a refrigerator or other food storage container, spilled on the floor, or in another similar state or condition.

Paragraph (i)—Waste Disposal

Paragraph (i) addresses waste disposal, including the construction of receptacles, the number of required receptacles, and employees working around uncovered garbage. The current general industry provisions that are applicable to shipyard employment, found in §§ 1910.141(a)(4), (a)(4)(i), and (g)(3), have been combined and reorganized into the following final provisions. Paragraph (i) requires that the employer provide waste receptacles that are corrosion resistant, leak-proof, and easily cleaned or disposable (paragraph (i)(1)(i)); fitted with a solid, tight-fitting cover (paragraph (i)(1)(ii)); provided throughout the worksite in numbers, sizes, and locations that promote their use (paragraph (i)(1)(iii)); and emptied often enough to prevent overfilling, and in a manner that does not create a hazard for employees, with waste receptacles for food emptied at least daily unless the receptacles have not been used (paragraph (i)(1)(iv)).

Although there were no comments on the specific requirements for waste receptacles, several commenters questioned who was responsible for providing waste receptacles, including Lake Union Drydock Company, Puget Sound Shipbuilders, Dakota Creek Industries, North Pacific Fishing Vessel Owners Association, and iWorkWise (Exs. 101.1; 124; 126; 128; 130.1). Trident Seafoods questioned, "Is the shipyard or maintenance facility responsible for the ship's crew waste receptacles?" (Exs. 104.1; 107.1). Similarly, American Seafoods Corporation asked, "Is the shipyard responsible for garbage cans on ships in their yard?" (Ex. 105.1).

OSHA's Multi-Employer Citation Policy directive (CPL 2–0.124), which applies to shipyard employment, specifies that on multi-employer worksites, more than one employer may be responsible and citable for hazardous conditions that violate OSHA standards. The directive spells out a two-step process for determining whether more than one is responsible and citable. Step

one involves determining the role of each employer at a specific multi-employer worksite and whether they fall into one of the categories (for example, creating, exposing, correcting, or controlling employer) that has obligations with respect to OSHA requirements. Step two is determining whether employers' actions are sufficient to meet the obligations of the applicable employer category.

Multi-employer worksites engaged in shipyard employment can vary widely in the categories of employers that may be present and the factors that may affect the responsibilities of various employers (for example, whether contract provisions establish control over specific safety and health issues at the worksite). The directive includes examples and scenarios of various common workplace situations to help employers understand their responsibilities in a specific type of multi-employer worksite. OSHA believes that these examples will provide useful guidance for determining who is responsible for garbage cans on vessels in specific situations and specific multi-employer worksites.

Paragraph (i)(2) specifies that employees are not to work in the immediate vicinity of uncovered garbage that could endanger their safety and health. Sound Testing, Inc., commented:

> Please define the terms 'uncovered garbage' or 'garbage.' There are many instances in Shipyard Employment when workers may be working on, near, or in the vicinity of 'uncovered garbage.' The difficulty is in the differentiation of what may look like 'garbage' and what constitutes actual garbage (Ex. 121.1).

OSHA does not believe that defining garbage is necessary. The provision requires that when uncovered waste could endanger employee's safety and health, they should not work in the vicinity of the waste. If there is no substance in the receptacle that might endanger them, they can work near the waste. OSHA is retaining this paragraph with no changes from the proposal.

Paragraph (i)(3), identical to the proposal, requires employers to ensure that employees working beneath or on the outboard side of a vessel are not contaminated by drainage or waste from overboard discharges. This paragraph protects employees working in dry docks, or on piers or decks, from overhead discharge. No comments were received on this paragraph. The Agency believes that it is common practice in shipyards not to discharge drainage and waste from above the worksite onto employees working at the worksite below.

Paragraph (j)—Vermin Control

OSHA proposed to revise the application of the existing general industry requirement (§ 1910.141(a)(5)) on vermin control to make the provision more appropriate to shipyard employment. The existing requirement, § 1910.141(a)(5), specifies that employers clean and maintain the workplace in a manner that prevents the infestation of vermin in "enclosed workplaces." Paragraph (j)(1) extends this application by requiring the employer to take those steps necessary to control vermin throughout the shipyard. Thus, to comply with this requirement, employers need to expand their vermin control efforts to include outdoor worksites. "Vermin" is defined in § 1915.80 as "insects, birds, and other animals, such as rodents and feral cats, that may create safety and health hazards for employees." Sound Testing, Inc., questioned, "Does this definition include animal species regarded as pests or nuisances and especially to those associated with the carrying of disease?" (Ex. 121.1). While OSHA recognizes that many types of animals may be found on shipyard property, the concern is with animals that are safety and health hazards. Evidence in the record shows that employees working at outdoor worksites, as well as in enclosed spaces, need to be protected from the hazards associated with exposure to vermin (Ex. 22). For example, employees working near water are at risk of disease if mosquito populations are not adequately controlled. In addition, birds and rodents can transmit disease directly, as well as through their feces (see *http://www.hhs.gov* and *http://www.cdc.gov* for information on vermin-related diseases). Sound Testing, Inc., commented:

> Many of these 'vermin' are often detected in Shipyard Employment, some are even considered as 'friends' to the employees! To 'implement and maintain an effective control program' as required in this section would probably be very expensive, near impossible or even illegal * * * [S]eagulls and eagles are 'frequent fliers' at fish processing plants, packing plants, canneries, and fish processors * * * (Ex. 121.1).

OSHA recognizes that it is not possible to prevent all vermin, especially birds and insects, from entering outdoor worksites. Therefore, the provision retains the existing requirement that employers take only those steps that are "reasonably practicable" to prevent vermin infestation.

Paragraph (j)(2) retains unchanged the existing general industry requirement applicable to shipyard employment (§ 1910.141(a)(5)) that employers implement and maintain an effective vermin-control program when vermin are detected. OSHA believes that such programs are necessary to protect workers from the health and safety hazards associated with uncontrolled vermin. Including this general industry requirement in the final standard responds to the shipyard employment industry's request to consolidate requirements for general working conditions in shipyard employment into one subpart.

Section 1915.89—Control of Hazardous Energy (Lockout/Tags-Plus).

In § 1915.89, OSHA establishes the requirements for the control of hazardous energy during the servicing of machinery, equipment, and systems in shipyard employment. OSHA proposed to incorporate the general industry standard (§ 1910.147), with minor revisions, into subpart F, since maritime employment is exempt from the general industry standard (§ 1910.147(a)(1)(ii)(A)). In the preamble to the subpart F proposal, OSHA discussed the need for a comprehensive lockout/tagout rule in shipyards, why OSHA was proposing to adopt the general industry approach, the requirements of the general industry standard, and the differences between § 1910.147 and proposed § 1915.89. The preamble to the proposal also included an in-depth discussion of the application of the lockout/tagout standard while servicing commercial vessels (72 FR 72452, 72484, Dec. 20, 2007).

The Agency received many comments regarding the adoption of § 1910.147 for shipyard employment, most of which were not in favor of adopting the general industry requirements verbatim. After considering the many informative comments and testimony OSHA received during the comment period, the Agency decided to develop a final rule that includes the substance of the general industry lockout/tagout provisions, while adding provisions that are more compatible with protecting workers in shipyard employment. In addition, the requirements in the final rule have been organized and set forth differently than the general industry standard due to the unique conditions in shipyard employment, both on land, and on vessels, including fish-processing vessels.

This final standard addresses the control of hazardous energy through the use of locks and tags-plus applications, employee training, written program and procedures, and program audits, as well as other requirements. The provisions in

this final rule are based on the Agency's detailed review and analysis of the entire rulemaking record, which included all pre-hearing and post-hearing comments from the public, as well as testimony obtained at the public hearings. The Agency believes the final approach developed from this information and data resulted in regulations that are compatible with providing optimal safety in shipyard employment.

The following discussion covers the need for a comprehensive lockout/tags-plus standard in shipyard employment. Further, the discussion addresses why OSHA has adopted in this final rule a standard that, while similar to the general industry standard, differs in ways that protect workers in the unique environment of shipyard employment. An in-depth discussion of commercial fishing vessels is included in the scope and application section of this lockout/tags-plus standard (see summary and explanation of § 1915.89(a)).

The Need for a Comprehensive Lockout/Tags-Plus Standard in Shipyards

OSHA believes that a comprehensive rule protecting shipyard employees from hazardous energy during servicing, maintenance, and repair operations is needed. In the proposal, OSHA listed the following three reasons why shipyard employment needs a comprehensive lockout/tagout program (72 FR 72452, 72484, Dec. 20, 2007):

1. Potential hazardous energy exposures are present throughout shipyard employment, on vessels and vessel sections, and in landside facilities (Exs. 9; 11). Employees servicing ships' systems face considerable risk of injury or death from the energization of those systems because they are often large and complex, and frequently have multiple power sources. That risk is compounded when ships' crews and outside contractors also work onboard the vessel. According to 2002 data from the Bureau of Labor Statistics (BLS) annual survey of occupational injuries and illnesses, 30.3 percent of the shipyard injury and illness cases involving days away from work resulted from contact with an object or equipment, and 1.8 percent of the cases resulted from being caught in equipment (72 FR 72452, 72484, Dec. 20, 2007). BLS Census of Fatal Occupational Injuries data from 1993–2002 show that 10 shipyard fatalities (6.3% of shipyard work-related fatalities) resulted from contact with electrical current, and 31 fatalities (19.5%) occurred because of contact with objects and equipment (72 FR 72484–85).

2. The general industry lockout/tagout standard specifically exempts "maritime employment" from its scope (§ 1910.147(a)(1)(ii)(A)). In the preamble to the final general industry standard, OSHA explained that shipyard employment was excluded because of the unique conditions present in this industry; further, the means to minimize injuries and fatalities to maritime workers required additional analysis and consideration, which had not been undertaken during the lockout/tagout rulemaking (54 FR 36644, 36657–58, Sept. 1, 1989). As a result, OSHA had insufficient information about hazardous energy in shipyard employment to conclude that the general industry approach would address those hazards effectively. OSHA said it would continue to review information on hazardous energy in shipyard employment, evaluate the need to initiate rulemaking, and determine whether the general industry rule, or an appropriate modification of that rule, would provide optimal protection for shipyard employees.

3. The existing lockout/tagout provisions applicable to shipyard employment (§§ 1910.331–.335, 1915.162–.164, 1915.181) do not provide comprehensive or adequate protection for shipyard employees. The existing provisions in 29 CFR 1915 establish specific, but isolated, practices for controlling hazardous energy, and no provisions establish a comprehensive program for addressing those risks. For example, none of the existing part 1915 provisions requires written lockout/tagout procedures, employee training, verification of deenergization or isolation, or periodic inspection.

Commenters supported the reasoning in OSHA's discussion in the preamble to the proposal regarding the need for a comprehensive lockout/tagout standard. Several employers stated: "We agree with OSHA that comprehensive energy control procedures are important and support OSHA in applying the 'cornerstone' part of the rules to ship repair" and that "positively securing all energy sources before servicing equipment and verifying that the energy control has been achieved is an obvious way to save lives and prevent injury" (Exs. 100.1; 101.1; 105.1; 123; 124; 126; 128; 130.1).

Some commenters confirmed that shipyard employers, as well as commercial vessels, are already utilizing a version of lockout, tagout, or tags-plus in their facilities, and have done so for a number of years. Manitowoc Marine Group testified that:

> [A]s far as the land base, we do follow the general industry standard on lockout/tagout. * * * [For vessel and vessel sections] we have tried to somewhat model the general industry to a point. We will identify the energy sources as best we can with the crew (Ex. 168, pp. 109–111).

Northrop Grumman-Newport News, Bath Iron Works, American Seafoods Company, Foss Maritime, Trident Seafoods, and several other commenters also confirmed that they use lockout, tagout, or tags-plus in some fashion for both their landside facilities, and vessels and vessel sections (Exs. 99; 100; 104.1; 105.1; 107.1; 116.1; 120.1). American Seafoods Company stated: "Many vessels have implemented some form of lockout procedures even though maritime has been exempted by OSHA for the past 18 years" (Ex. 105.1). Arctic Storm Management Group testified:

> All three vessels have lockout/tagout programs. All three of them have been tailored to the vessels, because they're different sizes in different places. I have worked with my engineering staff and electricians to design the programs, but they are vessel specific (Ex. 199, p. 90).

OSHA believes that a comprehensive hazardous-energy control program is essential for shipyard employment for the reasons listed above, and as explained in the proposal (72 FR 72452, 72484–85, Dec. 20, 2007). As discussed below, OSHA is adopting a lockout/tags-plus program, which is a modified version of the general industry lockout/tagout program. The shipyard employment lockout/tags-plus standard will establish uniform minimum procedures that shipyard employers must follow in all shipyard servicing operations to protect employees on land and on vessels and vessel sections.

Why OSHA Developed a Modified Version of the General Industry Standard

In the proposal, OSHA discussed how it determined to follow the general industry lockout/tagout standard. The Agency listed the following five reasons, with an in-depth discussion of each reason, in the proposed rule (72 FR 72452, 72487, Dec. 20, 2007): (1) The general industry standard has provided effective protection for affected employees; (2) many shipyard employers have already implemented lockout/tagout programs modeled on the general industry standard, and have reported that these programs are effective in reducing the risk of harm associated with servicing operations; (3) the comprehensive energy-control procedures, that are the cornerstone of the general industry standard, are particularly appropriate for addressing

the types of workplace conditions and hazardous energy present in shipyard employment; (4) shipyard employment also includes landside operations, which are similar to general industry worksites; and (5) the requirements of the general industry standard would be effective in controlling hazardous energy in complex shipyard work environments and in servicing complex ship's systems because the standard has proven effective under similar complex conditions in general industry sectors.

Almost uniformly, the comments on the proposed hazardous-energy standard disagreed with OSHA's justifications for adopting the general industry standard for shipyard employment in § 1915.89. As an example of a recurring concern, Northrop Grumman–Newport News stated: "The proposed standard is essentially identical to the existing General Industry standard and does not adequately address the uniqueness of Shipyard Employment" (Exs. 116.1; 120.1). DeWitt Davis stated:

> [Section 1910.147] works well when [t]here is one source of energy and in an assembly line process. Assembly lines are rare in shipyard construction. * * * [A] cookbook approach [cannot] be applied to multi-hazardous-energy-source work space (Ex. 122).

American Seafoods Company pointed out that, in contrast to general industry operations, shipyard work changes with each new vessel that needs repair work:

> The complexity in a shipyard does not just arise from the fact that there are many complex systems but that in large part, the equipment and systems in a facility completely leave and are replaced with entirely new ones dozens to hundreds of times per year (Ex. 105.1).

Moreover, as Northrop Grumman–Newport News discussed, systems on large vessels are extremely complex and interrelated, may involve thousands of workers, and may be relatively inaccessible:

> A significant number of energy-isolating devices or authorized individuals are involved. Overhaul of a nuclear-powered aircraft carrier typically involves 75,000 energy-isolating device(s) and over 3,000 authorized employees on a daily basis. * * *
>
> The energy-isolating device(s) are relatively inaccessible. Many isolating devices are located remotely from the area of actual work or are in areas where access is restricted to certain groups of employees.
>
> There is interdependence and interrelationship of the system components. Navy vessels, and to a lesser extent other vessels, are designed for survivability. As a result, they are designed and constructed with redundancy in mind. Isolation of components must take this redundancy into consideration, requiring an extensive effort to understand, identify, and account for all sources of energy (Exs. 116.2; 120.1).

Other commenters noted the complexity of vessels' energy systems and the difficulty that workers, including contractors, have in making sense of those systems:

> The employees or contractors who perform work on a particular system are unlikely to have the capability of identifying all energy sources, either initially based on engineering drawings and schematics or physically on the ship.
>
> The employees who perform the work on a particular system are unlikely to have the capability of coordinating the interface between multiple jobs that have overlapping points of isolation (Ex. 105.1).

Difficulties in deciphering a vessel's energy system may stem from the fact that schematics may be outdated:

> Inaccurate or no drawings or schematics—older ships, particularly commercial or foreign, may no longer have ship's drawings. Even newer ships may not have been constructed exactly as indicated on the drawing or the engineering drawings may not have been updated to reflect alterations.
>
> Failure to label components—a part of ship construction includes labeling of the components. Components should be labeled before they become live. In other cases, labels may be missing, damaged, or worn (Ex. 105.1).

At the Washington, DC, public hearing, Northrop Grumman–Newport News gave a further explanation about the challenges of adopting the § 1910.147 general industry standard for shipyard employment:

> I think, number one, is the complexity on an aircraft carrier, for example, you may have 75,000 devices that you are isolating at any one time. You may have 3,000 people that are engaged in some way of that lockout/tagout process, so I think sheer volume is one, complexity is another. It is one thing to talk about lockout and tagout of an engine lathe in a machine shop, and it is another to talk about a complex tagout of an electrical system on a nuclear-powered aircraft carrier. There is just no comparison in the breadth and depth of those systems (Ex. 168, pp. 250–251).

Manitowoc Marine Group gave examples of some of the complexities that they encountered on older vessels it repairs:

> But some of these older vessels actually use belting systems which will—you will have gates and a cargo hold that will dump the product on the gate as it is moving, and this belt will eventually sandwich into another belt, bring it up to the open deck of the vessel, and into a chute which will unload. So you have got a lot of complex equipment and motors and drives that [have] to be identified. And there may be a situation where one energy source may drive this motor, but you may have another energy source hooked to it as well, because it has an additional system which drives it (Ex. 168, pp. 113–114).

Commenters also confirmed that employers who were using the general industry lockout/tagout standard were struggling in various ways. American Seafoods Company stated:

> In response to recent accidents, many fishing industry vessels have reexamined their lockout/tagout procedures and worked to improve them. Some have used OSHA general industry regulation as a framework. As a result, they have struggled with application of the general industry rules to their equipment installations, and application of those rules to the unique circumstances of work aboard ships. Unfortunately, the general industry approach is not one size fits all and has not worked well. The principles are valuable, while the details of implementation have been difficult (Ex. 105.1).

iWorkWise explained how various fishing vessel owners were attempting to apply § 1910.147 to their vessels but were running into difficulties:

> [On] some vessels it's with a few specific pieces of equipment, and some vessels * * * the problem is throughout the whole vessel. So people are doing the best they can with it, and trying to use 1910 and trying to make it fit, because it's really all anyone has it for is a guideline. * * * They try to use 1910 until they get to the point where, oh, it won't work here. Now what? And that happens I think on every vessel in this industry (Ex. 199, p. 166).

Prowler LLC and Ocean Prowler LLC, as well as American Seafoods Company, stated:

> We agree with OSHA that comprehensive energy control procedures are important and support OSHA in applying the 'cornerstone' part of the rules to ship repair, however we believe that there is much in the OSHA standard that is not 'cornerstone' material. OSHA should minimize the requirements that are not performance oriented energy control procedures to allow employer's real flexibility in creating effective lockout programs, as well as training programs, that achieve full energy control (Exs. 100; 105.1).

Several of the commercial vessel operators and owners at the Seattle public hearing described their current hazardous-energy-control procedures. Dave Fraser of FV Muir Milach stated:

> We have remote starts on the bridge for the engine that we use to drive the hydraulics. So if the chief was going to work on that, you know, service it, he'd come up, and he'd take a piece of, if nothing else, duct tape, put it over the starter switch and write on it, 'Do not start. I'm working on the generator' (Ex. 199, p. 62).

Supreme Alaska Seafoods described how its § 1910.147 lockout/tagout program is not meeting its needs:

> We have basically a full-blown lockout/tagout program [modeled after § 1910.147]

onboard the boat. * * * It doesn't take into consideration the ship's systems. Some areas you can't access it. We have—electrical is my biggest problem right now. I have panels that weren't designed with that in mind. When this vessel was designed, it was considered adequate enough to shut the breaker off and put a little tag or something on it, and everybody was supposed to know better. It's no longer acceptable. So it won't take a blockout device. * * * So [§ 1910.147] doesn't meet our needs, all right? And the thing is—the first thing someone says is, well, can you change it? Yeah, we can change it. But there's so much of this throughout the boat * * * to do it in one blanket-type process (Ex. 199, pp. 161–163).

Amy Duz of iWork Wise testified: "I don't know of any vessel that's following 1910 a hundred percent, not even one. And the reasons—the first reason is probably that they just can't physically lock everything out, so it gets more complicated" (Ex. 199, p. 166). Icicle Seafoods, Inc., testified:

At Icicle we have a lockout/tagout program on every vessel and every land plant. I guess before you ask specifically, it's loosely modeled after 1910. I wish I could say that we're actually a hundred percent compliant, and every single time a situation arises we're doing exactly what we need to do. That doesn't happen. We're not in compliance with 1910, and we can't be (Ex. 199, p. 231).

OSHA also received comments and testimony from shipyard employers who had concerns over using the general industry lockout/tagout standard as an industry-wide approach. Manitowoc Marine Group explained that, on landside, it is using the § 1910 lockout/tagout standard. However, it commented that vessels present special circumstances:

[J]ust with the different vessels that come in, ranging [from] very, very old vessels—I mean, we are talking vessels that were built in the '20s and '30s that are actually still operational—it is a little more difficult, but we do try to use safe practices and develop a procedure that will protect them from energy sources (Ex. 168, pp. 84–85).

OSHA maintains that the shipyard industry needs a comprehensive hazardous-energy control program, for landside facilities as well as vessels and vessel sections. However, it is apparent from the comments made by large and small employers that applying the general industry lockout/tagout standard verbatim would present many challenges for this industry. The comments and testimony, which the Agency carefully reviewed and considered, convinced OSHA that a modified version of the general industry standard is necessary to protect workers who confront the unique conditions and complex situations of shipyard employment.

OSHA is adopting lockout/tags-plus requirements for shipyard employment due to the complexity of the worksite; the large number of workers involved in the work force; the involvement of multiple employers; and the vast array of machinery, equipment, and systems that employees may be servicing. These requirements build on the general industry lockout/tagout standard, but offer shipyard employers some flexibility in choosing the best method to control hazardous energy, given their special circumstances. The American Shipbuilding Association (ASA) argued that due to the complexity of shipboard system operations, the imposition of traditional general industry standards would increase an employee's risk exposure (Ex. 168, pp. 194–195). OSHA agrees with this and other similar comments, and revised the final rule to address the industry's concerns while ensuring that shipyard employees working under § 1915.89 are protected at least as well as their counterparts in general industry working under § 1910.147.

The change from lockout/tagout to lockout/tags-plus is one of clarification. Currently, § 1910.147 requires that, when an employer uses a tagout system on an energy-isolating device that is capable of being locked out, the tagout system must provide full employee protection. That full-employee protection provision requires that an additional safety measure be used in conjunction with all of the tagout requirements: essentially, a tags-plus system requires an additional safety measure. This final rule simplifies and clarifies that requirement by changing the definition and more explicitly specifying those particular requirements. In addition, when possible, OSHA has revised the language in the provisions to clarify the requirements, without changing the substantive requirements of §§ 1910.147 and 1910.269. For example, § 1910.147(c)(3) has two requirements written into one paragraph. Without changing the substantive provisions, § 1915.89(c)(6) separates those requirements into two paragraphs, and adds additional clarifying language. The Agency believes that the maritime industry will embrace the clarified language in the provisions, and be better able to understand and comply with the provisions in this section.

Due to the number of regulatory text changes that OSHA made from the proposed rule, this section of the preamble will explain the final regulatory text language, rather than track subsequent changes from the proposal, as is typically done in OSHA preamble discussions. OSHA will explain how the changes came about, and provide explanations and examples, when appropriate, for specific provisions. OSHA believes that this approach will assist employers in understanding the requirements in the final standard. In addition, this preamble references two tables that list the specific provisions OSHA revised between the proposed and final rules. Table 2 of this preamble (see below) is a side-by-side listing of sections and headings in both the final standard and the proposal. Table 3, found at Ex. 215, is a side-by-side table that compares the final regulatory language to the language in the proposal for the revised provisions. (The purpose of Table 3 is to assist the regulated community in understanding the revisions made to these provisions, and is not to be relied upon for regulatory language.)

TABLE 2—CONTROL OF HAZARDOUS ENERGY SIDE-BY-SIDE COMPARISON

Final regulatory text	Proposed regulatory text
(a) Scope and application	(a) Scope
(1) Scope	(1) Scope
(2) Application	(2) Application
(4) Exceptions	(3) Purpose
(b) Lockout/tags-plus program	(b) General
(c) General requirements	(1) Energy control program
(6) Full employee protection	(2) Lockout/tagout
(7) Lockout/tags-plus coordination	(3) Full employee protection
(d) Lockout/tags-plus written procedures	(4) Energy control procedures
(e) Procedures for shutdown and isolation	(5) Protective materials/hardware
(f) Procedures for applying lockout/tags-plus systems	(6) Periodic inspection

TABLE 2—CONTROL OF HAZARDOUS ENERGY SIDE-BY-SIDE COMPARISON—Continued

Final regulatory text	Proposed regulatory text
(g) Procedures for verification of deenergization and isolation	(7) Training
(h) Procedures for testing	(8) Energy isolation
(i) Procedures for removal of lockout/tags-plus systems	(9) Employee notification
(j) Procedures for startup	(c) Application of control
(k) Procedures for group lockout/tags-plus	(1) Preparation
(1) Primary authorized employee	(2) Shutdown
(2) Authorized employees	(3) Isolation
(l) Procedures for multi-employer worksites	(4) LLOTO application
(2) Host employer responsibilities	(5) Stored energy
(3) Contract employer responsibilities	(6) Verification
(m) Procedures for shift or personnel changes	(d) Release from lockout/tagout
(n) Lockout/tags-plus materials and hardware	(1) Machine/equip./system
(i) Durable	(2) Employees
(ii) Standardized	(3) Lockout/tagout removal
(iii) Substantial	(e) Additional requirements
(iv) Identifiable	(1) Testing
(o) Information and training	(2) Outside personnel
(1) Initial training	(3) Group lockout/tagout
(2) General training content	(4) Shift change
(3) Additional training requirements for affected employees.	
(4) Additional training requirements for authorized employees.	
(5) Additional training for lockout/tags-plus coordinator.	
(6) Employee retraining.	
(p) Incident investigation.	
(q) Program audits.	
(r) Recordkeeping.	
(s) Appendices.	

Special provisions apply to repairs to Navy vessels. When the Navy conducts repairs on its vessels, the Navy ship's force maintains control of the vessels' machinery, equipment, and systems, and performs the procedures for controlling hazardous energy. To a large extent, the Navy's system is consistent with OSHA's final rule on lockout/tags-plus. However, differences between the Navy's system and the final rule required the agencies to work together to craft exceptions to the final rule to accommodate the operational needs of the Navy regarding its ships that are under repair.

OSHA recognizes that Navy vessels and vessel systems undergoing repair may have to become operational quickly for purposes of national security. Furthermore, in its comments to the proposal (Ex. 132.2), the Navy described how its energy-control system is applied to vessel systems that are uniquely complex:

> The Navy vessels' expert based tags plus system under the control of the ship Commanding Officer provides the Commanding Officer ultimate control of what is happening aboard his/her ship in accordance with U.S. Navy Regulations.* * * Our group Tags Plus expert-based hazardous energy control program involves an interaction of expert systems operators [the ship's force] and shipyard *maintenance* personnel. Maintenance is used differently in shipyards it should be changed to repair or remove it altogether here!
>
> * * *
>
> The Navy has developed shipboard energy control process requirements codified in formal Naval Instructions. These instructions were specifically designed to provide for work safety when dealing with energy control of complex systems which require specialized system qualification, knowledge and experience as well as multi-layered technical reviews to ensure proper isolation of work areas is established. Work isolation is often directly linked to maintaining combat system requirements and ship safety (fire protection, list, trim, buoyancy, should be: hotel systems, ventilation, lighting etc.) on combat ships with redundant systems. This required the development of an energy control process that utilizes system experts and trained work control professionals. * * * Placing responsibility for adequate isolation and system conditions in the hands of personnel performing work [shipyard maintenance personnel] is unsafe when the equipment and systems are so complicated that workers could not be reasonably expected to correctly determine safe isolation or it's affect [sic] on critical ship systems.

Because of these factors, the Navy ship's force always maintains control over vessels and vessel systems undergoing repair, and exercises control of hazardous energy in these vessels and vessel systems, even when private-sector contract employers provide the workforce that performs the servicing operations. The Navy asserts that its hazardous-energy control program provides employees, including contractor employees, with a sufficient level of protection from hazardous energy, while permitting it to retain control of the vessels under repair should operational needs arise. For these reasons, OSHA provided several exceptions to the provisions of its lockout/tags-plus standard (see the notes to paragraphs (c)(4), (c)(6), (c)(7), (e), (f), (h), (i), (j), (k)(2), and (l) of this section); the preamble below discusses these exceptions more fully. OSHA believes that contractors performing servicing operations onboard U.S. Navy-owned and -operated vessels already are coordinating with the Navy ship's force during these operations, as required by these notes. Thus, the notes codify practices that already exist in situations when the Navy has control over its vessels and the vessel's machinery, equipment, and systems during servicing operations. These notes also apply to the servicing of machinery, equipment, or systems that takes place during new construction of naval vessels once the ship's force takes control of those machines, equipment, or systems. While these exceptions to the final lockout/tags-plus requirements accommodate the Navy's need to exercise control over the machinery, equipment, and systems of its vessels that are undergoing repair, OSHA nevertheless continues to exercise authority over private-sector employers, under contract with the Navy, performing repair work on Navy vessels. Those employers still must protect their employees to the full extent required by

the remainder of the lockout/tags-plus rule. For example, paragraph (q) addresses program audits. Even those employers who service vessels and vessel systems that are under the control of Navy ships' force are required to conduct audits. OSHA does not require or expect the employer to audit the Navy's lockout/tags-plus system. However, during the audit of its own participation in the Navy's program, the employer may identify deficiencies in the implementation of the program or may identify ways that a procedure could be improved. In those instances, the employer should coordinate with the Navy to address such concerns.

Finally, the exceptions in § 1915.89 that apply to Navy vessels do not amend the requirements of any other OSHA standard that regulates the control of hazardous energy.

Paragraph (a)—Scope and Application

Paragraph (a)(1)—Scope

Paragraph (a)(1) specifies that the lockout/tags-plus section covers the servicing of machinery, equipment, and systems when an employee could be injured if the machinery, equipment, or system is energized, is started up, or releases hazardous energy. The scope of the final rule is the same as the proposed rule with minor clarifications and streamlining to address stakeholder comments that the language should be more self-explanatory and less confusing (Ex. 121.1).

As mentioned in the discussion to § 1915.80, OSHA made changes to two terms in paragraph (a) of this section. First, to streamline paragraph (a)(1), OSHA states that the lockout/tags-plus section covers "servicing" operations, instead of using the "servicing and maintenance" terminology from the proposed rule. The definition of "servicing" includes the maintenance, as well as the construction, installation, adjustment, inspection, modification, testing, repairing, and servicing, of machines, equipment, or systems. (See definitions, § 1915.80(b)(26).) Thus, there is no need to pair the term "maintenance" with "servicing."

Second, OSHA replaced "release of stored energy" with "release of hazardous energy," a term that covers all energy that could be released, not just stored energy. In response to stakeholder comments (Exs. 121.1; 199, p. 152), OSHA also added a definition of "hazardous energy" to the final rule (see definitions, § 1915.80(b)(8)). OSHA defines "hazardous energy" as "[a]ny energy source, including mechanical (for example, power transmission apparatus, counterbalances, springs, pressure, gravity), pneumatic, hydraulic, electrical, chemical, and thermal (for example, high or low temperature) energies, that could cause injury to employees." Forms of hazardous energy include active, residual, and stored energy. This definition is consistent with the one OSHA uses in general industry (CPL 02–00–147, 2/1/2001). As such, many shipyard employers will be familiar with the definition because they have implemented the general industry lockout/tagout standard in their landside facilities, and some have used a form of the general industry standards on vessels (see preamble discussion above). Adopting this definition both clarifies and emphasizes that many servicing operations in shipyard employment involve multiple types and sources of energy, and that the lockout/tags-plus section covers all of those types and sources of energy when the energization or startup of machinery, equipment, or systems, or the release of energy, may occur. Requiring that all releases of hazardous energy be controlled will provide more protection to workers than if they were simply protected from the release of stored energy.

Paragraph (a)(2)—Application

After considering all the comments received in response to OSHA's questions in the preamble to the proposed standard (72 FR 72452, 72498, Dec. 20, 2007), and analyzing the record, the Agency determined that the record supports changing the application of the lockout/tags-plus section. The final standard is a complete standard for all shipyard employment.

Paragraph (a)(2) of the final rule applies the lockout/tags-plus section to any servicing operation that is performed:

- In any landside facility that performs shipyard employment work; and
- On any vessel or vessel section.

In addition, if such servicing is conducted on a vessel, the standard applies to any employee on a vessel, including, but not limited to, the ship's officers and crew, unless such application is preempted by the regulations of another federal agency.

The proposal would have required employers to control hazardous energy by complying with the following provisions: Section 1915.89 when servicing machinery, equipment, and systems on vessels and vessel sections (proposed paragraph (a)(2)(i)); and § 1910.147 for "inherently general industry operations" performed aboard vessels, such as fish processing (proposed paragraph (a)(2)(iii)(C)) (72 FR 72452, 72489–93, Dec. 20, 2007).

OSHA received many concerns from stakeholders describing the unique situations in shipyard employment in which the application of different standards for controlling hazardous energy in shipyard work would be impracticable (Exs. 100.1; 101.1; 124; 126; 128; 130.1; 168, pp. 368–369; 199, pp. 149–150). Some stakeholders (Prowler LLC and Ocean Prowler LLC; American Seafoods Company; and the U.S. Navy) said OSHA should apply the general industry lockout/tagout standard (§ 1910.147) to landside facilities (Exs. 100.1; 105.1; 132.2). Other commenters referred to the 2004 National Shipbuilding Research Program (NSRP) report, "Review of Current and Best Practices for Hazardous Energy Control (Tagout) in Shipyards," which stated that shipyards have, in most cases, adopted § 1910.147 for land-based operations (Ex. 105.2). For example, American Seafoods Company, citing the NSRP report, commented that land-based servicing operations at shipyards were conducive to the general industry standard because, compared to shipboard servicing jobs, land-based jobs are usually of shorter duration and involve a single authorized employee, have means of isolation that generally can be readily identified, and have employees who perform servicing are capable of identifying the energy sources and applying energy-control devices (Ex. 105.1). In addition, a number of stakeholders said they have implemented the general industry standard in their landside operations (Exs. 116.2; 120.1; 132.2).

In contrast to the commenters mentioned above, Northrop Grumman—Newport News expressed a preference for one hazardous-energy control standard that applies to all servicing operations, on landside and on vessels and vessel sections (Ex. 168, pp. 263–264). Northrop Grumman stated that it favored a single hazardous-energy control standard in part because its employees work both aboard vessels and in landside shops:

> [Employees] do go onboard and often the workload shifts, we will bring work into the shops and we will work in the shops, and we will take it back [on the vessel] and reinstall it, so there is some movement back and forth between shop and ship (Ex. 168, pp. 221–222).

Northrop Grumman also said that having a single hazardous-energy control standard for landside and vessel-servicing operations would make it easier for the company to move employees between Northrop

Grumman's shipyards without having to retrain them (Ex. 168, pp. 222).

The International Association of Drilling Contractors (IADC) noted that problems could arise when a vessel in active operation is undergoing repairs by both the ship's crew and shipyard workers because the two groups could potentially be working under different standards for controlling hazardous energy:

> It is IADC's view that the lockout/tagout program on a vessel should generally be administered by the vessel's owner (represented by the ship's Chief Engineer)—this is particularly the case on a vessel that remains in active operation while undergoing repairs or when repairs are being undertaken concurrently by ship's crew and 'shipyard workers.'* * * The shipyard lockout/tagout program must be subordinate to that of the ship's lockout/tagout program when the ship remains in service (Ex. 103.1).

Amy Duz of iWorkWise testified about the value of having shipyard employees and a ship's crew using one standard for controlling hazardous energy:

> The proposed two-standard approach creates more questions and problems than it attempts to solve. One hazardous energy control standard should be applied to the fishing industry * * * [T]hese vessels will be in shipyards and ships and shipyard personnel need to interface. This interface will be more seamless, making people safer if everyone is accustomed to using the same standard (Ex. 168, p. 373).

Based on its analysis of the record, OSHA believes that applying a single lockout/tags-plus rule to all servicing operations, both landside and on vessels and vessel sections, will ensure that employers have a cohesive strategy to protect employees from hazardous energy. A single standard responds to the comments of Northrop Grumman—Newport News and the IADC. It will require shipyard workers to have knowledge of only one hazardous-energy standard, whether the employees are working on vessels or in a landside facility, and regardless of the shipyard involved. In addition, it ensures that a ships' crew follow the same rules as shipyard workers, thereby avoiding conflict or confusion when repairs to a vessel's equipment are being conducted by both groups. In sum, OSHA believes that having one standard will facilitate employer implementation and maintenance of an effective lockout/tags-plus program, and will ensure that employees understand and follow the program.

OSHA added language to paragraph (a)(2)(i)(A) to clarify that the final lockout/tags-plus section only applies to servicing equipment at landside facilities that "perform shipyard employment work," that is, those facilities that perform shipbuilding, ship repair, shipbreaking, or other related employment. OSHA added this language to clarify the limited scope of this regulation with regard to the two industry sectors. First, the final lockout/tags-plus section, as in the proposed rule, does not apply to servicing equipment at facilities that manufacture components and parts used in shipyard employment when these manufacturers do not perform shipyard employment work at these facilities. These manufacturers are covered by the general industry lockout/tagout standard. (See, also, summary and explanation of § 1915.80, Scope, application, and definitions.) Second, the final rule does not extend to landside fish-processing facilities. Fish processing at landside factories is general industry manufacturing, not shipyard employment. This position is consistent with OSHA policy that fish processors on land must follow the general industry lockout/tagout standard (see CPL 02–01–047, 2/22/2010); thus, the general industry lockout/tagout standard continues to apply to servicing operations on equipment at land-based fish-processing facilities.

OSHA also deleted the exemption in proposed paragraph (a)(2)(ii) for "normal production operations," defined at § 1915.80(b)(20) as "the use of machinery or equipment, including, but not limited to, punch presses, bending presses, shears, lathes, keel press rollers, and automated burning machines, to perform a shipyard-employment production process." The proposal exempted servicing that takes place during "normal production operations" unless an employee would be required to (a) remove or bypass a guard or other safety device, or (b) place any part of his or her body into an area on a machine, piece of equipment, or system where work is actually performed upon the material being processed, or where an associated danger zone exists during an operating cycle. OSHA believes that deleting the exemption for "normal production operations," including the exceptions to the exemption, clarifies that the lockout/tags-plus standard for shipyard employment applies to all servicing operations on any machine, equipment, or system that is used in shipyard employment, whether at a landside location, or on a vessel or vessel section. This application is consistent with other subparts of § 1915, which apply a single standard for vessels and vessel sections, and on landside operations, regardless of where the work is performed. (See 29 CFR part 1915, subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment; 29 CFR part 1915, subpart I, Personal Protective Equipment; and 29 CFR part 1915, subpart P, Fire Protection in Shipyard Employment.)

Paragraph (a)(2)(i)(B) of the final rule specifies that the lockout/tags-plus section applies to servicing of all machinery, equipment, and systems on vessels and vessel sections. This application includes servicing shipboard equipment that is used for processing fish. Proposed § 1915.89 would have applied to servicing ships' systems (i.e., systems and equipment that are "an inherent and permanent part of the vessel") (72 FR 72542, 72489, Dec. 20, 2007), while § 1910.147 would have applied to the servicing of "inherently general industry equipment such as fish-processing equipment" (*Id.*). In the proposed rule, OSHA acknowledged that this approach would not result in a completely uniform application of standards onboard vessels. Nevertheless, OSHA preliminarily concluded that the proposed approach was appropriate under the assumption that equipment such as fish-processing equipment is not a core component of vessels, and that activities involving such equipment are more closely associated with general industry manufacturing operations than with shipbuilding, ship repair, shipbreaking, and related employment. *Id.* Further, the Agency opined that servicing such equipment aboard vessels is performed by production employees, and not by employees who service ships' systems. *Id.*

Stakeholders uniformly opposed OSHA's proposed two-standard approach (Exs. 100; 101.1; 104.1; 105.2; 107.1; 121.1; 123; 124; 126; 128; 130.1; 132.2; 168, pp. 194–195, 309–313), expressing their concern that applying two different standards for controlling hazardous energy on vessels would cause confusion (Exs. 130.1; 132.2). Icicle Seafoods Inc., stated:

> The proposed standards approach to lock and tagout will be confusing * * * Having to flip flop between two standards will only breed indifference and non-compliance. Asking an engineer to first determine what system he's working on before he's deciding how it should be locked out is asking too much. This is like asking my grandmother to follow one set of traffic laws on the weekend, and drive by a completely different set of laws during the week (Ex. 199, pp. 213–214).

Prowler LLC and Ocean Prowler LLC also agreed that the two-standard approach would be confusing for

employees working on fish-processing vessels: "It would mean that part 1910 standards would apply when [fish-processing employees] process fish and operate the equipment for production, but proposed 1915.89 would apply when they clean up or perform maintenance work on that same equipment" (Ex. 100).

iWorkwise also commented that OSHA's approach was confusing: "This approach can be summed up as follows: * * * 1915.89 applies to all the people, but only to part of the equipment and only for some of the time, but to all of the equipment for the rest of the time" (Ex. 130.1). iWorkwise elaborated on this issue at the informal public hearing:

> Two [lockout/tagout] standards will not make a single person more safe. It will introduce confusion and burden that will very likely make people less safe. Not a single vessel or fleet owner that I am aware of support this two-standard approach. * * * The two-standard approach begins by asking the impossible. * * * For example, when a ship's hydraulic system powers both processing and fishing equipment, where will one standard end and the other begin, or if processing equipment, such as a grinder sump pump is critical to keeping the ship afloat, is that ship's equipment or processing equipment, or when panels provide power for engineering and processing needs, what standard will be followed? (Ex. 168, pp. 368–369).

Prowler LLC and Ocean Prowler LLC raised the same concerns, saying that OSHA's proposed two-standard approach is confusing and arbitrary (Ex. 100). American Seafood Company agreed: "Application of general industry rules to one part of the ship, some of the time is folly. As is switching between two different standards for the same maintenance on the same equipment" (Ex. 105.1).

A number of stakeholders said the reasons OSHA provided in support of the two-standard approach were based on faulty assumptions about fish-processing operations. For example, several stakeholders said OSHA was incorrect in saying that fish-processing equipment is not "an inherent and permanent part of the vessel," in the way that, for instance, propulsion or navigation systems are (Ex. 168, pp. 369–370). American Seafood Company commented:

> The ship's purpose is processing, therefore processing is an essential ship function; the equipment is as essential to the ship's purpose as a dredge is to a dredging ship. We find the division of ship and ship's equipment on fish processing vessels by OSHA arbitrary (Ex. 105.1).

Stakeholders also said that OSHA's determination that most employers replace the fish-processing equipment on vessels at the end of each fishing season was inaccurate. At the informal public hearing, OSHA heard testimony from iWorkwise, stating that only a "minority of vessels change out their processing equipment between seasons" (Ex. 168, pp. 371–372). Although Trident Seafood Corporation said that their vessels replace processing equipment each season, the company added that they only replace some components, not the entire fish-processing system (Ex. 199, pp. 172–173). Trident Seafood Corporation also stated that the new equipment is plugged into the same electrical or hydraulic power sources that power the rest of the vessel (Ex. 199, p. 173).

Some stakeholders pointed out that OSHA was incorrect in stating that employees who service fish-processing equipment on a vessel do not service the ship's systems and vice versa (Exs. 104.1; 107.1; 168, p. 371; 199, pp.176–178). For example, Trident Seafoods Corporation commented, "Electricians, engineers and other technicians can and do work in various areas throughout the vessel" (Ex. 107.1). iWorkwise concurred, saying:

> In the vast majority of cases, [maintenance of fish-processing equipment] is done by the [ship's] engineer. It is a ship—the person works on everything. On some vessels, they will have factory technicians who will handle, for instance, a filet machine, but they will also help out the ship's engineer and engineering when they are not busy watching their machine (Ex. 168, p. 410).

Supreme Alaska Seafoods agreed:

> All personnel onboard ship are sailors first and foremost. Regardless of department, rank, or time at sea, all personnel are responsible for maintaining the ship. The term ship encompasses her hull, all machinery and its cargo. Some sailors are more skilled than others, but those of less skill will be used as helpers on the same machinery or systems. Furthermore, personnel from different departments will be called upon to work in other spaces on other machinery, or transferred to other departments as the needs of the ship dictate. This practice is not exclusive to the fishing industry, but it is standard and common practice in the maritime world (Ex. 199, pp. 148–149).

FV Muir Milach said that interchanging jobs between servicing ships' systems and fish-processing equipment is also prevalent on small vessels: "[E]verybody, including the engineer, is going to spend the majority of their time on the fishing end of things" (Ex. 199, p. 61). FV Muir Milach added that interchanging jobs is particularly prevalent when the vessel is at sea: "Our fishing seasons are fairly lengthy and discrete. * * * So from the vessel owner's perspective, the duties of crew are as broad as their skills" (Ex. 199, pp. 64–65).

After considering stakeholder comments and testimony, as well as analyzing the record as a whole, OSHA is convinced that having a single standard for vessels will best protect employees from injury due to energization, startup, or the release of hazardous energy anywhere on a vessel. Accordingly, OSHA incorporated that change into paragraph (a)(2)(i), and deleted proposed paragraph (a)(2)(iii)(C), which would have excluded servicing fish-processing machinery, equipment, or systems on vessels from the lockout/tags-plus section. Thus, § 1915.89 will apply to servicing fish-processing equipment aboard vessels. However, as noted above, the general industry lockout/tagout standard (§ 1910.147) continues to apply to servicing operations at landside fish-processing facilities, which is consistent with the similarity of those plants to other general industry facilities, current practice in the landside fish-processing industry, and OSHA policy (CPL 02–01–047).

Paragraph (a)(2)(ii) applies the final lockout/tags-plus section to any employee, including ships' officers and crew, who services equipment used during shipyard employment, unless the application of the lockout/tags-plus standard is preempted by the regulations of another federal agency. The proposed lockout/tagout section contained a similar provision (proposed § 1915.89(a)(2)(i)(A)).

The language in paragraph (a)(2)(ii) clarifies longstanding OSHA policy that part 1915 applies whenever a ship's crew performs ship-repairing operations. OSHA included this issue in this rulemaking to address concerns that some courts have raised about the scope and coverage provisions in part 1915, subpart A, General Provisions. Although § 1910.15(a) specifies that part 1915 applies to "every employment and place of employment of every employee engaged in ship repairing, shipbreaking, and shipbuilding, or related employment," some language in part 1915 suggests that the part does not cover certain shipyard employment activities or employees. Specifically, § 1915.4(d) implies that part 1915 does not apply to some employees who perform shipyard employment activities:

> The term employee means any person engaged in ship repairing, shipbuilding, shipbreaking or related employments.* * * other than the master, ship's officers, crew of the vessel, or any person engaged by the master to repair any vessel under 18 net tons.

Section 1915.4 was taken from the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 *et seq.*), which, along with the OSH Act, provides OSHA with rulemaking authority over shipyard employment. Prior to enactment of the OSH Act, the Secretary of Labor, pursuant to authority under the LHWCA, promulgated occupational safety and health standards for shipbuilding to protect the life, health, and safety of shipyard employees (33 CFR 941(a)).

When Congress enacted the OSH Act in 1970, it authorized OSHA, within the first two years after the effective date of the Act, to promulgate as occupational safety and health standards any established Federal standard without following normal rulemaking requirements (29 U.S.C. 655(a)). Pursuant to this authority, OSHA adopted all established Federal workplace safety and health standards in effect as of April 28, 1971, that pertained to employers, employees, and employment covered by the OSH Act (29 CFR 1910.11(a); 36 FR 10466, May 29, 1971), including the safety and health standards enacted under the LHWCA.

OSH Act coverage, which extends to employers engaged in a business affecting interstate commerce, is broader than LHWCA coverage. As such, OSHA has consistently asserted that the Agency is not bound by the coverage limitations in the LHWCA standards. To clarify this position, OSHA issued an interpretive rule amending its incorporation of established Federal standards (37 FR 26008, Dec. 7, 1972). Specifically, OSHA added paragraph (b) to § 1910.11 specifying that the Agency was incorporating "only substantive rules affecting safety and health" from established Federal standards. *Id.* "The incorporations by reference of Parts 1915, 1916, 1917, 1918 * * * are not intended to include the discussion in those parts of the coverage of the Longshoremen's and Harbor Workers' Compensation Act * * *" (§ 1910.11(b)). OSHA explained that when it adopted the LHWCA safety and health rules, the Agency had "no intention of incorporating [into OSHA rules] * * * any other rules having special applicability under the laws under which the 'established Federal standards' were initially adopted" (37 FR 26008).

OSHA has taken this position before the Occupational Safety and Health Review Commission (OSHRC) and the Federal courts of appeal. OSHRC accepted OSHA's approach as delineated in § 1910.11(b) (*Dravo Corporation,* 7 O.S.H. Cas. (BNA) 2089 (1980)), but this provision has not been universally accepted. See *Dravo Corp.*v. *OSHRC,* 613 F.2d 1227 (3rd Cir. 1980).

In *Dravo,* the court said that, notwithstanding § 1910.11(b), OSHA would be held to the plain-language meaning of its part 1915 standards, including the coverage standards carried over from the LHWCA. *Dravo,* 613 F.2d at 1232–33. The language at issue in *Dravo* concerned the location of covered shipyard employment activities, that is, whether part 1915 covered shipbuilding activities performed at a waterfront fabrication shop on an island in the Ohio River. The court looked to the definitions of "employer" and "employee" in § 1915.4, which indicate that the terms are limited to persons engaged in shipyard employment "on the navigable waters of the United States, including dry docks, graving docks and marine railways" (§ 1915.4(c) and (d)). The court said the plain meaning of the definitions did not include fabrication shops ("they include only waters, docks, and marine railways," *Dravo,* 613 F.2d at 1232), and declined to construe the definitions more broadly.

The *Dravo* court concluded that if OSHA intends a different coverage scheme, the Agency must amend part 1915 through rulemaking. *Id.* Thus, in accord with the *Dravo* court and to avoid confusion, OSHA proposed to change the coverage of § 1915.89 to apply to servicing performed by any employee, including ships' officers and crew of the vessel (proposed § 1915.89(a)(2)(i)(A)). OSHA did not receive any comments opposing this language. As OSHA said in the proposed rule, this change should not come as a surprise to employers, since OSHA has consistently applied part 1915 whenever a ship's crew performs shipyard employment work (Ex. 81; see also CPL 02–01–047). OSHA believes that this provision will reduce any confusion related to the split in the courts and the language in § 1915.4.

To address a question posed by the International Association of Drilling Contractors (Ex. 103.1), OSHA is clarifying that the final lockout/tags-plus section also applies, in certain circumstances, to seamen who perform servicing operations on vessels. CPL 02–01–047 outlines OSHA's authority over seamen. The Coast Guard exercises full authority over the safety and health of seamen onboard inspected vessels; therefore, with the exception of OSHA recordkeeping requirements (29 CFR part 1904), OSHA may not enforce the OSH Act with respect to the working conditions of seamen on those vessels.

On commercial uninspected fishing industry vessels and other uninspected vessels, however, OSHA has authority over the working conditions of seamen that are not addressed by Coast Guard regulations. *Chao* v. *Mallard Bay Drilling, Inc.,* 534 U.S. 235 (2002). The Coast Guard has not regulated the hazards addressed by § 1915.89 on uninspected vessels. Accordingly, the final lockout/tags-plus section applies to seamen performing servicing operations on commercial uninspected fishing-industry vessels and other uninspected vessels. However, as paragraph (a)(2)(ii) states, the lockout/tags-plus standard is not applicable if such application is preempted by the regulations of another federal agency. Thus, the standard does not apply to the working conditions of seamen aboard inspected vessels since the Coast Guard regulates that area.

Paragraph (a)(3) adopts the proposed requirement that when other standards in part 1915, or applicable standards in part 1910, require the use of a lock or tag, employers shall follow those requirements and supplement them with the procedural and training requirements specified by final § 1915.89, Control of hazardous energy (lockout/tags-plus).

Part 1910 standards that currently contain lockout/tagout related requirements that may apply, with some exceptions, to shipyards include: § 1910.178 Power Industrial Trucks; § 1910.179 Overhead and Gantry Cranes; § 1910.181 Derricks; § 1910.213 Woodworking Machinery; § 1910.217 Mechanical Power Presses; § 1910.218 Forging Machines; § 1910.252 Welding, Cutting and Brazing; and § 1910.305 Electrical. The part 1915 standards that contain requirements for locks or tags include § 1915.162 Ship's Boilers; § 1915.163 Ship's Piping Systems; § 1915.164 Ship's Propulsion Machinery; and § 1915.181 Electrical circuits and distribution boards. The regulatory language for the 1915 standards has been modified to incorporate the requirements of this final rule, which modifications have been carried over from the proposal with minor changes for purposes of clarification and consistency. OSHA received no comments on these proposed modifications. Therefore, the Agency is retaining the proposed revisions, which it believes will bring consistency to the lockout/tags-plus requirements across the various sections of part 1915 and will afford employees increased protection compared to the existing requirements.

For example, an employee working on a ship's main engine, engaging the electrically driven jacking gear,

currently would follow § 1915.164 that requires that the circuit controlling the jacking gear be deenergized by tripping the circuit breaker, opening the switch, or removing the fuse, and then applying a tag at the breaker, switch, or fuse panel. With this final rule, the employer will now implement the additional requirements in § 1915.89 to ensure that all employees are protected while servicing machinery, equipment, or systems. Alternatively, an employee cleaning a space that has electrical wiring or the fire-suppression system running through it will not need to follow § 1915.89 since the employee is not servicing the wiring or fire-suppression system, but is merely cleaning the space. However, other 29 CFR 1915 standards may apply, and should be considered when working on machinery, equipment, or systems on vessels and vessel sections.

Exceptions

Paragraph (a)(4) lists exceptions from the final lockout/tags-plus section for two types of operations: Work on electric equipment that is connected with a cord and plug, and minor servicing activities performed during normal production operations. OSHA did not receive any opposition to these two exemptions, which were included in the proposal. The exceptions for electric plug-in equipment and minor servicing are the same as the proposal with only minor, non-substantive editorial revisions.

The exception in paragraph (a)(4)(i) refers to work on machinery, equipment, or systems that are connected by a cord and plug. When equipment is unplugged and under the exclusive control of the employee performing the servicing, the risk of the equipment starting up or hazardous energy being released no longer exists.

In paragraph (a)(4)(ii), OSHA recognizes that some servicing activities that occur during normal production operations, such as making fine adjustments to equipment, must be performed with the power on. This activity may include certain aspects of troubleshooting—for example, checking to ensure that the source of a production problem has been corrected. The final lockout/tags-plus rule exempts these servicing activities during normal production operations, provided these activities are routine, repetitive, and integral to the use of the equipment. However, the employer is required to provide employees with effective means of protection from the energization, startup, or the release of hazardous energy when they perform these activities. If employees are conducting other-than-minor servicing, they must follow the lockout/tags-plus procedures.

Proposed § 1915.89(a) Provisions Not in the Final Rule

In addition to deleting proposed paragraph (a)(2)(iii)(C), which would have removed fish-processing on vessels from § 1915.89 coverage, OSHA deleted three other provisions in proposed paragraph (a). All three provisions were taken from the general industry lockout/tagout standard.

OSHA did not include in the final rule the exception specified by proposed paragraph (a)(2)(ii). This proposed provision exempted "normal production operations" from the lockout/tags-plus standard. As explained in the summary and explanation of paragraph (a)(2)(i)(A), not including the exception for "normal production operations" results in uniform application of the final standard across all shipyard employment.

OSHA also excluded from the final rule the proposed paragraph (a)(2)(iii)(B) exception for hot-tap operations on transmission or distribution systems for substances such as gas, steam, water, and petroleum products. Bath Iron Works, Electric Boat Corporation, and the American Shipbuilding Association said the exemption was not necessary (Exs. 106.1; 108.2; 117.1). These stakeholders pointed out that § 1915.14 requires marine chemist certification for workers performing hot work on pipelines that contain or have contained flammable or combustible materials. Moreover, these stakeholders noted that National Fire Protection Association's 306 standard for the Control of Hazardous Gas on Vessels states, "Marine Chemists are not permitted to authorize hot tapping except in emergency situations where a vessel is in peril" (Exs. 106.1; 108.2; 117.1). OSHA agrees with the stakeholders that 29 CFR 1915, subpart B, fully covers hot-tap operations, and that including language in the final rule about such operations is unnecessary and may cause confusion.

Proposed paragraph (a)(3)(i) was not included in the final rule to simplify the lockout/tags-plus section. The Agency believes that this provision, which described the purpose of the lockout/tags-plus section, is unnecessary because paragraph (b) of the final lockout/tags-plus section provides the same information.

Paragraph (b)—Lockout/Tags-Plus Program

This final standard requires that the employer establish and implement a written program and procedures to control hazardous energy during the servicing of any machinery, equipment, or system. OSHA separated the requirements into paragraphs (b)(1) through (b)(6). The written energy-control procedures proposed in paragraph (b)(4) were moved to paragraph (d), Lockout/tags-plus written procedures, in this final standard.

Although the energy-control program applies to all employees, it is directed primarily at those workers who have the greatest exposure to hazardous energy, which include authorized and affected employees. The final standard defines "authorized employees" as those employees who execute the lockout/tags-plus procedures, install the lock or tags-plus system, or service any machine, equipment, or system under a lockout/tags-plus application (final § 1915.80(b)(3)). "Affected employees" include employees who normally operate the machinery or equipment on which service is being performed as well as those employees whose job duties require them to work in the area where the servicing is being performed (final § 1915.80(b)(2)). The definition also specifies that affected employees become authorized employees when they perform servicing operations on the equipment under a lockout/tags-plus application.

Paragraphs (b)(1) through (b)(6) specify the components of the employer's written lockout/tags-plus program: General procedures for the use of lockout or tags-plus systems in accordance with paragraph (c); procedures for protecting employees involved in servicing operations in accordance with paragraphs (d)–(m); specification for locks or tagout hardware in accordance with paragraph (n); employee training procedures in accordance with paragraph (o); incident investigations procedures in accordance with paragraph (p); and program audit procedures in accordance with paragraph (q). These procedures are more fully explained below.

The employer's program is required to be written. OSHA concludes that, because the requirements in the lockout/tags-plus standard are comprehensive, the employer's program must be in writing to assist both employers and employees in implementing the standard's many provisions, and to give those groups ready access to all of the requirements. OSHA believes this is standard industry practice, and that it is essential for employee safety. No comments were received on the requirement that the program be in writing. OSHA is

retaining this requirement in final paragraph (b).

Paragraph (c)—General Requirements

Paragraph (c)(1), proposed as § 1915.89(b)(2), requires that, before any authorized employee performs servicing when energization or startup, or the release of hazardous energy, may occur, all energy sources be identified and isolated, and the machinery, equipment, or system rendered inoperative. This requirement means that, prior to servicing, each source of energy must have a lock or tags-plus system applied to it. While this is a new paragraph in the final standard, it is not a new concept in lockout/tags-plus. Failure to identify an energy source prior to servicing could result in serious injury and death. For example, in 1999, an employee installing a support cable was electrocuted when he came into contact with the energized high-voltage line that he was servicing (Ex. 69). A secondary switch that should have been locked open to deenergize an electric panel had been left closed. Procedures to isolate all hazardous-energy sources may have prevented this accident (72 FR 72452, 72485, Dec. 20, 2007). No comments were received disputing the fact that machinery, equipment, or systems need a lock or tagout application before servicing.

A primary tool for providing protection under the standard is the energy-isolating device, which is the mechanism that prevents the transmission or release of energy and to which locks or tags are attached. The energy-isolating device guards against equipment startup or reenergization of equipment during servicing. For purposes of this final standard, there are two types of energy-isolating devices: Those that are capable of being locked, and those that are not. How energy must be controlled depends on whether the energy-isolating device can accommodate a lock.

The term "capable of being locked out" is being retained from the proposal, and is defined at § 1915.80(b)(4). An energy-isolating device is considered "capable of being locked out" if it: Has a locking mechanism built into it; has a hasp or other means of attachment to which, or through which, a lock can be affixed (for example, a lockable electric disconnect switch); or can be locked without dismantling, rebuilding, or replacing the energy-isolating device, or permanently altering its energy-control capability (such as using a lock/chain assembly on a pipeline valve, a lockable valve cover, circuit-breaker lockout, or fuse block-out devices).

As discussed in the major issues section of this preamble, OSHA recognizes that there are many important elements of any energy-control program, and that the choice of lockout versus tagout is just one of these elements. Further, OSHA also acknowledges that, in isolation, the attachment of a lockout device to an energy-isolating device will provide greater protection against reactivation than the attachment of a tag. Thus, in final paragraph (c)(2), OSHA requires that when an energy-isolating device is capable of being locked, a lock must be used unless the employer can demonstrate that the use of a tags-plus system will provide "full employee protection" equivalent to the protection obtained by using a lock. This requirement was proposed as § 1915.89(b)(2)(ii), and is being included in the final rule.

During the public hearing for this rulemaking, Amy Duz of iWorkWise stated: "I have a general preference for locks, but I realize they can't always be used" (Ex. 199, p. 186). When asked whether he would support locks for fishing vessels, Chris Kline of Icicle Seafoods, Inc., responded: "I would absolutely. It's the only real way to [ensure safety when] you have individuals working around equipment" (Ex. 199, p. 246). Asked the same question, Alan Davis of American Seafoods Company stated: "Yes. When I'm climbing into a piece of equipment, I want to make sure my lock is on it, because it is a very sure way of making sure that someone can't activate it without a willful act of malice" (Ex. 199, pp. 302–303). Allen Rainsberger of Puget Sound Shipbuilder's Association agreed: "Whenever it's capable of being locked up, that's the preferred method, yes." After considering these employers' comments, OSHA has concluded that applying a lock will provide workers with the most efficient means of protection and the highest degree of confidence in their personal safety.

However, there are also data in the record on programs that effectively use tags-plus systems. Northrop Grumman—Newport News and Bath Iron Works stated that they believe their tags-plus systems are "as effective" as locks (Ex. 168, p. 340). While OSHA has historically preferred locks over tags, the Agency will defer to employers who use the latter, as long as they can demonstrate that their tags-plus system offers full employee protection equivalent to that provided by a lock.

In evaluating whether to implement lockout or tags-plus systems, the employer should use the following clarifications. First, as a general rule, lockout must be implemented as part of the overall energy-control program for machinery, equipment, or systems that are "capable of being locked out." Machinery, equipment, or systems that have a hasp or other attachment capable of accepting a lock, or that incorporate a locking mechanism, are obviously considered to be "capable of being locked out." However, other equipment without such a locking capability may still be considered "capable of being locked out," but only if lockout can be achieved without the need to dismantle, rebuild, or replace the energy isolating device, or permanently alter its energy-control capability.

Second, for machinery, equipment, or systems that are capable of being locked out, OSHA recognizes that employers may, nonetheless, prefer to implement a tagout program instead of lockout. OSHA will allow the use of tagout programs as an alternative to locks only if the employer can demonstrate that its complete tagout program will provide full employee protection. In most cases, for OSHA to consider a tagout program to be sufficiently protective, the elements of such a program will need to be detailed and intensive, and will necessitate far more commitment and day-to-day vigilance to make it effective than will a lockout program. This approach is necessary because a tag serves only as a warning and not as a positive restraint on hazardous energy. The final rule establishes criteria that OSHA will evaluate in determining whether a given tagout program does, in fact, provide full employee protection. Thus, when machinery, equipment, or systems are capable of being locked out, OSHA believes it will be easier for employers to use that capability than to bypass it in favor of a tagout program.

Paragraph (c)(3) states that a tags-plus system must be used when the energy-isolating devices are not capable of being locked out. If the employer wishes to perform modifications of the equipment to accommodate a locking device, OSHA encourages, but does not require, such modifications.

New provisions in paragraph (c)(4) describe the basic components of the tags-plus system. As required by paragraph (c)(4)(i), a tags-plus system includes an energy-isolating device, which is a mechanical device on a machine, equipment, or system that physically prevents the release or transmission of energy. Examples of energy-isolating devices are manually operated electrical circuit breakers, disconnect switches, line valves, blocks, or similar devices, but do not include push buttons, selector switches, or other types of control-circuit devices. Each

energy-isolating device must have a tag affixed to it. The second component, required in paragraph (c)(4)(ii) of the tags-plus system, is at least one additional safety measure. This additional measure provides an impediment (in additional to the energy-isolating device) to the energization or startup of the equipment being serviced, or the release of hazardous energy. Some examples of additional safety measures include, but are not limited to:

- Removing an isolating circuit element, such as removing a fuse;
- Blocking a control switch, including blocking a circuit breaker with clips;
- Opening an extra disconnecting switch;
- Using a blocking device, such as a tie wire on a valve handle;
- Blocking, blanking, or bleeding a line; including bolting a blank flange on a line;
- Removing a valve handle or wiring it in place; or
- Shutting a second valve (double-valve isolation).

As a last-resort option, an employer could choose to use an attendant as an additional safety measure. While this would not be a preferred method, this could be used should an employer not be able to identify an additional safety measure that would be feasible at that time. Phil Dovinh of Sound Testing, Inc., presented a long list of additional measures that he called "positive measures" in his testimony:

> When shipyard industry refers to lockout and tagout, we normally mean a positive measure of some kind is to be used, not only just to lockout or tagout, but also closing valves, removing handles, splash zoning, blanking, plugging, ballooning, stuffing with a rag, wedging, capping, drill, tap, plug, bandaging, securing manholes, closing doors and hatches, shutting portholes and ventilation ducts, tying ropes, duct-taping, guarding machinery, posting signs in confined space entry when hot work remains, reenergize, disconnect, pull the plug, tank cleaning, isolation, building containment, jerry rigging, hanging fire blankets, water blanketing, et cetera (Ex. 198, pp. 150–151).

While not endorsing all of the suggested "positive measures" listed by Mr. Dovinh as acceptable additional safety measures, OSHA appreciates the numerous ways that extra precautions can be taken during servicing operations. In addition, Sound Testing, Inc., confirmed that most employers are taking extra precautions, and are proactive in protecting their employees, including while they are performing servicing operations. Moreover, testimony from several commenters advocated taking an extra step, regardless of whether locks or tags were being used (Exs. 168, pp. 100–101; 198, pp. 39–40, 150–151; 199, p. 248). OSHA appreciates these comments, and believes that these additional provisions will not be burdensome for employers to implement.

A note [2] has been added to paragraph (c)(4) to explain that when the Navy ship's force maintains control of the machinery, equipment, or systems on a vessel and has implemented such additional measures it determines are necessary, the provisions of paragraph (c)(4)(ii) of this section do not apply, provided that the employer complies with the verification procedures in paragraph (g) of this section. Following the deenergization, isolation, and application of a lock or tag of any machinery, equipment, or system, the authorized employee must verify deenergization and isolation prior to beginning the servicing operation. In a group servicing situation, the employer's primary authorized employee must verify, and all of the employer's authorized employees must be given the option to verify, deenergization and isolation prior to beginning the servicing operation. This procedure will ensure that the employees who are not in control of the machinery, equipment, or system, are protected from the uncontrolled release of hazardous energy.

Paragraph (c)(5), which was carried over from proposed paragraph (b)(2)(iii), requires the employer to ensure that each energy-isolating device is designed to accept a lock whenever the machinery, equipment, or system undergoes extensive repairs, renovation, or modification, or whenever new machinery, equipment, or systems are installed. In the preamble to the general industry rule, OSHA explained that such modifications are most effectively and efficiently made as part of the normal equipment replacement or renovation cycle (72 FR 72452, 72494, Dec. 20, 2007).

American Seafood Company expressed concern over this requirement:

> It is also unlikely that [shipyards] will be able to insist that their customers perform a complete Hazardous Energy Control Plan and retrofit prior to getting serviced in a shipyard. * * * While all agree that as overhauls and replacements occurs it makes sense to upgrade to Lockable Disconnects, the scope and enormity of attempting to do so in anything other than a major refitting of a ship's system is financially daunting (Ex. 105.1).

[2] See rationale for this note in the summary and explanation above.

However, Manitowoc Marine Group testified that they are already moving toward updating equipment during repairs:

> No, that is exactly what we do going forward. We have an electric superintendent. He has pretty much taken the job of the electrical technician for the new vessels, and he does the work and testing on some of the older vessels as well. And his main priority is to align ourselves with the up-to-date material and equipment, and so that we are in compliance going forward, for the vessel, for us, when we actually do the work (Ex. 168, pp. 119–120).

Atlantic Marine raised the following issue regarding shipyards that do not own the vessel under construction:

> It is typical for ownership of a vessel under construction to be the shipyard's until delivery of the vessel or some other contractually agreed-upon date. Many of these machines, equipment, and systems are owner furnished materials. How does an employer comply with this paragraph if the customer does not want a lockable system on the vessel? (Exs. 115.1; 118.1).

OSHA understands that, in some situations, shipyard employers do not control the equipment to the extent that they can have locks installed as the main energy-isolating device. The proposed rule, in paragraph § 1915.89(b)(2)(iii), made clear that this requirement would only apply to machines, equipment, and systems the shipyard employer owns. OSHA agrees that compliance with the requirement to install locks may not be possible when the shipyard employer does not own the machines, equipment, or systems, and is including this exception in paragraph (c)(5)(i) of this final rule. In addition, the Agency included a second exception, paragraph (c)(5)(ii), specifying that the requirement for installing or converting to lockable systems does not apply when a shipyard employer builds or services a vessel or vessel section according to customer specifications. Both Bath Iron Works and Northrop Grumman—Newport News testified that they must purchase materials and equipment for the vessels on which they perform construction. The vessel owners, who may not be subject to OSHA's authority, could specify that they do not want lockable systems. OSHA acknowledges this dilemma, and concludes that the two exceptions to installing locks are appropriate, especially since the tagout requirement will cover all systems that cannot be locked. By setting forth these exceptions in this final standard, shipyard employers will know when they are not required to modify energy-isolating devices to be lockable. In all other circumstances, however, the

requirement in paragraph § 1915.89(c)(5) for lockable energy-isolating devices must be followed.

Paragraph (c)(6)—Full Employee Protection

Final paragraph (c)(6) clarifies the requirements when employers use a tags-plus system in lieu of a lock when a machine, piece of equipment, or system is capable of being locked. These provisions, proposed under § 1915.89(b)(3)(i) and (ii), are organized in this final rule to eliminate any misunderstanding of what OSHA requires for "full employee protection" under the control of hazardous energy.

Paragraph (c)(6)(i) requires that when a tag is affixed to an energy-isolating device instead of a lock, the tag must be attached at the same location that the lock would have been attached. As discussed, tags are prominent warning devices that provide protection by identifying the energy-isolating device as a source of potential danger. Improper placement of a tag could result in a serious injury.

Final paragraph (c)(6)(ii), which was proposed as paragraph (b)(3)(ii), requires an employer to demonstrate that a tags-plus system will provide a level of protection equivalent to that of a lock. Paragraph (c)(6)(ii)(A) requires that employers demonstrate full compliance with all tagout-related provisions of this subpart. Paragraph (c)(6)(ii)(B) requires that employers also implement such additional safety measures as are necessary to provide the equivalent safety available from using a lock.

The requirement for an additional safety measure(s) is a key element in demonstrating that the tagout program provides equivalent protection to a lockout program. In other words, at least one added safety measure must be used in addition to tagging the energy-isolating device to prevent unexpected reenergization. This independent, additional measure protects an employee from injury or death through the inadvertent activation of an energy-isolating device caused by human error, inadvertent contact, the loss or detachment of a tag, or from any other limitation of tags. As discussed above, additional safety measures might include, but are not limited to: Closing a second in-line valve (for example, double block and bleed); removing a valve handle to minimize the possibility that machines or equipment might be inadvertently energized or started; removing an additional isolating circuit element (for example, fuse); opening an extra disconnecting device (for example, disconnecting switch; circuit breaker); opening and then racking out a circuit breaker; grounding an electrical circuit if the grounding practice protects the employee should the tagged isolating device be activated; or locking, blocking, or barricading a controlling switch.

Any additional safety measure used must be integrated into an energy-control program through sound hazard-specific analyses on a case-by-case basis. For example, blocking a control switch as an additional safety measure to tagging an electrical disconnect may be an effective second layer of protection for preventing the mechanical activation of a machine, but this block may be an inadequate additional safety measure for the same machine's hydraulic or pneumatic hazardous-energy sources. In short, this additional control measure provides the authorized employee using a tagout program with a "second layer of protection" in the event the tagout device for the primary isolating device is defeated.

In paragraph (c)(6), a note [3] has been included to explain that when the Navy ship's force maintains control of the machinery, equipment, or systems on a vessel and has implemented such additional measures it determines are necessary, the provisions of paragraph (c)(6)(ii)(B) of this section do not apply, provided that the employer complies with the verification procedures in paragraph (g) of this section. Following the deenergization, isolation, and application of a lock or tag of any machinery, equipment, or system, the authorized employee must verify deenergization and isolation prior to beginning the servicing operation. In a group servicing situation, the employer's primary authorized employee must verify, and all of the employer's authorized employees must be given the option to verify, deenergization and isolation prior to beginning the servicing operation. This procedure will ensure that the employees who are not in control of the machinery, equipment, or system, are protected from the uncontrolled release of hazardous energy.

Paragraph (c)(7)—Lockout/Tags-Plus Coordination

Paragraph (e)(3)(ii)(C) of the proposal assigned responsibility to an authorized employee to coordinate affected work forces and ensure continuity of protection in a group lockout/tags-plus situation (that is, when servicing is performed by a crew, craft, department, or other group). During the comment period and at the public hearings, OSHA learned that shipyard employers use different, more comprehensive approaches such as a tiered approach, systems experts, or databases to provide coordination in extremely complex shipboard environments. iWorkWise stated:

> What a tiered approach to me is, the more complicated it gets, maybe the more qualified or the more people that need to be involved. So if I am going to lock out a pump and the pump has one 220 breaker, that is pretty simple, and it says Pump 1. You know, almost anyone can be trained to do that. But when you start getting back into the engine rooms and the control panels of these places, there * * * [are] going to have to be multiple people involved or a system expert, I should say, and when you are pulling in contractors and shipyard employees, there has to be a lot of coordination. So I think of it almost like the incident command system (Ex. 168, pp. 416–417).

Bath Iron Works uses a tiered approach when using a tag system:

> Every one of the tags, Joe, once a system's expert decides to tagout a system, we use a three-part carbon copy, so each tag has multiple copies, if you will. One goes to the supervisor, one goes into a log box that is transferred over to an administrator, who logs in all those tags, whatever information is on it, date, time, specific reason why we are tagging out, puts onto a log sheet that is reviewed at the operation level. The reverse is the same, when you go to take them off (Ex. 168, pp. 276–277).

When questioned about their log system, Bath Iron Works stated:

> The tag itself has a carbon copy, it is snapped off, put into a box. That box is sent up to an administrative clerk who enters all that information into a database. So, anytime, at that point, if someone has to get into that system or either secure it or non-secure it, has to go back to the supervisor, and they have logs of who has got the thing tagged out, and follow through that way (Ex. 168, p. 277).

In addition, a National Shipbuilding Research Program study (NSRP Study (Ex. 61)) entitled, "Review of Current and Best Practices for Hazardous Energy Control (Tagout) in Shipyards, June 30, 2004," which advocates a systems-expert approach, notes that a general industry-type lockout/tags-plus program does not work in shipyard environments because:

- The means of isolation are typically complex involving many points of isolation and types of energy. The points of isolation may require modification during the course of the work (roll back or roll forward).
- The employees who perform the work on a particular system are unlikely to have the capability of identifying all

[3] See rationale for this note in the summary and explanation above.

energy sources, either initially based on engineering drawings and schematics or physically on the ship.

• The employees who perform the work on a particular system are unlikely to have the capability of coordinating the interface between multiple jobs that have overlapping points of isolation (Ex. 61).

The NSRP Study also stated:

> Due to the complexity of shipboard systems, system experts are relied upon to identify and isolate systems to permit the safe work by non-system expert employees. * * * This process of using system experts is similar to the use of competent persons for a variety of other hazards (Ex. 61).

OSHA finds these comments and testimony persuasive, and concluded that employers must be given a different, more comprehensive method to coordinate servicing in complex conditions. Based on the information in the comments above, the findings of the NSRP Study, and OSHA's own expertise, the Agency added a requirement for a lockout/tags-plus coordinator and log in two situations: (1) When multiple employees service the same machinery, equipment, or system at the same time on vessels, in vessel sections, or at landside facilities; and (2) when employees service multiple machinery, equipment, or systems at the same time on the same vessel or vessel section.

Final paragraph (c)(7)(i)(A) requires the coordination of all lockout/tags-plus applications when employees are servicing multiple machinery, equipment, or systems at the same time on vessels and in vessel sections. This requirement for a lockout/tags-plus coordinator (hereafter referred to as "coordinator) applies when employees, whether contract or host employees, are performing separate, but concurrent, servicing operations on different machinery, equipment, or systems. Because of the complexity of machinery, equipment, and systems used in vessels and vessel sections, as well as the existence of shared and redundant energy sources, the Agency concluded that a requirement for coordination would heighten employee protection. For example, a generator aboard a U.S. Navy combatant vessel may supply power to the vessel's weapons system and to the lighting system for a particular part of a vessel. If the generator is secured for the servicing of both these systems, and the employee servicing the weapons system restores power to the generator for testing or troubleshooting, an employee servicing the lighting system at the same time would be at risk of electrocution. The presence of a coordinator, who would oversee removal of the lockout/tags-plus system for the two operations, would eliminate such a possibility.

Paragraph (c)(7)(i)(A) does not require that a coordinator be used when servicing multiple machinery, equipment, or systems at the same time at landside facilities. The Agency concluded that machinery, equipment, and systems at landside facilities do not have the same complexities and redundant or shared energy sources as those aboard vessels and in vessel sections. Further, machinery, equipment, or systems at landside locations often have their own individual disconnect or cutoff mechanisms that completely isolate them from other machinery, equipment, or systems. In such cases, a coordinator is not necessary because hazardous energy to a machine, piece of equipment, or system can be controlled through a single source that will not affect other machinery, equipment, or systems.

Paragraph (c)(7)(i)(B) requires a coordinator when employees, whether employed by the host employer or a contract employer, are performing multiple servicing operations on the same machinery, equipment, or systems at the same time on vessels, in vessel sections, and at landside facilities. Such a situation might arise during landside servicing operations, for example, when an electrician secures the power on a portable crane so that a machinist can inspect the crane's wire rope while ironworkers repair the crane's structural members. Another situation, while servicing is being performed on a vessel, could occur when two or more sets of employees work on high-pressure steam lines. In such a situation, the energy source would be secured, possibly using a single blank, in order for the piping to be repaired in one location, such as the forward location of a machinery space, while additional repairs are being performed in another separate location (*i.e.,* aft location of the machinery space two levels below the forward location). By complying with the requirement to have a coordinator, who would be aware of the status of each separate servicing operation, the employer can avoid situations when an employee servicing one part of a system is injured because another employee working on another part of the system, without knowledge of the first employee, restores power to that system.

As defined in § 1915.80, the lockout/tags-plus coordinator is an employee designated by the employer to coordinate and oversee all lockout/tags-plus applications for (a) multiple servicing operations on the same machinery, equipment, or system at the same time, whether on vessels, in vessel sections, or at landside facilities, and (b) servicing operations on multiple machinery, equipment, or systems on the same vessel or vessel section at the same time (§ 1915.80(b)(15)). Paragraph (c)(7)(ii) requires that the coordination process include both the lockout/tags-plus coordinator and a lockout/tags-plus log. In addition, the lockout/tags-plus log must be specific to each vessel, vessel section, or landside work area. The specific requirements for the lockout/tags-plus log are discussed below in paragraph (c)(7)(iv).

OSHA has not specified the number of servicing operations that must be taking place or the number of employees performing the servicing before a coordinator must be designated, nor does the Agency specify that the coordinator may only be responsible for the lockout/tags-plus coordination and log. By not including such specifications, OSHA is giving employers the flexibility to make decisions based on the need in their facilities to ensure employee protection. OSHA believes employers are in the best position to assess this need. However, employers must base this application on the complexity of vessels under construction or repair. For example, a large vessel that is undergoing extensive repairs and upgrades, with multiple contract employers and multiple servicing operations, will likely have one employee with the sole responsibility to be the lockout/tags-plus coordinator for that particular vessel. On the other hand, if an employer has two smaller vessels on adjacent piers with minimal servicing operations, that employer may choose to either have one coordinator for both vessels, or have an employee on each vessel with the collateral duty to serve as the lockout/tags-plus coordinator.

In paragraphs (c)(7)(iii)(A), (B), and (C), OSHA specified several responsibilities of the lockout/tags-plus coordinator. These three provisions require, respectively, the coordinator to oversee and approve: The application of each lockout and tags-plus system; the verification of hazardous-energy isolation prior to any servicing performed on any machinery, equipment, or system; and the removal of each lockout or tags-plus system. This requirement ensures that one coordinator is responsible for approving these three phases of the lockout/tags-plus process.

Paragraphs (c)(7)(iii)(A), (B), and (C) requires the coordinator to oversee and approve the application of each lockout/

tags-plus system, the verification of hazardous energy isolation before servicing begins, and the removal of each lockout/tags-plus system. This oversight and approval authority will require the coordinator to work closely with the authorized person for each lockout/tags-plus application. The coordinator will review the authorized person's plan and either approve or deny the request. Once the coordinator approves a request, the authorized person, in consultation with the coordinator, will apply the lock or tags-plus system, verify isolation of the hazardous energy, and remove the lockout/tags-plus system.

In addition to coordinating all lockout/tags-plus applications, the coordinator must maintain the lockout/tags-plus log. In paragraph (c)(7)(iv), OSHA specified six items that the coordinator must maintain in the log, including: The location and the type of the machinery, equipment, or system (paragraphs (c)(7)(iv)(A) and (B)); the name of the authorized employee applying the lockout/tag-plus system (paragraph (c)(7)(iv)(C)); the date that the lockout/tags-plus system was applied (paragraph (c)(7)(iv)(D)); the name of the authorized person removing the lock or tags-plus system (paragraph (c)(7)(iv)(E)); and the date that the lockout/tags-plus system was removed (c)(7)(iv)(F)). This information is needed so that the lockout/tags-plus coordinator can effectively oversee all lockout/tags-plus applications prior to servicing operations to ensure the safety of each authorized and affected employee. Inclusion of this information in the log will permit the coordinator to know, at all times, which systems are under lockout/tags-plus and which authorized person is responsible for each lockout/tags-plus application.

As stated previously, the Agency is aware of cases in which the U.S. Navy will designate its ship's force to coordinate and/or apply the lock or tags-plus systems on Navy vessels being serviced in a private-sector shipyard, and also to maintain control of the lockout/tags-plus log, rather than a shipyard-assigned employee. In those instances, OSHA believes that having a Navy-designated coordinator and authorized person who applies the lockout/tags-plus systems fulfills certain requirements as set forth in "Notes" in the applicable sections of the regulatory text and achieves the level of protection required by this section. In paragraph (c)(7), a note [4] has been included to explain that when the Navy ship's force is the lockout/tags-plus coordinator and maintains control of the lockout/tags-plus log, the employer will be in compliance with paragraph (c)(7) of this section when coordination occurs between the ship's force and the employer to ensure that applicable lockout/tags-plus procedures are followed and documented. Here, the term "employer" refers to the host employer, any of its contractors, or any employer contracted directly by the military. In these cases, all employers performing servicing work must coordinate all aspects of the lockout/tags-plus program with the Navy ship's force. The host employer should perform this coordination for all host employer personnel and for contractors and other personnel hired by the host employer.

Paragraph (d)—Lockout/Tags-Plus Written Procedures

Paragraph (d), Lockout/tags-plus written procedures, is a departure from the proposal (§ 1915.89(b)(4)), which was based on the general industry standard. Changes from the proposal primarily involve the recognition that servicing machinery, equipment, and systems in the shipyard environment often entails complexities that require a different approach regarding documentation of procedures.

Paragraph (d)(1) requires that employers establish and implement written energy-control procedures to prevent energization or startup, or the release of hazardous energy, during the servicing of machinery, equipment, or systems. This provision was proposed as paragraph (b)(4)(i). The written procedures must include all information employees must know in order to control hazardous energy during servicing.

OSHA received several comments requesting clarification whether OSHA was proposing to require a written procedure for every machine, piece of equipment, or system. Accordingly, a group of commenters, including Lake Union Drydock Company, American Seafoods Company, Puget Sound Shipbuilders, Dakota Creek Industries, North Pacific Fishing Vessel Owners Association, and iWorkWise, inquired: "How are they to require or generate such written procedures for all equipment when as shipyards they will not work on most of it, and they have no control over the existing equipment installations?" (Exs. 101.1; 105.1; 124; 126; 128; 130.1). Prowler LLC and Ocean Prowler LLC commented: "Will [ship]yards have to write procedures for every piece of equipment they work on?" (Ex. 100).

As OSHA stated in the proposal the standard does not require separate procedures to be written for each and every piece of equipment (72 FR 72452, 72493, Dec. 20, 2007). Similar machines and/or equipment (such as those using the same type and magnitude of energy) that have the same or similar types of controls can be covered with a single procedure. For example, employers may develop one set of procedures for all steering gear systems, ship's lighting systems, ship's refrigeration systems, fire-suppression systems, grinders, or lathes if the type and magnitude of energy and type of controls are the same or similar for the particular systems, and as long as the procedure satisfactorily addresses hazards and the steps that must be taken to control these hazards. However, if unique conditions are present, such as multiple energy sources or different means of connection, then the employer must develop specific energy-control procedures to address these conditions to ensure that employees are protected. For example, if a system requires that a unique shutdown sequence be followed, specific energy-control procedures will be required for that system.

OSHA added a note to paragraph (d)(1), specifically addressing this issue, which explains that employers only need to develop a single procedure for a group of similar machines, equipment, and systems if the machines, equipment, or systems have the same type and magnitude of energy and the same or similar type of controls, and if a single procedure can satisfactorily address the hazards and the steps to be taken. Under those circumstances, a separate procedure need not be written for each and every machine or piece of equipment.

Prowler LLC and Ocean Prowler LLC asked the following question: "If the ship has not clearly labeled their equipment or disconnects, will the [ship] yard then have to write a procedure prior to working on it as they are not 'readily identifiable'?" (Ex. 100). OSHA believes that whether a vessel undergoing repair is in a shipyard for a few weeks, a few months, or a few years, it is the responsibility of the shipyard employer to develop procedures that will cover all machinery, equipment, or systems on which it will perform servicing operations. OSHA understands that vessels typically do not return for repairs to the shipyards in which they were built, and that some vessels, particularly foreign-built vessels, may have components that are difficult to identify. However, the release of hazardous energy is a serious hazard, and OSHA concludes that

[4] See rationale for this note in the summary and explanation above.

employers must not exclude any machinery, equipment, or systems from their lockout/tags-plus programs. In this regard, it is the employer's responsibility to correctly identify all energy sources and the means to control them. When the shipyard employer cannot identify and control all energy sources, the entire systems may need to be shut down.

Manitowoc Marine Group described how its employees assist in this process:

> What we have tried to do is we have tried to somewhat model the general industry to a point. We will identify the energy sources as best we can with the crew. We usually have the crew members with us, walking through the processes. And what we try to do with this is, we identify a "boat boss," for lack of better phrase. He will actually shut the entire systems down, because in most cases, we are not working with the systems. We are doing physical repair of the vessel. All of these complex systems and beltings are all locked out physically, from pneumatics, hydraulics, whatever the case may be, identified, and placement of the locks (Ex. 168, pp. 110–111).

Paragraph (d)(1)(i) requires that the written energy control procedures include a clear and specific outline of the scope and purpose of the lockout/tags-plus procedures. As proposed (proposed paragraph (b)(4)(ii)), this provision would have required the procedure to have an outline of the scope, purpose, authorization, rules, techniques used to control hazardous energy, and the means to enforce compliance. After reviewing accident reports, comments, and testimony on conditions in shipyard employment, OSHA concluded that requiring documentation of the authorization and rules regarding the control of hazardous energy is not necessary or appropriate (see preamble discussion above). However, because the consequences of the release of hazardous energy can be serious, the Agency included the provision requiring a means of enforcement in paragraph (d)(1)(ii) of this final rule; this paragraph addresses the employer's enforcement responsibility. This requirement does not specify how an employer must enforce employee compliance with the lockout/tags-plus program and procedures, only that the employer must do so. OSHA made this requirement performance-based, allowing employers to establish disciplinary programs that will be effective under the unique conditions of each shipyard. OSHA believes this requirement will ensure that employers and employees understand the importance of following the established lockout/tags-plus procedures. At the same time, this provision will provide employers with flexibility to tailor their enforcement programs to their shipyard conditions.

Paragraph (d)(1)(iii) requires employers to provide the steps employees must follow when using each of the procedures specified by paragraphs (d)(1)(iii)(A) through (I). OSHA included paragraphs (A) through (E) in the proposal. These paragraphs specify, respectively, the following procedures: Preparations for shutting down and isolating the machinery, equipment, or system to be serviced in accordance with paragraph (e) of this section; application of the lockout/tags-plus system in accordance with paragraph (f) of this section; verification of isolation in accordance with paragraph (g); testing the machinery, equipment, or system in accordance with paragraph (h); and removing lockout/tags-plus systems in accordance with paragraph (i).

In addition to these procedures, OSHA added the procedures specified by paragraphs (d)(1)(iii)(F) through (I) to the final standard. Accordingly, employers are to provide the steps employees must follow when using each of these procedures. Paragraphs (F) through (I) specify: Starting up the machinery, equipment, or system in accordance with paragraph (j) of this section; applying lockout/tags-plus systems in group servicing operations in accordance with paragraph (k); addressing multi-employer worksites involved in servicing machinery, equipment, or systems in accordance with paragraph (l); and addressing shift or personnel changes during servicing operations in accordance with paragraph (m).

During the Washington, DC public hearing, Northrop Grumman—Newport News emphasized the benefit of training employees on their procedures, further illustrating how important a single set of standards can be:

> They [land-side employees] do go on-board and often the workload shifts, we will bring work into the shops and we will work in the shops, and we will take it back and reinstall it, so there is some movement back and forth between shop and ship, so it's not like there is never the twain shall meet. Furthermore, as there has been integration, for example, Newport News has been integrated with our Gulf Coast yards, and we are moving people back and forth between the Gulf yards and Newport News, and we think it is important, if we can get there, to have a consistent set of standard or standards that would apply across the board, so I don't have to retrain Gulf employees in my procedures and/or vice versa (Ex. 168, pp. 264–265).

OSHA agrees that, by establishing procedures that include all of the steps necessary for identifying each source of hazardous energy, applying the lockout/tags-plus system, releasing the energy, testing the equipment, removing the lockout/tags-plus system, and starting up the machinery, equipment, or system, the employer will have a comprehensive and easy-to-administer lockout/tags-plus program. In addition, employers will be able to establish the basic provisions of a lockout/tags-plus program throughout their facilities and with the entire workforce, which OSHA believes will enable employees to better protect themselves.

OSHA acknowledges that circumstances may arise when an employer must develop specific procedures that apply to only one work situation. Manitowoc Marine Group testified on a recent procedure it developed:

> We just recently developed a lockout procedure specifically for a self-unloading belt system, because of a potential that we did discover. But that is only as good as that system for that vessel. And that is where I guess where we struggle the most is the different types of exotic systems that come in here, identifying and developing the procedures. It will be wonderful if we identify all of these vessels and have all these procedures in place, and they would come back year after year. But as you well know, those things change season to season (Ex. 168, p. 111).

Paragraph (d)(2) provides an exception to the requirement to have written control procedures for particular machinery, equipment, and systems. In the proposal, OSHA specified the conditions limiting application of the exceptions in a note to paragraph (b)(4)(i). The note was lengthy, detailed, and composed of small print. To promote easy access to, and improve understanding of, these exceptions, OSHA included them in the text of paragraph (d)(2) of this final standard. Under these exceptions, employers need not have a written procedure for equipment when all of the following conditions exist: (1) The machine, equipment, or system has no potential for the release or re-accumulation of hazardous energy after shutting down or restoring energy; (2) the machine, equipment, or system has a single energy source that can be readily identified and isolated; (3) the isolation and locking out of the energy source will completely deenergize and deactivate the machine, equipment, or system, with no potential for re-accumulation of energy; (4) the machine, equipment, or system is isolated from that energy source and secured during servicing; (5) a single lock will achieve a locked-out condition; (6) the lock is under the

exclusive control of the authorized employee performing the servicing; (7) the servicing does not create hazards for other employees; and (8) the employer, in utilizing this exception, has had no accidents involving the activation or reenergization of this type of machinery, equipment, or system during servicing. The exception is the same as the proposed exception, and OSHA continues to believe it is warranted as there is little or no risk to employees when applied correctly. To require a written procedure under these conditions would divert resources from other, high-risk, situations. OSHA believes that this exception will primarily apply to landside facilities, not ship's machinery, equipment, or systems, due to the latter's complex nature.

Paragraphs (e)—(j) Procedures for Lockout/Tags-Plus

These paragraphs establish procedures that authorized employees must follow when applying energy controls. The energy-control procedures must include procedures for:

- Shutdown and isolation (paragraph (e));
- Application of lockout/tags-plus systems (paragraph (f));
- Verification of deenergization and isolation (paragraph (g));
- Testing (paragraph (h));
- Removing lockout/tags-plus systems (paragraph (i)); and
- Startup (paragraph (j)).

Paragraph (e)—Procedures for Shutdown and Isolation

Paragraph (e) establishes the provisions for the safe shutdown of, and the isolation of hazardous energy to, machinery, equipment, or systems. The procedures for shutdown and isolation were proposed as §§ 1915.89(c)(1)–(c)(3). Final paragraph (e)(1)(i) requires that, before any authorized employee shuts down any machinery, equipment, or system, the authorized employee must have knowledge of the source, type, and magnitude of the hazards associated with energization or startup of the machinery, equipment, or system; the hazards associated with the release of hazardous energy; and the means to control those hazards. American Seafoods Company stated: "The employee(s) performing the work typically [do] not have the expertise to determine all types and magnitudes of hazardous energy" (Ex. 105.1). OSHA understands that the machinery, equipment, and systems on vessels and vessel sections are complex and sometimes have multiple sources of energy. Under such conditions, the release of hazardous energy presents a grave risk to employees. This risk is the primary reason why OSHA retained the training requirements in paragraphs (o)(4)(i) and (o)(4)(ii): All authorized employees must have training so they know the types of energy sources and the magnitude of the energy present at the worksite. In addition, all authorized employees must know the means and methods necessary for effective isolation and control of hazardous energy. OSHA believes that authorized employees must have this knowledge prior to servicing operations to protect themselves and other employees. Therefore, OSHA is retaining this language for the final standard.

Paragraph (e)(1)(ii) of the final rule retains the proposed requirement (proposed § 1915.89(b)(9)) to notify affected employees when machinery, equipment, or systems are being shut down and a lockout/tags-plus system is being applied. OSHA has moved this requirement into the procedures for shutdown and isolation to emphasize the importance of this step in the process of safely shutting down and isolating machinery, equipment, or systems that are going to be serviced. OSHA has concluded that notification is necessary to protect affected employees who may not be aware that shutdown will take place and that the machine, equipment, or system they normally work on will be taken out of service for a period of time. When affected employees [5] are not aware of the shutdown condition, they may take actions that are not consistent with safe practices, such as attempting to restore power to the system. For example, some systems may run the length of the vessel and pass through several decks, or span several spaces within the vessel. Affected employees may be working on a system in various locations, or they may be working near where the servicing is taking place. These affected employees must be notified of the lockout/tags-plus application to ensure that they are aware that they must not energize or start up the machinery, equipment, or system because it is being serviced, that they must not remove or disable the lockout/tags-plus application, and that they cannot use the machinery, equipment, or system to perform their regular job until after they are notified that the lockout/tags-plus application has been removed. Without such notification, affected employees may inadvertently energize or start a piece of machinery, equipment, or system, thus endangering any authorized employee performing servicing.

Paragraph (e)(2) requires that the machinery, equipment, or system be shut down according to the written procedures that the employer established pursuant to paragraph (d). This action is the starting point for all subsequent steps necessary to put the machinery, equipment, or system in a state that will allow employees to work on or near it safely. As discussed above, the employer must establish and implement procedures for all machinery, equipment, or systems. The authorized employee must follow these procedures. Paragraph (e)(3) requires that an orderly shutdown be used to prevent exposing any employee to additional or increased hazards resulting from the release of energy. Paragraphs (e)(2) and (e)(3) were proposed as paragraph (c)(2). OSHA received no comments on the proposed requirement to shut down machinery, equipment, or systems in an orderly manner. OSHA is therefore retaining these critical first steps in the shutdown process in this final rule.

Paragraph (e)(4), which was proposed as paragraph (c)(5), requires the employer to ensure that the authorized employee relieves, disconnects, restrains, or otherwise renders safe all potentially hazardous energy that is connected to the machinery, equipment, or system that will be serviced. This requirement emphasizes that the authorized employee must ensure that every possible source of energy to the machinery, equipment, or system being serviced is deenergized. Thus if a system is deactivated but stored, residual, or otherwise hazardous energy remains, the authorized employee must relieve or disconnect that energy to fully protect the employees who will be servicing the system. Paragraph (e)(1)(i) is, of course, a prerequisite to paragraph (e)(4), since the authorized employee must fully understand all sources of potential energy associated with the machinery, equipment, or system that will be serviced. No comments were received on this provision, and OSHA retained it in the final rule.

A note [6] has been added to paragraph (e) describing that, when a Navy ship's force shuts down machinery, equipment, or systems and relieves, disconnects, restrains, or otherwise renders safe all potentially hazardous energy connected to the machinery,

[5] As a reminder, affected employees are those employees who either normally operate the machinery, equipment, or system that is being serviced, or who work in the area where the servicing is taking place.

[6] See rationale for this note at the summary and explanation of the note to paragraph (c)(7), above.

equipment, or system, the employer will be in compliance with paragraph (e) when the employer's authorized employee verifies that the machinery, equipment, or system being serviced has been properly shutdown, isolated, and deenergized. Here, the term "employer" refers to the host employer, any of its contractors, or any employer contracted directly by the military.

Paragraph (f)—Procedures for Applying Lockout/Tags-Plus systems

Once the machinery, equipment, or system has been shutdown, the next step is to apply the lock or tags-plus system. These procedures were proposed in § 1915.89(c)(4). The lock or tags-plus system (which is a tag attached to the energy-isolating device and an additional safety measure) must be located and applied in such a manner as to isolate the machinery, equipment, or systems from all energy source(s).

Paragraph (f)(1) requires that only the authorized employee apply the lock or tags-plus system. This provision was proposed as paragraph (c)(4)(i). Paragraph (f)(2), proposed as paragraph (c)(4)(ii), requires that when a lock is used, the authorized employee must affix the lock so that the energy-isolating device is held in a safe or off position. Paragraphs (f)(3) and (f)(4), which were proposed as paragraphs (c)(4)(iii)(A) and (B), specify the requirements for the use of tags. When a tags-plus system is used, tags must be affixed by the authorized employee directly to the energy-isolating device. The placement of these tags must clearly indicate that the removal of the device from the safe or off position is prohibited. When a tag cannot be affixed directly to the energy-isolating device, it must be located as close as possible to the device in a safe and obvious position. These requirements also are included in the training of both affected and authorized employees, as discussed in paragraph (o) below. OSHA did not receive any comments opposing the requirements in paragraphs (f)(3) and (f)(4). OSHA is retaining the language as proposed for this final standard because these steps constitute safe practices that are common and essential to all effective lockout/tags-plus programs.

Paragraph (f)(5), proposed as paragraph (c)(3), contains the requirements for energy-isolating devices. The employer is required to ensure that these devices control the energy to the machinery, equipment, or systems, and ensure that the device is effective in isolating the machinery, equipment, or system from all potentially hazardous-energy sources. The purpose of lockout/tags-plus is to eliminate or control hazardous energy, and the devices used to do so are critical to the success of the employer's program. Hazardous energy includes stored or residual energy. This type of energy presents a unique hazard to employees when, for example, the energy becomes trapped in a system or develops from gravity exerting pressure on spring-loaded components. As stated in the preamble to the general industry standard, such stored or residual energy cannot be turned on or off; it must be dissipated or controlled (54 FR 36677, Sept. 1, 1989). Nevertheless, there are ways to render this energy harmless. To control this potentially hazardous energy, the authorized employee may need to use blanks, blocks, bleed valves, or other physical components. Finding, and rendering safe, all potentially hazardous energy sources with appropriate energy-isolating devices and additional safety measures is essential to the success of all lockout/tags-plus programs. No comments were received on this provision; therefore, OSHA is retaining the language in this final standard.

As stated above there are instances when the Navy ship's force maintains control of the lockout/tags-plus program. For these instances, OSHA has included a note [7] to paragraph (f) that explains that when the Navy ship's force applies the lock or tag, instead of the employer's authorized employee, the employer will be in compliance with paragraph (f) of this section when the employer's authorized employee verifies the application of the lockout/tags-plus system or device. Here, the term "employer" refers to the host employer, any of its contractors, or any employer contracted directly by the Navy.

Paragraph (g)—Procedures for Verification of Deenergization and Isolation

Paragraph (g)(1), which was proposed as paragraph (c)(6), requires that, after the application of locks or a tags-plus system, the authorized employee, or the primary authorized employee in a group lockout/tags-plus application, must verify that the machinery, equipment, or system is deenergized, and that the hazardous energy has been isolated, before starting the servicing operation. Northrop Grumman–Newport News agreed with this provision, stating that this was currently a step of their lockout/tagout program. They indicated that their "Employees are required to know how to check for residual or potential energy when first entering into equipment or systems isolated as a secondary check following the expert based assessment and deenergization of systems" (Ex. 120.1). In addition, Foss Maritime confirmed that their procedures include provisions to ensure that all energy has been released: "I think the most important [action] that you can do is bleed the system out to make sure there is no energy left" (Ex. 198, p. 27). The U.S. Navy recommended that OSHA "delete the words 'Following the application of lockout or tagout devices to energy-isolating devices.' This leaves the key requirement that all stored energy must be relieved, but without a required order of performance which is not always possible" (Ex. 132.2). The Navy gave no examples of when verification cannot be conducted. OSHA disagrees with this commenter and believes that verification is always possible, needs to take place after the lock or tags-plus system has been applied to the energy-isolating device, and is necessary to ensure deenergization. Therefore, OSHA is retaining this provision in the final rule. OSHA added clarifying language that addresses group lockout/tags-plus applications (see § 1915.89(k)). For those instances when there is a group lockout/tags-plus application occurring, the primary authorized employee, rather than all of the authorized employees working in the group application, would verify that the machinery, equipment, or systems have been deenergized and all energy sources isolated.

Paragraph (g)(2) retains and expands the proposed requirement (proposed § 1915.89(c)(5)(ii)) to continue verification of isolation. The proposed rule specified that, if there is a possibility of reaccumulation of stored energy, verification must be continued until servicing is completed or the possibility of reaccumulation no longer exists. The final rule expands the verification of isolation requirement so it is continued throughout the servicing operation. Commenters, including Foss Maritime, said they already require employees to verify that the system continues to be deenergized and isolated prior to starting servicing on any machinery, equipment, or system (Ex. 198, p. 27). OSHA believes this good industry practice needs to be part of employers' lockout/tags-plus program and procedures. Continuous verification of isolation will ensure the ongoing protection of employees, particularly when a servicing operation cannot be accomplished quickly or during a single workshift. As stated above, OSHA included clarifying language that

[7] See rationale for this note in the summary and explanation above.

addresses group lockout/tags-plus applications. For those instances when there is a group lockout/tags-plus application occurring, the primary authorized employee would continue the verification of deenergization and isolation during servicing operations.

For this final rule, OSHA added paragraph (g)(3) to ensure that each employee working in a group lockout/tags-plus servicing operation is offered the option to verify the deenergization and isolation of machinery, equipment, or systems. Each employee will have this option even when the primary authorized employee verifies isolation for the group. This requirement has been OSHA's policy for general industry lockout/tagout and for lockout/tagout in the electric power generation industry. See *www.osha.gov/SLTC/etools/electric_power/hazardous_energy_control_loto.html* and *www.osha.gov/pls/oshaweb/owadisp.show_document?_table=PREAMBLES&p_id=1149.* Paragraph (g)(3) simply codifies, in subpart F, that longstanding policy as an additional protective element for authorized employees servicing machines, equipment, or systems in a group lockout/tags-plus situation. The option for all authorized employees to verify also applies when the Navy ship's force controls the application of lockout/tags-plus systems. In 1996, a shipyard employee was working on a Navy vessel. It was the Navy's policy at the time that military personnel, not the shipyard's authorized person, apply all tags. In this case, the authorized person did not verify isolation of a 480-volt electrical cabinet prior to beginning work. As a result, the disconnecting means were not properly identified, and the circuits in the cabinet had not been tested. The employee came into contact with energized parts in the cabinet, was electrocuted, and died (Ex. 38). This death could have been avoided had the shipyard's authorized person verified the isolation.

Paragraph (h)—Procedures for Testing

The standard allows for the temporary removal of locks or tags-plus systems and the reenergization of equipment during the limited time when power is needed for testing the equipment or positioning of its components. The procedures were proposed in § 1915.89(e)(1)(i) through (v). The re-start operation must be conducted by the authorized employee in accordance with the following sequence of steps to ensure employees' safety when they transition equipment from a deenergized to an energized condition, and then return to a deenergized condition: (1) Clear the work area of tools and materials; (2) remove non-essential employees from the work area; (3) remove the lock or tags-plus system in accordance with the required removal procedures (see paragraph (i) of this section); (4) energize the machinery, equipment, or system and proceed with testing or positioning; and (5) when testing or positioning is completed, deenergize and shut down the machinery, equipment, or system, and reapply the locks or tags-plus systems in accordance with the required control application procedures (see paragraphs (e) through (h) of this section). Machine guarding or other safety equipment need not be replaced before energizing the system for testing, unless the employer establishes such a requirement in the lockout/tags-plus program and procedures. However, when servicing is completed, the safety equipment, including restraints and guarding, must be fully restored prior to reenergization.

OSHA added a note [8] to paragraph (h), similar to the notes for paragraphs (c), (e), and (f), that clarifies the employer's role when the Navy ship's force serves as the lockout/tags-plus coordinator, performs the testing, and maintains control over the lockout/tags-plus applications. During testing, the employer will be in compliance with paragraph (h) when the employer's authorized employee acknowledges to the lockout/tags-plus coordinator that the employer's personnel and tools are clear and the machinery, equipment, or system being serviced is ready for testing; and upon completion of the testing, verifies the reapplication of the lockout/tags-plus systems. Here, the term "employer" refers to the host employer, any of its contractors, or any employer contracted directly by the military.

OSHA received no comments on any of the provisions in paragraphs (h)(1) through (h)(5), which the Agency believes are necessary for the safe testing of machinery, equipment, and systems. These provisions permit the employer to conduct interim testing and still protect employees by ensuring that the procedures are orderly and complete. Therefore, OSHA is retaining these provisions in paragraphs (h)(1) through (h)(5) in this final standard.

Paragraph (i)—Procedures for Removal of Lockout and Tags-Plus Systems

Paragraph (i) establishes the procedures that authorized employees must follow when removing locks or tags-plus systems (*i.e.,* when the equipment is being released from lockout or tagout status). These procedures will assist the employer in returning the machinery, equipment, or system to an effective operating condition without exposing employees to the risk of injury while the lockout/tag-plus system is being removed or when the machinery, equipment, or system is reenergized. With the exception of minor editorial changes, the provisions in final paragraph (i) are the same as proposed paragraph (d).

Paragraph (i)(1) requires the employer to ensure that, before the lock or tags-plus system is removed and energy restored to the machinery, equipment, or system, the authorized employee takes three specific steps. The first step, set forth in paragraph (i)(1)(i), requires the authorized employee to notify all other authorized and affected employees in the work area that the lockout/tags-plus system will be removed. This provision was proposed as paragraph (d)(2)(ii), which required that the affected and authorized employees be notified after the lockout or tagout devices were removed but prior to starting the equipment. OSHA modified the language in the final standard to simplify the requirements and to clarify that the notification must take place prior to the lock or tags-plus system being removed.

Paragraph (i)(1)(ii), the second step, requires the authorized employee to ensure that all employees in the work area have been safely positioned or removed. This step is critical to guaranteeing that these employees are not harmed when the equipment is reenergized. Examples of methods employers may use to alert employees that they need to either be safely positioned or leave the work area may include conducting visual inspections, or using buzzers, bells, alarms, or whistles.

The final step, set forth in paragraph (i)(1)(iii), requires the authorized employee to inspect the work area to ensure that nonessential items have been removed and that the equipment components are operationally intact. A visual inspection may be sufficient to meet this requirement; however, the employer may choose to use a checklist, depending on the complexity of the equipment.

Paragraph (i)(2), proposed as (d)(3), requires that the lock or tags-plus system be removed by the authorized employee who applied it. This requirement ensures that the authorized employee, who is in direct control of the lockout/tags-plus device, and who also is exposed to potential injury while

[8] See rationale for this note in the summary and explanation above. See rationale for this note at the summary and explanation of the note to paragraph (c)(7), above.

servicing operations are in progress, remains in full operational control of the machinery, equipment, or system. Ensuring that the authorized employee who applied the device is the only employee permitted to remove it emphasizes the importance of the authorized employee and the employer's lockout/tags-plus program. Further, this provision will help prevent other employees from removing the device, either intentionally or accidentally.

Paragraph (i)(3) specifies that when the authorized employee who applied the lockout/tags-plus system is not available to remove it, the lockout/tags-plus system may be removed by another employee who is an authorized employee and is working under the direction of the employer. However, the employer must take specific actions prior to removal of the system by another authorized employee. As stated in the proposal, and now in paragraph (i)(3) of this final standard, the employer must develop and incorporate specific procedures and training in the lockout/tags-plus program that address removal of the system by another authorized employee. In addition, the employer must demonstrate that the procedures provide a level of safety that is equivalent to removal by the initial authorized employee.

Paragraphs (i)(3)(i) through (iii) establish the sequence of events that must take place prior to the removal of the lockout/tags-plus system by another authorized employee. As required in (i)(3)(i), the employer must first verify that the authorized employee who applied the lockout/tags-plus system is not in the facility. Paragraph (i)(3)(ii) requires the employer to make all reasonable efforts to contact the absent authorized employee to inform him/her that the lockout/tags-plus system has been removed. Finally, paragraph (i)(3)(iii) requires the employer to ensure that the absent authorized employee who applied the lock or tags-plus system knows that the lock or tags-plus system has been removed prior to the authorized employee resuming work. This provision does not apply to an absent authorized employee who is simply on a break, is using a sanitation facility, or is temporarily doing other work. In addition, the substitution of another authorized employee should not occur just because the original authorized employee left at the end of his/her workshift. Employers may apply this provision only in emergency situations, or when the absent authorized employee is on vacation or will not be returning to the worksite for an extended period of time (for example, employee is sick and is not able to return for the next assigned workshift). Finally, substitution of one authorized employee for another would not be a typical occurrence but, rather, would be a rare event. These provisions were proposed in paragraph (d)(3)(i) through (iii).

OSHA has added a note [9] to paragraph (i), similar to the notes for paragraphs (c), (e), (f), and (h), that clarifies the employer's role when the Navy ship's force acts as lockout/tags-plus coordinator and removes the locks or tags-plus systems. The employer will be in compliance with all of the provisions in paragraph (i) when the employer's authorized employee informs the lockout/tags-plus coordinator that the procedures in paragraph (i)(1) of this section have been performed. Here, the term "employer" refers to the host employer, any of its contractors, or any employer contracted directly by the military. It is imperative for employee protection that the lockout/tags-plus coordinator be informed that all employees servicing the machinery, equipment, or system have been notified, all employees are safely positioned or removed, and the work area is clear of nonessential items before the Navy ship's force removes the lockout/tags-plus system.

As stated earlier, this final paragraph (i) was proposed as paragraph (d). No comments were received on any of the proposed provisions. OSHA concludes that, because the employer needs to be able to remove a lockout/tags-plus application in the event that the authorized employee is unavailable to remove it, the requirements in paragraph (i) are necessary for the safety of employees. OSHA is retaining the provisions as proposed with only minor editorial changes in final paragraph (i).

Paragraph (j)—Procedures for Startup

For this final standard, OSHA added a new paragraph that establishes the procedures for startup of machinery, equipment, or systems. OSHA believes that paragraph (j) will assist employers and authorized employees to understand how to safely restart machinery, equipment, or systems after servicing operations are completed. Some of these provisions, which were implicit in the proposal, are similar to those described in paragraph (i), Procedures for removal of lockout/tags-plus systems. OSHA concludes that setting forth the procedures required for each step involved in servicing equipment safely will assist employers in developing programs that represent all actions that must be taken from start to finish in lockout/tags-plus applications.

Paragraph (j)(1) requires that, after servicing is completed and before an authorized employee turns on or reenergizes any machinery, equipment, or system, the authorized employee understand the source, type, and magnitude of all hazards associated with the energization process, and the means to control these hazards. This requirement specifies an important duty of the authorized employee; this requirement is integral with paragraphs (o)(4)(ii) and (iii), which provide that the authorized employee must be trained to know this information prior to the start of servicing operations.

Paragraph (j)(2) requires that an orderly startup must be implemented to prevent or minimize any additional or increased hazards to employees. As described previously, authorized employees may be servicing complex or large systems while other employees are in the area. An orderly startup will ensure that all of these employees are safe when the machinery, equipment, or system is reenergized.

Startup must consist of at least the following three steps, as specified in paragraphs (j)(2)(i) through (iii): (i) Tools and materials must be cleared from the work area; (ii) all non-essential employees must be removed from the work area; and (iii) the machinery, equipment, or system must be started according to the detailed procedures the employer established for that machinery, equipment, or system. The employer must comply with the first two requirements either by using a checklist or by having supervisors or foremen ensure, by inspection or any other effective means, that the work area is cleared of all tools, materials, and non-essential employees. OSHA did not include a provision in this paragraph that required that all guards be replaced prior to reenergization. The Agency believes that such a requirement is not necessary since employers know that having operationally intact machinery, equipment, or system means that the machine guarding or other safety components must be replaced. In addition, this condition is covered by other applicable provisions (29 CFR § 1910, subpart O) that address machine guarding. Therefore, OSHA concludes that these procedures for start-up are necessary to protect employees while reenergizing machinery, equipment, or systems.

[9] See rationale for this note in the summary and explanation above. See rationale for this note at the summary and explanation of the note to paragraph (c)(7), above.

OSHA has added a note [10] to paragraph (j), similar to the notes for paragraphs (c), (e), (f), (h) and (i), that clarifies the employer's role when the Navy ship's force serves as the lockout/tags-plus coordinator and maintains control over lockout/tags-plus during startup of the machinery, equipment, or systems, and the employer is prohibited from starting up the machinery, equipment, or system, the employer will be in compliance with all of the provisions in paragraph (j) provided that the employer's authorized employee informs the lockout/tags-plus coordinator that the procedures in paragraph (j)(2)(i) and (j)(2)(ii) of this section have been performed. Here, the term "employer" refers to the host employer, any of its contractors, or any employer contracted directly by the Navy. It is imperative for employee protection that the employer's authorized employee ensures, and communicates to the Navy's lockout/tags-plus coordinator, that the work area is clear of tools, materials, and nonessential employees before the machinery, equipment, or system is restarted.

Paragraph (k)—Procedures for Group Lockout/Tags-Plus

Paragraph (k) establishes the provisions for group lockout/tags-plus. Group lockout/tags-plus occurs when more than one employee is working on the same machinery, equipment, or system simultaneously. The term "employee" encompasses ship's crew, different yard crafts or departments, or employees from another employer (*i.e.,* contract employees). These group lockout/tags-plus procedures were proposed as paragraph (e)(3) and required that the employer designate an authorized employee to coordinate affected work forces (proposed paragraph (e)(3)(ii)(C)), and that each authorized employee affix a personal lock or tag to a group lockout device, group lockbox, or comparable mechanism (proposed paragraph (e)(3)(ii)(D)).

Several commenters expressed concerns with the group lockout/tags-plus proposal. Electric Boat commented on the impracticality of having each authorized employee attach his or her own tag to the energy-isolating device:

> This is one instance where trying to apply a general industry standard to the shipbuilding and repair industry does not make sense or increase safety. Electric Boat requests that OSHA consider changing or removing this requirement where each person working on a tagged system must place an individual tag(s) on the system. This proposed method would not provide any additional safety to a proven system and would present a substantial increase in the cost of repair, installation and testing for shipyards (Ex. 108.2).

OSHA received comments that several employers are using "systems experts" to perform a function similar to the group's authorized employee, and they would like to continue this practice. Trident Seafoods testified:

> It wouldn't make sense to have 10, 15 processors trudging someplace else in the vessel to go do a lockout, and then come back when we have system experts that can guarantee they're locked out. They go back in before they let people work and make sure everything's secured. They can push any button, turn any valve they want that may energize to assure themselves that it is locked out. And then they let them do their cleanup, do the work if it's on a dock side maintenance job, do their work. And then when they come back, get ready to reenergize, it has to go back to the system expert to reenergize and redo things (Ex. 199, p. 160).

Manitowoc Marine Group agreed, and noted that they also use one individual for multiple group lockout/tags-plus systems:

> The SCA member shipyard requires that the authorized employee, because of his or her training and designation, must interface with the authorized operator of said energized system to ensure that all energy is contained prior to commencing work on that job. This is far more effective at ensuring the safety of a group of employees such as laborers, who know nothing of those systems, to affect a lockout in an area such as a thruster tunnel (Ex. 125).

During his testimony, Roy Martin described how Manitowoc Marine Group performs group lockout/tag-plus on both construction and repair jobs:

> Well, on the construction or the repair side of it, we usually take leaders and supervision in each department as the vessels come in. And they all meet, they talk about the different types of work that they will be doing. Each one of those will place a lock on that system prior to any work taking place. And once again, as work progresses—and obviously, the reason for doing that is, as someone finished and they removed their locks, it is still physically locked out. So as far as the repair side of it goes, there is a group locking procedure, to where we actually have representatives from each one of the different departments place their locks on it (Ex. 168, pp. 128–129).

The U.S. Navy commented: "When using an expert representative as the authorized employee for group tagout applications, these experts will require training on ship's systems and equipments, and the energy control process, including device and tag attachment applications" (Ex. 132.2).

Based on the comments and testimony received, OSHA made several changes to this paragraph in the final standard, including reorganizing the provisions for clarity. This section has been divided into two sections: primary authorized employees and authorized employees.

Paragraph (k)(1) specifies the procedures for primary authorized employees that must be implemented in group lockout/tags-plus operations. First, paragraph (k)(1)(i) requires that the employer assign responsibility to one authorized employee (the primary authorized employee) for each group of authorized employees working on the same machinery, equipment, or system. For example, if three groups of employees are working on the fire-suppression system, there must be three primary authorized employees—one for each group. Each primary authorized employee will ensure that the members of the group have applied their own locks, have signed a group tag, or have otherwise complied with the employer's procedures for group servicing operations. This requirement was proposed as paragraph (e)(3)(ii)(A).

Second, paragraph (k)(1)(ii) requires the employer to develop and implement procedures for determining the safe exposure status of individual group member, and for taking appropriate measures to control or limit that exposure. This requirement was proposed as paragraph (e)(3)(ii)(B). The primary authorized employee, whether he or she has been called an expert representative or systems expert, must be designated the primary authorized employee and meet all the requirements in this standard for a primary authorized employee, including determining potential exposures to hazardous energy of the group's employees, regardless of the size or complexity of a worksite. If work needs to be conducted on a ship's system with which the primary authorized employee has no experience, it is the employer's responsibility to ensure that, prior to any servicing operation, the primary authorized employee receives the necessary training in accordance with paragraph (o)(4) of this standard. Knowledge of systems, and the ability to determine whether fellow employees are exposed to hazardous energy during servicing, are critical skills needed by the individual whom the employer designates as the primary authorized employee.

Third, paragraph (k)(1)(iii) is a requirement that recognizes the

[10] See rationale for this note in the summary and explanation above. See rationale for this note at the summary and explanation of the note to paragraph (c)(7), above.

responsibilities and duties of the lockout/tags-plus coordinators and the role they play in group lockout/tags-plus applications. This paragraph differs from proposed paragraphs (e)(3)(ii)(C), which required that one authorized employee be assigned control of the overall job-associated lockout/tags-plus process, and to coordinate efforts among all of the groups. OSHA believes that, when there are multiple groups or individuals performing servicing operations on the same machinery, equipment, or system at the same time, which is a common occurrence in shipyards, a lockout/tags-plus coordinator, who approves each group's lockout/tags-plus system, will be more effective in managing all lockout/tags-plus systems. Each primary authorized employee must obtain approval from the lockout/tags-plus coordinator before applying and removing each lock or tags-plus system when required by paragraph (c)(7)(i) of this section. In addition, paragraph (k)(1)(iv) requires that the primary authorized employee coordinates each servicing operation with the coordinator. Involvement of the coordinator will ensure that the safety of other authorized employees who are servicing equipment is taken into account, which is critical when an energy source that has been, or will be, isolated provides power to more systems than the one being serviced.

Paragraph (k)(2) includes the provisions for the authorized employees working in a group lockout/tag-plus operation. The provision specifies that, when servicing is performed by multiple authorized employees, the employer must either (i) have each authorized employee apply a personal lockout or tags-plus system, or (ii) use a procedure that the employer can demonstrate affords each authorized employee a level of protection equivalent to the protection provided by having each authorized employee apply a personal lockout/tags-plus system. These procedures must incorporate a means for each authorized employee to have personal control of, and accountability for, his or her own protection. This is similar to proposed (e)(3)(i). OSHA believes that the final language makes clear that employers have two options when more than one employee is working on the same machinery, equipment, or system at the same time: either each authorized employee applies his/her own lock or tags-plus system, or the employees must use another method that is just as protective as each authorized employee applying a personal lockout/tags-plus system.

Proposed paragraph (e)(3)(ii)(D) required each authorized employee to affix a personal lockout/tags-plus device to the group lock when they began work, or to use a group lockbox. Bath Iron Works gave an example of how they used lockboxes at their facility:

> On a group lockout/tagout, we were using multiple clips. I will give an example. If we do a substation lockdown for a weekend where we check all the substations out, it typically happens twice a year. On a group lockout we have had these clips, sometimes you would have 25 locks on these things. We have gone to a lockbox now, put the locks inside the box and have one authorized person doing that, so we have evolved into that (Ex. 168, p. 278).

During the public comment period, OSHA received testimony that employers would have difficulty complying with the group lockout requirements as proposed. Trident Seafoods Corporation explained why following a lockout/tagout program that was modeled after the general industry standard would be inappropriate:

> It's very difficult to meet the group lockout/tagout, whether it's working on our dock side on some of the vessels, or whether it's doing cleanups for the processing decks. * * * Some of the breaker boxes and isolation points for hydraulics are located in other areas. So it wouldn't make sense to have 10, 15 processors trudging someplace else in the vessel to go do a lockout * * * (Ex. 199, pp 159–160).

OSHA determined that, in certain situations, the safety of the servicing employees will be maximized if each employee in the group affixes his/her personal lockout or tags-plus system device as part of the group lockout. First, the placement of a personal lockout or tags-plus system device gives the employee a degree of control over his/her own protection. Second, the presence of an employee's lockout or tags-plus system will inform all other persons, including the other servicing employees and supervisors, that the employee is still working on the machinery, equipment, or system. Third, as long as the device remains attached, the primary authorized employee in charge of the group lockout or tagout knows that the job is not completed and that it is not safe to reenergize the machinery, equipment, or system. Fourth, the servicing employee will continue to be protected by the presence of his/her device until he/she removes it. The primary authorized employee is not to remove the group lockout device until each employee in the group has removed his/her personal device, indicating that employees are no longer exposed to the hazards from the servicing operation.

However, OSHA acknowledges that it is not always possible for each authorized employee to affix his or her own lock or tag to an energy-isolating device, especially when multiple employees are working on a highly complex system. Therefore, OSHA has clarified, in paragraph (k)(2)(ii), that the employer, as an alternative to having each employee apply a personal lockout/tags-plus system, may use a procedure that the employer can demonstrate affords each authorized employee a level of protection equivalent to that provided by having each authorized employee apply a personal lockout or tags-plus system. This level of protection requires each employee to take some sort of affirmative step, such as, but not limited to, a master or group lockbox or a group tag signed by each authorized employee, before servicing is started (sign-on) and after servicing is completed (sign-off).

If a single lock or set of lockout devices are used to isolate the machinery, equipment, or system from the energy sources, each authorized employee is afforded a means to utilize his/her personal lockout or tagout device so that no one employee has control of the means to remove the group lockout or tagout devices while employees are still servicing the machinery, equipment, or system. This requirement can be accomplished by the use of a group lockbox or other similar appliance. Once the machinery, equipment, or system is locked out, the key is placed into the lockbox, and each authorized employee places his/her lockout or tagout device on the box. When each individual authorized employee completes their portion of the work, they remove their lockout or tagout device from the group lockbox. After all of the personal lockout or tagout devices have been removed, the key for the group lockout devices for the machinery, equipment, or system can be used to remove the group lockout device. This method provides protection for all employees working under a particular group lockout/tags-plus device.

For employers who choose to implement a group tags-plus system using a group tag, such a system works similarly to the group lockout system in the sense that all authorized employees must take the affirmative action of signing the group tag. After the tag is properly placed, the employer must ensure that each authorized employee "signs on" by signing the tag. As each authorized employee completes his/her portion of the servicing, he/she will "sign off" by initialing or signing the tag. Once all employees have signed off, the

primary authorized employee will be able to proceed with removing the tag.

OSHA notes that paragraph (k)(2)(ii) gives employees flexibility to develop a system equivalent to the group lockout/tags-plus systems described above by including paragraphs (k)(2)(ii)(A) and (B) as examples of how employers can implement this system. The Agency included as examples signing a group tag or tag equivalent, attaching a personal identification device to a group lockout device, or performing some comparable action before servicing is started. Following the servicing operation, employees must then sign off the group tag or equivalent, detach their personal identification devices, or perform a comparable action that signifies they completed their work. Some employers may choose to use work permits or other systems for providing protection to employees in group servicing situations. Employers who elect that option must be able to demonstrate that their systems protect each authorized employee to the same degree as a personal lock or personal tags-plus system. That level of protection is significant; thus, the employer would need to develop well-designed and carefully monitored procedures that include "sign on" and "sign off" by each authorized employee, and provide thorough training to all authorized employees and lockout/tags-plus coordinators.

A note [11] to paragraph (k)(2) was added for those situations when the Navy ship's force maintains control of the machinery, equipment, or systems on a vessel and prohibits the employer from applying or removing the lockout/tags-plus system or starting up the machinery, equipment, or systems being serviced. In these specific instances, the shipyard employer is in compliance with the requirements in paragraphs (k)(1)(iii) and (k)(2) provided that the employer ensures that the primary authorized employee takes the following steps in the following order: (1) Before servicing begins and after deenergization, (a) verifies the safe exposure status of each authorized employee, and (b) signs a group tag (or a group tag equivalent) or performs a comparable action; and (2) after servicing is complete and before reenergization, (a) verifies the safe exposure status of each authorized employee, and (b) signs off the group tag (or the group tag equivalent) or performs a comparable action.

The U.S. Navy uses a system that incorporates procedures from the Navy's Tagout User's Manual (TUM) and Work Authorization Form (WAF) for controlling hazardous energy during servicing. This system requires the employer's primary authorized employee, but not each authorized employee, to sign the WAF. As discussed above, the Navy ship's force maintains control of the machinery, equipment, and systems during servicing, which removes control from the individual shipyard employers. Since it is the shipyard employer's authorized employees who perform the servicing operations and who are thus exposed, it remains the responsibility of the shipyard employer to ensure the safety of the authorized employees.

The requirement in this final standard for affirmative steps to be taken by each authorized employee in a group lockout/tags-plus situation duplicates requirements in OSHA's lockout/tags-plus standards for general industry and the electric power industry. As OSHA noted in the preamble to the final electric power generation standard, the fundamental premise of lockout or tagout is "personal protection." 59 FR 4319, 4360, Jan. 31, 1994. However, the Agency agreed that some "modification of the general rule" for employees to apply their own personal locks or tags is warranted under specific circumstances, including, to a limited extent, in group lockout or tagout situations. 59 FR at 4360. Accordingly, OSHA promulgated § 1910.269(d)(8)(ii), which includes the following provision:

> (8) *Additional requirements.*
> * * *
> (ii) When servicing or maintenance is performed by a crew, craft, department, or other group, they shall use a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device. Group lockout or tagout devices shall be used in accordance with the procedures required by paragraphs (d)(2)(iii) and (d)(2)(iv) of this section including, but not limited to, the following specific requirements:
> * * *
> (D) Each authorized employee shall affix a personal lockout or tagout device to the group lockout device, group lockbox, *or comparable mechanism* when he or she begins work and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained.

§ 1910.269(d)(8)(ii)(D) (emphasis added).

In the preamble to the final electric power generation standard, OSHA explicitly rejected a system that did not specify the use of individual locks or tags by the individual employees of a group but, rather, accorded to a single authorized employee the responsibility for all employees in the group. 59 FR at 4361. OSHA acknowledged the difficulty of addressing LOTO when complex equipment is serviced by numerous employees extending across multiple workshifts. *Id.* Nonetheless, the Agency stressed its basic approach of requiring individual responsibility for application and removal of lockout or tagout devices, stating:

> (1) [I]rrespective of the situation, the requirements of the final rule specify that each employee performing maintenance or servicing activities be in control of hazardous energy during his or her period of exposure.
> (2) The procedures must ensure that each authorized employee is protected from the unexpected release of hazardous energy by personal lockout or tagout devices. No employee may affix the personal lockout or tagout device of another employee.
> (3) The use of such devices as master lock and tags are permitted and can serve to simplify group lockout/tags-plus procedures.* * * In a tagging system, a master tag may be used, as long as each employee personally signs on and signs off on it and as long as the tag clearly identifies each authorized employee who is being protected by it.

Id. at 4261–62.

The Occupational Safety and Health Commission addressed the group lockout/tags-plus provisions in the electric power generation standard in *Exelon Generating Corp.,* 2005 OSHRC No. 17 (Apr. 26, 2005). There, the Commission upheld a citation issued to Exelon for Exelon's failure to require each employee to affix a personal lock or tag to a group lockout/tags-plus device or sign on/off a master tag. *Id.,* slip op. at 1. As the Commission noted:

> Beginning with the general industry standard and carried forward into the power generation standard, the core concept of lockout/tags-plus is *personal* protection, that each individual worker controls his/her own lock or tag. This fundamental requirement does not convert the standard from performance oriented to a specification standard. Rather, individual control over the lockout/tags-plus devices constitutes a core performance requirement of the standard.

Id. at 5 (emphasis in original). Accordingly, the Commission rejected Exelon's contention that OSHA agreed to substitute verbal notification of the application and removal of LOTO protection for the requirement of individual worker sign on/off. *Id.* at 6. The Commission also referred to OSHA's compliance directive, which approved the use of a work permit or master tag in a group LOTO situation, provided each employee takes the physical step of personally signing on and off the job. *Id.* at 7.

[11] See rationale for this note in the summary and explanation above.

OSHA developed compliance directives for the control of hazardous energy both in general industry (CPL 02–00–147, Feb. 11, 2008) and in electric power generation, transmission, and distribution (CPL 2–1.38, June 18, 2003). Both directives describe alternatives to individual locks or tags in group situations. Whether a shipyard employer adopts an alternative system described in a compliance directive, or develops its own, the employer must demonstrate that the control and accountability procedures provide a level of protection to authorized employees that is at least equivalent to the protection afforded to them when they affix their own lock to the energy-isolating device. Such a system would comply with the group lockout/tags-plus provisions in shipyard employment.

Paragraph (l)—Procedures for Multi-Employer Worksites

Paragraph (l) of § 1915.89 sets forth requirements for exchanging information and coordinating responsibilities for a lockout/tags-plus program among host and contract employers.[12] These requirements are fundamental to any effective and safe lockout/tags-plus program on a multi-employer worksite.

The multi-employer requirements are necessary because the existence of additional employers and their employees at a workplace makes addressing safety and health conditions at the workplace complex. For example, one employer may introduce hazards into the workplace where employees of other employers are exposed. Because these situations cannot be prevented, the host employer must establish and implement procedures that will protect all workers. All employers need information about relevant hazards present at the worksite to enable them to fulfill their obligations to protect workers. For these reasons, communication and coordination among employers are essential.

The following accident description highlights the need for employers to understand and follow a host employer's energy control program. In 1987, a fatality occurred aboard a grain-carrying ship that was equipped with wing tanks on each side of the ship. A screw conveyor ran through each wing tank. At the time of the accident, two of the wing tanks were being washed. Simultaneously, a marine chemist and a shipyard employee were inside another wing tank that was not being washed. The shipyard employee was standing on the conveyor when it was turned on by a member of the ship's crew who was unaware that the employee and chemist were inside the other wing tank. The screw conveyor crushed the shipyard employee to death. Although a lockout procedure was in effect for the employees washing the tanks, this information was not conveyed to the other employees, nor was there any coordination between employers or tasks (72 FR 72452, 72496, Dec. 20, 2007).

Such tragic events, and the increased reliance on contractors throughout the shipyard industry, led OSHA to conclude that responsibilities for the control of hazardous energy must be assigned to all employers, and all employers must be held accountable for discharging those responsibilities properly. It is common practice to hire contractors for non-routine, specialized work, or as workloads fluctuate. Shipyard employers provided testimony on the use and number of contractors hired by shipyards. For example, Roy Martin of Manitowoc Marine Group testified:

> [Just] in my experience, you know, it can range as small as two different types of subcontractors up to four or five, just depending on the type of work, especially when you are discussing new construction versus repair, you will see a lot of multi-employer[s] in the repair end of the business (Ex. 168, p. 81).

Similarly, Trident Seafoods commented that it "employ[s] over 190 subcontractors at various times throughout the year at both locations" (Ex. 198, p. 70).

As a result of its analysis of the entire rulemaking record, OSHA made several changes to the proposed provisions affecting multi-employer worksites. Proposed paragraph (e)(2)(i) required that, when outside personnel, such as contractors or ship's crew, perform servicing operations at a worksite, the on-site employer and the outside employer must inform each other of their respective lockout or tagout procedures. Proposed paragraph (e)(2)(ii) required the on-site employer to ensure that his/her employees and contractors understand, and comply with, all restrictions and prohibitions of the outside employer's energy-control program. The purpose of the proposal was to ensure that each employer at a multi-employer worksite be responsible for the control of hazardous energy according to that employer's own lockout or tagout procedures, and communicate those procedures to other employers at the worksite. However, echoing the comments of other employers, American Seafoods Company stated that the host employer, and not the contract employer, should be responsible for lockout/tags-plus: "The employees or contractors who perform work on a particular system are unlikely to have the capability of identifying all energy sources, either initially based on engineering drawings and schematics or physically on the ship" (Ex. 105.1). OSHA finds American Seafoods' argument persuasive, and concludes that the control of hazardous energy must be assigned to the host employer, not outside employers. Thus, OSHA modified this section to place control of hazardous energy under the on-site, or host, employer. In response to comments requesting clarification of the roles of shipyard employers and contractors in lockout/tags-plus situations, OSHA added new provisions to paragraph (l) that specify, and differentiate between, the responsibilities of the host employer and the contract employer. Paragraph (l)(1) requires that the host employer establish and implement procedures to protect employees from hazardous energy in multi-employer worksites. The procedures must specify the responsibilities for both the host employer and the contract employer(s). The responsibilities of the host employer are established in § 1915.89(l)(2). Paragraph (l)(2)(i) requires the host employer to inform each contract employer about the contents of the host employer's lockout/tags-plus program and procedures, which may also include training. The host employer, in conjunction with the contract employers, must decide which employees to train. Manitowoc Marine Group testified that it will train employees of contract employers when necessary:

> And I have even seen cases where you will have another company—this is really important about the multi-employer work site where you actually have to deal with these other employees so that they know

[12] OSHA also replaced the proposed terms "outside employer" and "on-site employer" with "contract employer" and "host employer," respectively. These terms are used throughout the industry and in other OSHA regulations. To assist employers and workers, the Agency added definitions in § 1915.80(b) for both contract and host employers. For purposes of this subpart, a "contract employer" is often a subcontractor with employees who provide specialized trade services to the shipyard such as painting, joinery, carpentry, or scaffolding. The contract employer is under contract to the host employer, or to another employer under contract to the host employer at the host employer's worksite. This definition excludes employers providing incidental services not related to shipyard employment (such as mail delivery or office supply services). A "host employer" is an employer in charge of coordinating work or hiring other employers to perform shipyard-related work or to provide shipyard-related services at a multi-employer worksite.

there are other ways—even if you lockout, there are other ways to bypass some of these older systems and energize. So it is very important that we not only train our employees and safeguard them against the energies, we have to come in and train the contractors and actually get them, with our supervision, to understand what they are doing, what their processes are, and put in place our best practices (Ex. 168, pp. 113–114).

Paragraph (l)(2)(ii) requires that the host employer instruct each contract employer to follow the host employer's lockout/tags-plus program and procedures. Shipyard employers provided testimony on how they are already implementing this requirement at their facilities. Foss Maritime testified: "Subcontractors go through our supervision to do the lockout/tags-plus measures" (Ex. 198, p. 14). Trident Seafoods described how contract employers working on Trident vessels follow Trident's hazardous-energy control program:

We've developed a set of contractor safety guidelines that we have our subcontractors sign, and in that they have to follow, for instance, on like a tagout specifically, they have to come on and actually use the lockout/tagout on Rule 1910.1[4]7 on our vessels when they perform work for us (Ex. 198, p. 90)

Paragraph (l)(2)(iii) requires the host employer to ensure that the lockout/tags-plus coordinator knows about all servicing operations and communicates with each contract employer. This communication must involve each contract employer with employees servicing machinery, equipment, or systems, or working in an area where servicing is being performed. The lockout/tags-plus coordinator should communicate with contractors about the host employer's lockout/tags-plus program and procedures and the role of the lockout/tags-plus coordinator. Establishing open lines of communication between the lockout/tags-plus coordinator and contractors is important because the contractor is responsible for alerting the employer (i.e., lockout/tags-plus coordinator) of any new lockout/tags-plus hazards the coordinator identifies.

Bath Iron Works explained how contract employers must comply with Bath Iron Works' program, and report to Bath's system experts to apply a lock or tags-plus system:

Under our program at Bath * * * we have contractors come in, but they follow our standard, we have systems experts located within a facility on those halls that control hazardous energy. For example, our electricians, we have 500 electricians in the plant. Only 50 of those, 45 or 50 are what we call system experts. So, anytime anybody works on those ships, whether it is our own employees, contractors, vendors, anybody, they have to follow the guideline and the authority of that particular ship system expert. So, we lockout, we will tagout that particular system for that contractor. He validates it, so do we (Ex. 168, p. 252).

The comments and testimony cited above demonstrate that some shipyards are already successfully controlling hazardous energy by requiring contractors to follow the host employer's procedures. These and other comments in the record convinced OSHA that having contractors follow the host employer's lockout/tags-plus program and procedures is appropriate and provides the most reliable protection for all workers. Therefore, in paragraphs (l)(1) and (l)(2) of the final rule OSHA revised the multi-employer worksite procedures to now require contractors to follow the host employer's program rather than the reverse, as OSHA proposed (proposed § 1915.89(e)(2)).

Paragraphs (l)(3)(i) through (iii) set forth the requirements for contract employers. Under paragraph (l)(3)(i), the contract employer must follow the host employer's lockout/tags-plus program and procedures. As stated previously, OSHA believes that the ultimate responsibility for lockout/tags-plus must remain with the host employer. However, the contract employer has the important responsibility to ensure that its employees know and understand the host employer's lockout/tags-plus program and procedures. Adherence to the program will result in contract employees protecting themselves and others during potentially dangerous work involving hazardous energy.

Paragraph (l)(3)(ii) requires the contract employer to inform the host employer about any lockout/tags-plus hazards associated with the contract employer's work, and any abatement steps being taken by the contract employer to correct such hazards. Manitowoc Marine Group provided testimony regarding how it interacts with contract employers, and particularly how its shipyards obtains information regarding the work the contractor employer will perform, when it first arrives at the worksite:

When they come on site, we have a quick orientation with everybody that steps in the facility, myself or any of my staff will actually, once the general orientation is over with, try to get a grasp of what their work scope is, to identify the different processes. And if it is identified that there will be a lockout procedure or work near equipment that has been locked out, we will go through our process, what we expect, and ensure that they follow our procedure (Ex. 168, p. 124).

OSHA added paragraph (l)(3)(iii) to require that contract employers inform host employers (i.e., lockout/tags-plus coordinators) of any previously unidentified lockout/tags-plus hazards the contractor employer and employees identify at the worksite. As commenters explained, servicing operations on vessels are often complex, involving many employees and multiple employers. This provision ensures that the host employer is alerted and takes appropriate precautions if contractors discover new hazards during the servicing operation. OSHA believes this requirement is necessary to ensure that all employees, regardless of their employer, are protected from hazardous energy during servicing operations. Although OSHA did not propose this requirement, the Agency believes it is responsive to comments received during the rulemaking.

Finally, OSHA added two notes to paragraph (l) for clarification. The first note explains that the host employer may include provisions for the contract employer to have more control over the lockout/tags-plus program when those provisions would provide an equivalent level of safety for both the host and contract employers' employees. There may be situations when it is preferable for contract employees to comply with their own employer's lockout/tags-plus program when working at a host employer's worksite. The note acknowledges these situations, and gives employers flexibility in how they interact with their contractors.

The second note to paragraph (l) clarifies that when the U.S. Navy contracts directly with a contract employer, and the Navy ship's force maintains control of the lockout/tags-plus systems or devices, the contract employer shall consider the Navy to be the host employer for purposes of § 1915.89(l)(3). There are situations when the Navy will contract directly with a subcontract employer instead of the shipyard. As defined in § 1915.80, a host employer is in charge of coordinating work or hires other employers to perform shipyard-related work, or provide shipyard-related services. During these situations, that contract employer would follow the Navy lockout/tags-plus program and procedures, inform the Navy ship's force of any lockout/tags-plus hazards associated with their work, and inform the Navy ship's force of any previously unidentified hazards.

Paragraph (m)—Procedures for Shift or Personnel Changes

The standard requires that the employer's lockout/tags-plus program

include specific procedures to ensure the continuity of lockout or tagout protection during workshift and personnel changes. In final paragraph (m), OSHA adopted proposed paragraph (e)(4), and added a new requirement.

OSHA is cognizant that this standard covers servicing of complex machinery, equipment, and systems, and that work can extend across several workshifts. Under the basic approach of this standard, each authorized employee is responsible for the application and removal of his/her own lockout or tagout device. However, servicing of some of the larger vessels may take weeks or months, and require that hundreds or thousands of lockout/tags-plus devices to be used.

Paragraph (m) of this final rule requires that specific procedures be utilized to ensure the continuity of lockout/tags-plus protection for employees during shift or personnel changes. Paragraph (m)(1), which is adopted from the proposed rule, requires that the employer establish procedures for the orderly transfer of lockout/tags-plus systems between authorized employees when starting and ending their workshifts, and when there are personnel changes. It is essential that locks or tags-plus systems be maintained on energy-isolating devices through transition periods involving shift or personnel changes so that no employee is exposed to uncontrolled energy hazards associated with servicing machinery, equipment, or systems.

In paragraph (m)(2), OSHA clarified and expanded the application of proposed § 1915.89 (e)(4). Paragraph (m)(2) requires, for workshift or personnel changes, there be an orderly transfer of lockout/tags-plus protection between authorized employees coming onto, and leaving, a workshift. Paragraph (m)(2) specifies what basic steps must be included to ensure that workshift changes ensure continuity of lockout/tags-plus protection.

This provision was written in performance-based language so that the employer can conduct shift or personnel transitions in any manner that the employer determines is appropriate, safe, and effective. As stated in the preamble to the general industry standard, the transfer of responsibility can be accomplished by the on-coming shift's authorized employee accepting the control of the machinery, equipment, or system involved prior to the off-going authorized employee relinquishing such control (54 FR 36682, Sept. 1, 1989). Some employers may choose to have only one shift conduct work on any particular machinery, equipment, or system so that there will be no transfer of responsibility. Although such a restriction may not be practical for shipyards having at least two work shifts, it may be a reasonable alternative for some employers.

An alternative means of transfer may involve the on-coming authorized employee accompanying the off-going authorized employee to inspect and verify isolation, and to ensure that the lock or tags-plus system is still intact. This alternative provides the on-coming authorized person the assurance that the machinery, equipment, or system has been deenergized prior to work. The oncoming authorized employee may also initial the lockout/tags-plus log and tag after verifying isolation, or apply his/her own lock or tags-plus system. This action will inform all authorized employees who are working on the machinery, equipment, or system of the change in personnel.

There may be occasions when the authorized employee who applied the lock or tags-plus system is not the employee who completes the job. Because the authorized employee applying the lock or tags-plus system is being protected by that device or system, it is important that the device or system not be removed by anybody else. However, if removal by another authorized employee occurs at anytime, including during another workshift, the employer must comply with the requirements of paragraphs (i)(3)(i) through (i)(3)(iii) of this section.

Many shipyard employment employers commented that their lockout/tags-plus programs already include procedures for the orderly transfer of lockout/tags-plus systems and verification of isolation during workshift and personnel changes (Exs. 105.1; 116.2; 120.1). These comments indicate that employers consider such procedures to be essential to fully protect employees involved in servicing operations. Therefore, the final rule includes these procedures.

Paragraph (n)—Lockout/Tags-Plus Materials and Hardware

Paragraph (n) addresses the locks and tags-plus system hardware used to isolate, secure, or block hazardous-energy sources to any machinery, equipment, or system. When attached to energy-isolating devices, both locks and tags are tools that protect employees from hazardous energy. A "lock" (proposed as "lockout device"), as defined in the final standard, provides protection by holding the energy-isolating device in a safe position, thus preventing the release of energy and the startup or energization of the machinery, equipment, or system (§ 1915.80(b)(13)). A tag (proposed as "tagout device") is a prominent warning device that provides protection by identifying the energy-isolating device as a source of potential danger (§ 1915.80(b)(30)). The tag is used to indicate that the energy-isolating device, and the equipment being controlled by such device, may not be activated until the tag is removed by an authorized employee. An additional safety measure provides a barrier to the release of energy (§ 1915.80(b)(1)). When the use of tags is combined with an energy-isolating device and an additional safety measure, a tags-plus system is established (see the summary and explanation for paragraph (c)(4) above).

Whether a lock or tags-plus system is used, paragraph (n)(1) requires that the employer provide materials and hardware to block hazardous energy. With the exception of minor editorial changes, this requirement is the same as the requirement proposed in § 1915.89(b)(5)(i). OSHA removed the examples of such materials and hardware from proposed paragraph (b)(5)(i), and added them to the definition of "lockout/tags-plus materials and hardware" (§ 1915.80(b)(16)). These examples are not exhaustive; rather, they exemplify hardware and materials that currently exist. Employers may use other hardware or materials that effectively isolate hazardous energy from the machinery, equipment, or systems being serviced.

Final paragraph (n)(2) retains the same provision as proposed (b)(5)(ii), which required that each lock and tag be uniquely identified for lockout/tags-plus applications. One way for employers to comply with this requirement would be to use the same color lock, or tag, for all lockout/tags-plus applications. For example, the employer could select red locks for lockout applications only. This measure also would meet the requirements of paragraph (n)(3)(ii) that each lock be standardized in either color, shape, or size. Use of, for example, red locks will assist employees and contractors in a shipyard facility to immediately recognize that servicing is taking place under a lockout application. In addition, all employees and contractors would recognize that they are not to use red locks for any other purpose while in the shipyard. No comments were received on these provisions, and the final rule retains this practice to protect employees.

The remainder of paragraph (n) specifies the requirements for locks and tags. These requirements specify that

these items must be durable, standardized, substantial, and identifiable.

Durable—Paragraph (n)(3)(i)(A), proposed § 1915.89(b)(5)(ii)(A)(1), requires that locks and tags be able to withstand the environmental conditions to which they are exposed for the maximum duration of expected exposure. Proposed paragraphs (b)(5)(ii)(A)(2) and (3) were combined in this final standard as paragraph (n)(3)(i)(B), which states that each tag must be constructed and printed so that it does not deteriorate or become illegible in wet or damp environments, or when used in environments where corrosives (for example, acid and alkali chemicals) are used or stored. OSHA believes that combining these provisions into one paragraph simplifies the requirements for tags. No comments were received on either of these provisions, and OSHA is retaining the requirements in this final standard.

Standardized—Paragraph (n)(3)(ii) requires that locks and tags be standardized. Both locks and tags must be standardized in at least color, shape, or size so they are readily recognized and associated with the control of hazardous energy. As described above, an employer could elect to use red locks only for lockout and train employees in such use, thus meeting the requirements of §§ 1915.89(n)(2), (n)(3)(ii)(A) and (o)(2)(ii). In addition, tags must be standardized in print and format (paragraph (n)(3)(ii)(B)).

Several commenters stated that standardizing locks and tags would be difficult to accomplish in a shipyard (Exs. 101.1; 105.1; 117.1; 124; 126; 128; 130.1). American Seafoods Company and Lake Union Drydock Company asked: "How will shipyards ensure that [LOTO] devices are standardized within the facility in at least color, shape or size when working with hundreds of vessel crews and contractors? Wouldn't it be more appropriate and just as effective to ensure all devices are distinctive, [and] readily identifiable?" (Exs. 105.1; 101.1). Both Northrop Grumman-Gulf Coast and the American Shipbuilding Association stated: "[T]he lockout device standardization requirement * * * [is] an undue impediment to selecting the most effective devices for controlling hazardous energy" (Exs. 112.1; 117.1). The Agency disagrees with these commenters. The shipyard employer has control over work performed in its facility, and should never permit the use of unsafe tools or work practices. The requirement for standardized locks and tags enhances safety in shipyards, which may have hundreds, or even thousands, of employees. These employees, who may include ship's crew and contractors, will best be served if they can immediately recognize, by seeing standardized locks or tags, that the machinery, equipment, or system is being serviced.

Substantial—For this final standard, proposed paragraphs (c)(5)(ii)(C)(1) and (2) were divided into four provisions, (n)(3)(iii)(A) through (D), for clarity. Paragraph (n)(3)(iii)(A) requires that each lock be sturdy enough to prevent removal without the use of excessive force or special tools such as bolt cutters or other metal-cutting tools. Paragraph (n)(3)(iii)(B) requires that each tag and tag attachment be sturdy enough to prevent inadvertent or accidental removal. Paragraph (n)(3)(iii)(C) requires that the tag attachment have the general design and basic safety characteristics equivalent to a one-piece nylon cable tie that will withstand all environmental conditions, and paragraph (n)(3)(iii)(D) requires that the tag attachment be non-reusable, attachable by hand, self-locking, and non-releasable. It must also have a minimum unlocking strength of 50 pounds. Paragraphs (n)(3)(iii)(B) through (D), discussed above, were proposed as paragraph (c)(5)(C)(2). No comments were received on these provisions. OSHA continues to believe that all lockout/tags-plus system hardware and materials must be durable enough to prevent inadvertent removal and, therefore, has retained the requirements in this final standard.

Identifiable—Paragraph (n)(3)(iv), proposed (c)(5)(D), requires that each lock and tag clearly identify the authorized employee who applied it. Paragraph (n)(3)(v) (proposed paragraph (c)(5)(ii)) requires that tags warn of hazardous conditions that could arise if the machine or equipment is energized, and include a legend such as one of the following: DO NOT START; DO NOT OPEN; DO NOT CLOSE; DO NOT ENERGIZE; DO NOT OPERATE. Stamping the authorized employee's name or identification number on the lock will allow individuals to quickly identify who applied the lock. Manitowoc Marine Group testified that employees' names are on the locks (Ex. 168, p. 129). If an employer chooses not to have names, identification numbers, or other employee identifiers on the lock, the employee must apply a tag to the lock that contains identifying information. In such a case, the authorized employee's name or identification number may be written in indelible ink or with any medium that will withstand the conditions to which the tag will be exposed. No comments were received on these two provisions. OSHA believes that having the authorized employee's name or identification number on the lock or tag is necessary for the protection of all involved employees. Therefore OSHA retained this requirement in the final standard.

Paragraph (o)—Information and Training

Paragraph (o) sets forth the lockout/tags-plus training requirements. OSHA revised the training requirements to address the incorporation of the lockout/tags-plus approach to the final rule. The revisions also ensure that employees have adequate training targeted for their level of exposure and responsibilities under the lockout/tags-plus program. These new training provisions are as equally important whether the employee(s) involved in the servicing of machinery, equipment, or systems are employees of the host or contract employer. In the event that a contract employee is involved in the servicing of machinery, equipment, or systems, it is the contract employer's responsibility to provide the necessary training for the control of hazardous energy in accordance with the host employer's lockout/tags-plus program.

Commenters said that many employers in shipyard employment already have implemented hazardous-energy training. For example, Amy Duz of iWorkWise described lockout/tags-plus training programs are set up for fishing vessels:

> The training basically consists of orienting to whatever the procedure is used on the boat, whatever those procedures are within the scope of what their job is. So, for instance, you know, training for an engineer would be a little bit different. There'd be some hands on, some on-the-job training, as well as some initial orientation and, you know, going over drawings and what not, and a processing employee would only, you know, would be trained to the affected employee level, and if it is in their procedures that they would perform lockout, then they would be trained what to do in that regard. Getting them, for instance, to verify that energy has been disabled is a trick because they don't know what they are doing [or] working on (Ex. 168, pp. 428–429).

Roy Martin described Manitowoc Marine Group's lockout/tagout training program:

> It is a video portion—we actually do the video—but after the conclusion of a video, we will take out the lockout/tagout procedures that we have, the facility procedures, as well as the ones that we have developed on some of the vessels, especially if we are getting close to the repair time frame, and we will go through these procedures pretty much line item by line item, so they understand exactly what we

need to do. We will actually present them with the entire booklet of all the machine specifics that are in the facility itself. And then we will look at our lockout/tagout devices and ensure that they understand that and there are no issues. There will be a question-and-answer period, a general discussion, and at that point, pretty shortly after that, we will start our process of annual review to ensure that they are following the procedures. And we identify just specific people that are authorized lockout/tagout personnel (Ex. 168. pp. 122–123).

These and other comments discussing lockout/tags-plus training substantiate the importance of including lockout/tags-plus training in this final rule.

Paragraph (o)(1) specifies when employers must provide lockout/tags-plus initial training. It requires that employers complete initial lockout/tags-plus training for employees no later than 180 days after the effective date of this final rule (*i.e.,* 180 days after publication of the final rule in the **Federal Register**). A number of commenters said that it would take time for them to develop lockout/tags-plus programs and procedures, and to provide training to all affected employees, authorized employees, and lockout/tags-plus coordinators. OSHA believes that allowing employers 180 days to accomplish lockout/tags-plus training for employees will ensure that all employers, including small employers, have sufficient time to develop a training program.

OSHA believes training for new employees is common in shipyard employment. For instance, Dakota Creek Industries commented on its initial and ongoing training of employees:

It depends on the new crew that might be coming in. But for anybody new coming into the yard, they go through an orientation process in general which touches on that, and at the craft level they do regular monthly training sessions as needed as new people come in and join the staff (Ex. 198, p. 110).

In paragraphs (o)(2) through (o)(5), OSHA identified four categories of employees who must receive lockout/tags-plus training: Employees whose work operations are or may be in an area where a lockout/tags-plus system is in effect, affected employees, authorized employees, and lockout/tags-plus coordinators. With the exception of the lockout/tags-plus coordinator, these are the same categories that OSHA included in the proposed rule (proposed paragraphs (b)(7)(i)–(iii)).

Paragraphs (o)(2) through (o)(5) establish tiered training requirements for each employee category based on employees' level of exposure to hazardous energy and their duties and responsibilities under the employer's lockout/tags-plus program. All employees whose work operations are or may be in a lockout/tags-plus area receive the first level of training (paragraph (o)(2)). Since the work operations of affected employees, authorized employees, and lockout/tags-plus coordinators also are in a lockout/tags-plus area, they also must receive first-tier training. Northrop Grumman–Newport News supported this approach: "We concur with the need to provide a robust training program for all employees who work directly with or in the vicinity of isolated systems/equipment" (Exs. 116.2; 120.1).

In addition to first-level training, affected employees must have second-level of training (paragraph (o)(3)). Authorized employees receive the first, second, and third levels of training (paragraph (o)(4)); and lockout/tags-plus coordinators receive all four levels of training (paragraph (o)(5)). The relative degree of knowledge that authorized, affected, and other employees must acquire varies. The lockout/tags-plus coordinator and authorized employees need the most extensive training because of their responsibilities, respectively, for the entire lockout/tags-plus program and procedures, and for implementing energy control procedures (for example, shutting down and isolating energy sources, applying and removing locks and tags-plus systems) to perform servicing operations.

The U.S. Navy suggested the idea of tailoring training to employees' job duties under the lockout/tags-plus program:

Warship shipboard hazardous energy control program requires specific training of all personnel who execute process steps. It also requires general training for all workers on generic energy control issues which could be affected by any worker. Requiring all workers to be trained in aspects of the program for which they have no involvement or authority to apply is cumbersome (Ex. 132.2).

The U.S. Navy also recommended limiting the amount of training depending on the employees' duties. For example, in reference to training on attaching tags, the Navy said that "only personnel authorized to attach tags should require this training" (Ex. 132.2). OSHA agrees that focusing training on the information that is most essential to the employee's specific job duties will help to increase employees' proficiency in the work practices that are necessary to ensure they are able to safely perform their jobs and not expose others to hazardous energy.

To illustrate, the final rule requires that all affected employees and employees whose job requires them to pass through or briefly visit a lockout/tags-plus area be trained about the prohibitions against applying, tampering, or removing any lockout/tags-plus system and against starting up machinery, equipment, or a system that is under lockout/tags-plus. This information is critical for their protection, as well as the protection of authorized employees performing the servicing. However, in contrast to the proposal, the final rule does not require that those employees be trained so they know that tags and their means of attachment be made of materials that can withstand environmental conditions or be securely attached so they cannot be accidentally or inadvertently removed. Only authorized employees and lockout/tags-plus coordinators are authorized to apply tags; therefore, only they need to know what type of materials must be used for tags or how they must be attached. It is much more critical that all affected employees and employees passing through or briefly visiting a lockout/tags-plus area know and correctly follow the prohibition against applying or removing any lockout/tags-plus system, or starting equipment that is being serviced.

Similarly, the training requirements have been revised so they are more directly applicable to the lockout/tags-plus approach OSHA incorporated in the final rule. For example, since the final rule requires that employers use lockout/tags-plus systems, it is essential that employees be trained about the three basic components of those systems. At the same time, it reduces the need to train employees who work in a lockout/tags-plus area that tags may evoke a false sense of security because the final rule prohibits employers from using tagout alone.

As mentioned earlier, paragraph (o)(2) specifies the training requirements for all employees who are, or may be, in an area where a lockout/tags-plus system is used. As indicated by the phrase "all employees who are, or may be, in an area," this provision applies to employees who are incidentally exposed to a lockout/tags-plus system, as well as affected employees, authorized employees, and lockout/tags-plus coordinators; for example, employees passing through, or briefly visiting, an area where such a system is being, or may be, applied are covered by this provision. Each of these employees must know (i) The purpose and function of the employer's lockout/tags-plus program and procedures; (ii) the unique identity of the locks and tags that will be used, as well as the standardized shape, size, or color of these devices;

(iii) that tags-plus systems are comprised of an energy-isolating device with a tag affixed, and an additional safety measure; (iv) that lockout/tags-plus applications are not to be tampered with or removed; and (v) that machinery, equipment, and systems are not to be restarted or reenergized while being serviced.

Most of the training elements in paragraph (o)(2) were in the proposed rule, but OSHA also expanded, added, and deleted some requirements. For example, the proposed rule required that employees be trained that tags must be legible and understandable to employees. The final rule (paragraph (o)(2)(ii)) expands that provision to require that employees be trained in the unique identity of locks and tags used in lockout/tags-plus applications. Such training ensures that employees know what energy-control locks and tags look like versus other types of locks and tags, thereby ensuring that they know which locks and tags they must not remove. Training employees in the identity of locks and tags also will ensure that they have a better understanding of the components of tags-plus systems and their purpose in the overall lockout/tags-plus program.

OSHA also replaced the proposed requirement that employees be trained that tags may evoke a false sense of security, and that tags need to be understood as part of an overall energy-control program. Instead, the final rule (paragraph (o)(2)(iii)) requires that employees be trained that a tags-plus system includes an energy-isolating device with a tag affixed and at least one additional safety measure. OSHA made this change so the training requirements in the final rule would better address the types of measures employers must use to control hazardous energy. Moreover, since the hazardous-energy program in the final rule does not permit the use of tags alone, there is less need to train employees about the limitations of tags.

OSHA added a requirement in the final rule that employees working in or passing through a lockout/tags-plus area be trained that they are prohibited from starting or energizing any machinery, equipment, or system under lockout/tags-plus. This requirement reinforces the concept that only authorized employees, not employees working in or passing through the lockout/tags-plus area, are authorized to activate machinery, equipment, or systems that are under lockout/tags-plus. OSHA believes that this requirement, along with the prohibition against removing a lockout/tags-plus system, are the two most critical work practices that these employees must understand and follow.

Finally, as explained above, OSHA deleted three training requirements (proposed § 1915.89(b)(7)(ii)(A), (E), and (F)) that focused on tags-plus systems rather than lockout/tags-plus systems. OSHA believes it is more important for employees to know all components of the lockout/tags-plus systems being used rather than the limitations of tags in tags-plus systems, especially since the use of tags alone is not allowed in this final rule.

OSHA believes the training components in paragraph (o)(2) are important to ensure employees' complete understanding of the lockout/tags-plus program and procedures, as well as their awareness of what is occurring around their work areas so that they can protect themselves.

Paragraph (o)(3) sets forth additional training requirements for affected employees. An affected employee is any employee who normally operates, for production purposes, the machinery, equipment, or system that is going to be serviced. Working in a lockout/tags-plus area increases exposure to hazardous energy. Since the definition of affected employee also includes an employee whose job requires working in a servicing area, the training requirements for affected employees are almost identical to those of employees whose work operations are, or may be, in the lockout/tags-plus area. In addition to being trained in the requirements in paragraph (o)(2), paragraph (o)(3) also requires that affected employees be trained in the use of the employer's lockout/tags-plus program and procedures, which was in the proposed rule (proposed § 1915.89(b)(7)(i)(B)). OSHA believes that affected employees need to know the essential components of the employer's lockout/tags-plus program and how they work so they know that machinery, equipment, or systems are not to be operated while under a lockout/tags-plus application. Affected employees also need to understand which activities are servicing operations covered by § 1915.89, which of these servicing activities must be left to authorized employees, and which servicing activities they can perform.

Paragraphs (o)(3)(ii) and (iii) require that affected employees be trained to understand that they may not apply or remove lockout/tags-plus systems, and that lockout/tags-plus systems are not to be bypassed, ignored, or otherwise defeated. These two requirements are the most critical ones that affected employees need to understand to ensure their safety, as well as the safety of the authorized employees servicing the particular machinery, equipment, or system.

Paragraph (o)(4) specifies the training authorized employees must receive in addition to the training in paragraphs (o)(2) and (o)(3). Most of these training requirements were in the proposed rule.

Paragraph (o)(4)(i) (proposed § 1915.89(b)(7)(i)) requires that authorized employees be trained in the steps that are necessary for the safe application, use, and removal of lockout/tags-plus systems. Since authorized employees apply and remove locks or tags-plus systems, it is crucial that they fully understand the procedures and steps they must follow to safely accomplish those tasks. Paragraph (o)(4)(ii), which was in the proposed rule, requires that authorized employees be trained in the type of energy sources, and the magnitude of the energy available, in the workplace. Both of these provisions are particularly important for servicing operations onboard vessels, where several types of energy may be present (for example, electrical, steam, hydraulic), and where energy may be provided by off-vessel sources. The presence of multiple energy sources and multiple locations of energy sources heightens the potential for exposure to hazardous energy, and adds complexity to servicing operations. As such, OSHA believes that authorized employees need to understand the types, sources, and magnitude of available energy to successfully execute the necessary steps to prevent energization, startup, or the release of hazardous energy.

Paragraph (o)(4)(iii), which also was in the proposed rule, specifies that authorized employees be trained in the means and methods necessary for effective isolation and control of hazardous energy. OSHA retained this provision because the final rule now requires authorized employees to lock machinery, equipment, or systems that are capable of being locked, as well as apply both energy-isolating devices and additional safety measures if the machinery, equipment, or system cannot be locked. It is important that authorized employees understand this new control framework to ensure that employees are protected from hazardous energy during servicing operations.

Paragraph (o)(4)(iv), which is a new provision, requires that the authorized employee designated as a group's primary authorized employee be trained to know the means for determining the exposure status of other employees in the group. Since both the proposed and final rules require that the primary authorized employee determine the

exposure status for those employees in the group, OSHA believes that primary authorized employees need to receive training in this task to ensure their assessments are accurate. The training needs to provide the primary authorized employee with information necessary to understand how to determine whether, how, and to what extent employees in the servicing group are exposed to hazardous energy. This is a critical skill that primary authorized employees must possess because they have responsibility for the employees in the group, and for coordinating the lockout/tags-plus application with the lockout/tags-plus coordinator. If primary authorized employees are not trained to accurately determine the exposure status for the employees performing the servicing operation, their determinations may be incomplete, thereby leaving employees exposed to hazardous energy.

Paragraph (o)(4)(v), which was in the proposed rule (proposed § 1915.89 (b)(7)(ii)(C)), requires that authorized employees be trained so they know that tags must be written so as to be legible and understandable to all employees. Authorized employees are responsible for writing the information on the tags, and this requirement will ensure that they carefully write the information so other employees can read and understand the tag, thereby increasing the protection afforded to employees performing servicing operations. OSHA did not receive any comments on this provision, but the Navy generally suggested that training on other similar provisions be limited to authorized employees and lockout/tags-plus coordinators (Ex. 132.2), which the final rule does.

Paragraph (o)(4)(vi), which was in the proposed rule (proposed § 1915.89(b)(7)(ii)(D)), requires that authorized employees be trained so they know that tags must be made of materials which will withstand the environmental conditions encountered in the workplace. Tags must be constructed so that they do not deteriorate or become illegible in wet or damp environments, or when used in environments where corrosives are used or stored.

Paragraph (o)(4)(vii), which also was in the proposed rule (proposed § 1915.89(b)(7)(ii)(F)), requires that authorized employees be trained so they know they must securely attach tags to energy-isolating devices to prevent them from becoming detached during servicing. This training is particularly important in shipyard employment, where servicing operations may take place in all types of weather and environmental conditions. If tags are not firmly attached, they may fall off if there are strong winds. Also, many servicing operations in shipyard employment take place in tight and confined spaces where employees passing by a tag could knock it off if it is not firmly attached. Since it is the authorized employee's responsibility to ensure that the tag is attached, OSHA believes that they are the employees who must receive such training.

Paragraph (o)(4)(viii) requires authorized employees to be trained that tags are warning devices and do not provide the same physical barrier against the energization or startup or the release of hazardous energy that locks or additional safety measures provide. Similarly, paragraph (o)(4)(ix) requires authorized employees to understand that, because tags may evoke a false sense of security, they must be used in conjunction with energy-isolating devices. Both provisions were in the proposed rule. Once again, OSHA is limiting training on these provisions to authorized employees (and lockout/tags-plus coordinators) since they are the employees who apply lockout/tags-plus systems. OSHA believes they need to understand why OSHA is requiring employers to use lockout/tags-plus systems instead of tags alone. OSHA did not receive any comments opposing the proposed provisions.

Finally, paragraph (o)(4)(ix) requires that authorized employees be trained so they know that tags must be used in conjunction with energy-isolating devices to prevent energization, startup, or release of hazardous energy. OSHA proposed a similar provision, but revised it to better address the lockout/tags-plus system that the final rule requires. OSHA did not receive any comments opposing this provision.

Paragraph (o)(5) addresses the training that lockout/tags-plus coordinators must have in addition to the training in paragraphs (o)(2), (o)(3), and (o)(4). The requirements in paragraph (o)(5) are new provisions that apply to the lockout/tags-plus coordinator position that OSHA added to the final rule. The job of lockout/tags-plus coordinator is critical because it directly affects the safety of employees working in complex shipyard environments. The position requires a high degree of skill and expertise. The lockout/tags-plus coordinator is responsible for overseeing all servicing operations and lockout/tags-plus applications in those operations. As such, the lockout/tags-plus coordinator must have a thorough working knowledge of the employer's lockout/tags-plus program and procedures, as well as the available energy sources. In addition, the coordinator needs to have a full understanding of the machinery, equipment, and systems that employees are servicing, including the energy-isolating devices and additional safety measures that will need lockout/tags-plus applications. This coordination job will necessitate being able to read plans and schematics of the machinery, equipment, and systems to ensure that all sources of energy are identified. Once sources of energy are identified, the coordinator also must know the means of isolation that will be needed. To ensure that the coordinator has the critical knowledge and is proficient in all of the steps necessary to protect employees from hazardous energy, the final rule requires that the coordinator receive all tiers of lockout/tags-plus training that other employees must receive, plus training geared specifically to the coordinator position.

Paragraph (o)(5)(i) requires that lockout/tags-plus coordinators be trained so they know how to identify and isolate any machinery, equipment, or system that is being serviced. As mentioned previously, machinery, equipment, and systems used in shipyard employment may involve several different energy sources. The coordinator must be able to identify all of the energy sources so the sources can be shutdown and isolated. If any sources are missed, employees performing the servicing operation may be exposed to hazardous energy. Therefore, the coordinator must be able to accurately identify all energy sources, because they will be overseeing and authorizing, and possibly applying, the lockout/tags-plus systems necessary to protect authorized employees.

Paragraph (o)(5)(ii) requires the coordinator to be trained so he/she knows how to accurately document the lockout/tags-plus system and maintain the lockout/tags-plus log. Whatever methods and procedures the employer has established for the lockout/tags-plus log, the coordinator will need to be trained in them so the log is accurate. For example, if the employer uses an electronic log, the coordinator will need to be trained to operate that program.

In this final standard, paragraph (o)(6) specifies when employees must be retrained or receive additional training. The employer must retrain each employee applicable whenever:

- A change in the employee's job assignment presents a new hazard or requires a greater degree of knowledge about the employer's program or procedures (paragraph (o)(6)(i)(A));
- A change in machinery, equipment, or systems presents a new hazard for

which the employee has not received training (paragraph (o)(6)(i)(B));

- A change is made in the employer's lockout/tags-plus program or procedures (paragraph (o)(6)(i)(C)); and
- It is necessary to maintain the employee's proficiency (paragraph (o)(6)(i)(D)).

OSHA did not receive any comments opposing lockout/tags-plus retraining in general, and some commenters support the need for it. Northrup Grumman's—Newport News' comments were representative of stakeholders: "Periodic retraining ensures that lessons learned are shared with all employees" (Ex. 116.2).

In the final rule, OSHA clarified and expanded the scope of the proposed retraining requirements. The final rule states that paragraph (o)(6)(i) requires employers to retrain "employees as applicable." The proposed rule limited these retraining requirements to affected and authorized employees. The final rule clarifies that retraining must be provided to those employees whose jobs, tasks, or responsibilities may be affected by the changes. Thus, if changes in the lockout/tags-plus program or procedures affect any employee whose work operations are, or may be, in a lockout/tags-plus area, then all four categories of employees would need to be retrained. However, if the program or procedure changes pertain only to authorized employees and lockout/tags-plus coordinators, such as changes in communication procedures between these employees, then the retraining can be limited to those two categories of employees. OSHA believes these changes will assist employers to appropriately direct their retraining efforts.

The proposed rule (proposed § 1915.89(b)(7)(iii)(A)) required that employees be retrained whenever there was any change in their job assignment. Northrop Grumman—Newport News commented opposing that approach:

> [W]e do not believe it is feasible or necessary to retrain employees whenever there is a change in job assignment or equipment. By nature, vessel construction and repair is a dynamic environment and equipment and job assignments change regularly. We believe initial and periodic refresher training is the most practical and beneficial means to maintain employee proficiency and knowledge. Periodic training ensures that lessons learned are shared with all employees, not just those that had a job assignment (Exs. 116.2; 120.1).

The U.S. Navy raised similar concerns: "In the re-training section the words 'whenever there is a change to their job assignment' is too ambiguous. Recommend adding to this—whenever there is a change to their job assignment that changes their role or responsibility in performance of the energy program" (Ex. 132.2).

OSHA recognizes that there may be some changes in job assignments for which it may not be necessary to retrain employees. For example, if authorized employees are assigned to service the same types of machinery, equipment, or systems on a different vessel, they may not need to be retrained. In this case, additional program knowledge appears not to be required, and it does not appear that the employees will be exposed to new energy-release hazards. Likewise, if authorized employees are assigned to work on similar machinery, equipment, or systems in another area of the vessel, their current training may be sufficient.

Based on the record, OSHA modified the final language to specify that employers provide retraining when a new job assignment presents a new energy-release hazard or requires a greater degree of knowledge about the employer's lockout/tags-plus program or procedures. For example, if an affected employee is newly assigned to be an authorized employee, it is clear that the employee would need additional training because the new tasks and responsibilities require greater knowledge of the employer's lockout/tags-plus program. In addition, the job likely also would involve additional hazards as the employee's new responsibilities would include shutting down and isolating energy sources, applying lockout/tags-plus systems, and performing servicing on machinery, equipment, or systems that are under a lockout/tags-plus system.

Paragraph (o)(6)(i)(B), like the proposed rule, requires that employers retrain employees as applicable when there is a change in machinery, equipment, or systems that presents a new hazard. As with changes in job assignment, some changes in machinery, equipment, or systems are minor, and the hazards those jobs pose are within the scope of the employee's previous training. In such cases retraining may not be necessary. However, when there are substantial changes in the machinery, equipment, or systems being serviced, or the employee is unfamiliar with the new machinery, equipment, or system, retraining is necessary to prevent exposure of employees to hazardous energy.

Paragraph (o)(6)(i)(C) requires that employers retrain employees as applicable when there is a change in the employer's lockout/tags-plus program or procedures. The proposed rule included this provision.

In paragraph (o)(6)(i)(D), OSHA added a requirement that employers must retrain employees as "necessary" to maintain proficiency. Commenters generally supported retraining to maintain employee proficiency. Some commenters said they provide annual energy-control retraining. For example, Bath Iron Works and Northrop Grumman–Newport News stated that they provide annual lockout/tags-plus training (Ex. 168, p. 349). In addition, James Thornton explained that Northrop Grumman disseminates "reminders," and conducts refresher training on an as-needed basis:

> For example, during the year, if we have seen a lot of near misses, we might put out to the yard for general distribution, a communication that says okay, we saw a number of these kinds of things, be sensitive to this particular operation, and so it is not just the formal training, but it is also refresher training and a reminder if we have had near-misses and that sort of thing (Ex. 168, p. 349).

That said, OSHA notes that this provision is not a requirement to provide annual retraining. Rather, employers must provide retraining when it is necessary so their employees maintain proficiency. OSHA understands that many shipyard employees have long careers, and that it is not unusual for employees to continue in the same craft during their entire career. These employees may have been implementing lockout/tags-plus procedures for an extended period of time. It is likely that these employees maintain a high degree of expertise and proficiency based on their long experience. However, to the extent that routine and habit may lead to risky shortcuts or missed steps in procedures, this provision requires retraining to restore and refresh the high degree of proficiency essential to prevent employees from being exposed to hazardous energy during servicing operations. Therefore, employers will need to assess their workplaces and workforce to determine the appropriate retraining frequency necessary to maintain employee proficiency.

In sum, OSHA believes that the specific frequencies of training and retraining required in the final rule, as opposed to annual retraining, are correlated with the key times and situations in which employees need lockout/tags-plus training. Requiring annual retraining may not be adequate to ensure that employees have the critical information at the time they need it to perform their jobs safely. For shipyard employment worksites where

servicing operations change frequently, it may be possible that employees will receive training more frequently than once a year.

Paragraph (o)(6)(ii) requires retraining employees as applicable when an incident investigation or audit indicates there are deviations from or deficiencies in the lockout/tags-plus program or procedures, and when there are inadequacies in an employee's knowledge or use of the lockout/tags-plus program or procedures. The proposed rule (proposed § 1915.89(b)(7)(iii)(B)) required that employees receive retraining when a periodic inspection reveals, or the employer has reason to believe, that there are deviations or inadequacies in the employee's knowledge or use of energy-control procedures. The final rule expands the requirement to require retraining when an employer's lockout/tags-plus program or procedures, as opposed to employees, have deficiencies. Requiring retraining when either employee knowledge or employer programs or procedures are deficient is necessary to adequately protect workers during servicing operations.

OSHA believes that the retraining requirement in paragraph (o)(6)(ii) implicitly requires employers to implement the corrective actions identified in incident investigations and program audits. In many cases, the appropriate corrective action will be retraining.

Paragraph (o)(6)(iii), as with the proposal (proposed § 1915.89(b)(7)(iii)(C)), requires the employer to ensure that retraining establishes employee knowledge and proficiency in the employer's lockout/tags-plus program and procedures, and in any new or revised procedures. This performance-based requirement gives employers flexibility to determine effective methods and means to attain employee efficiency. For example, employers could test employee proficiency, or have employees demonstrate safe practices, before they begin or resume servicing activities.

Also implicit in this provision is the requirement that employers provide retraining using methods and language that employees are able to understand. The Agency recognizes that workers in the shipyard employment industry have different backgrounds, languages, ethnicities, and literacy levels. The employer will need to tailor the training to the particular demographics of their employees to ensure that the retraining establishes employee knowledge.

Throughout paragraph (o), OSHA specifically states that employers must train or retrain employees so they know or understand the required content (see, for example, paragraph (o)(6)(iii)). This requirement means that employers must ensure that training is provided in ways that enable their employees to understand the information, know its meaning, and use that information to ensure their safety under hazardous-energy conditions. There are many ways employers can provide effective and understandable training to a diverse workforce. iWorkWise explained how fishing-vessel operators ensure that their Spanish-speaking employees understand training:

> It might be conducting the training in both English and Spanish, for instance, although there are a lot of other languages [besides] Spanish on fishing vessels. It might be, you know, watching them do it the first time, showing them how to do it physically. All of those things, I think, are used by every vessel, quite well. I mean, that is how they are able to do their job at all and show up when they are supposed to. So everything possible, I guess, is the answer, and I have seen it employed in a training program to get people to understand what they need to do (Ex. 168, p. 430).

Bath Iron Works commented on how it ensures training is understandable to all employees:

> On our end, for the most part, they are all English-speaking, but we also do a validation exam, make sure they understand the material, and then we go through the answers to make sure everybody understands that. * * * Sometimes we have had some folks who are illiterate, and we have done some one-on-one training with those folks, so they understand (Ex. 168, pp. 350–351).

Finally, paragraph (o)(7), like the proposal, requires the employer to keep a record that training has been accomplished and is current. OSHA revised this paragraph to require that the employer include at least the employee's name, date(s) of the training, and the subject of the training. The proposed rule only required that the record include the employee's name and date of training. OSHA believes that the record also must include the subject of the training to be a useful record. Employers are free to determine the form of the record. For example, some employers may retain training course sign-in sheets while other employers may maintain individual employee training records.

Paragraph (p)—Incident Investigation

In paragraph (p), OSHA added provisions requiring employers to investigate each incident that resulted in, or reasonably could have resulted in, the energization or startup, or the release of hazardous energy. SESAC recommended that a shipyard lockout/tags-plus standard require the employer to conduct incident investigations when accidents or near-misses occur (Docket SESAC 1993–3, Ex. 8, p. 7). SESAC also recommended that employers conduct such investigations to identify deficiencies in the lockout/tags-plus program, and then correct any problems or deficiencies in the program.

In the proposal, OSHA requested input from shipyard employers as to whether § 1915.89 should include an incident-investigation requirement. Northrop Grumman—Newport News, the U.S. Navy, and Puget Sound Shipbuilder's Association agreed that such a requirement would be an important, if not critical, component of a lockout/tags-plus program (Exs. 116.2; 132.2; 168 p. 392). Northrop Grumman stated:

> A best practices study on hazardous energy control in shipyards noted that most successful programs included a provision for incident investigation. This provision was determined to be one of several strengths typically found in Shipyard Employment hazardous energy programs, which are absent from the General Industry standard. The investigation should be documented, including a cause analysis and corrective actions (Ex. 116.2).

The U.S. Navy stated that it agrees "that [the requirement for] incident investigation[s] is an appropriate requirement to be included in the standard * * * [i]n order to maintain a level of quality and frankness necessary to assist in the continuation of a successful proactive program" (Ex. 132.2). In addition, Puget Sound Shipbuilder's Association testified: "The essential elements listed on this slide are the foundation for a new hazardous-energy control standard that will serve the employees in the shipyard industry well. * * * [Element] nine [addresses] incident investigations and regular inspections" (Ex. 168, pp. 390–392).

It is long-standing OSHA policy to encourage, and in some instances to require, incident reports, accident assessments, and other types of reports that document an investigation of an incident that could, or does, compromise safety. According to an OSHA Safety and Health Management System fact sheet entitled "Accident/incident Investigation":

> Near miss reporting and investigation allow you to identify and control hazards before they cause a more serious incident. Accident/incident investigations are a tool for uncovering hazards that either were missed earlier or have managed to slip out of the controls planned for them. It is useful only when done with the aim of discovering every contributing factor to the accident/incident to "foolproof" the condition and/or activity and prevent future occurrences. In

other words, your objective is to identify root causes, not to primarily set blame. (See *http://www.osha.gov/SLTC/etools/safetyhealth/mod4_factsheets_accinvest.html.*)

OSHA believes that requiring shipyard employers to implement incident investigations will result in a decrease in incidents and near-misses. Based on the Agency's expertise and existing policy, and the comments from SESAC and members of the regulated community addressing the importance of incident investigation and reports, OSHA added paragraph (p), Incident investigation, to this final standard.

Paragraph (p)(1) requires the employer to investigate each incident that resulted in, or could reasonably have resulted in, energization or startup, or the release of hazardous energy. OSHA believes that investigating "near misses" in addition to actual incidents is an important proactive measure to maintain an effective lockout/tags-plus program. Investigating near misses can prevent incidents and keep small or minor problems from becoming major problems. Further, successfully identifying and addressing root causes of incidents is the most effective way to prevent fatalities and injuries from occurring.

Paragraph (p)(2) requires that, within 24 hours of the incident, the employer initiate the investigation and notify each employee who was, or could reasonably have been, affected by the incident. Paragraph (p)(3) requires that the investigation be conducted by at least one employee who has knowledge of, and experience in, the employer's lockout/tags-plus program and procedures. This employee also must have knowledge of, and experience in, investigating and analyzing incidents involving the release of hazardous energy. OSHA understands that some employers use outside safety and health consultants to perform various services, such as inspections, program development, and incident investigations. Thus, paragraph (p)(3) permits employers to use additional individuals to participate in incident investigations. Such individuals may include co-workers, outside consultants, or other ship's forces or crafts. However, the responsibility for the incident investigation rests with the employer, regardless of whom the employer may designate to assist with the task.

Paragraph (p)(4) specifies that the employer prepare a written report of the investigation. This report must include the following seven items (paragraphs (p)(4)(i) through (vii)): the date and time of the incident; the date and time the incident investigation began; the location of the incident; a description of the incident; the factors that contributed to the incident; a copy of any lockout/tags-plus log that was current at the time of the incident; and any corrective actions that the employer must take as a result of the incident. OSHA believes that all of these items will assist the employer in identifying causes of the incident, as well as unsafe practices. In this regard, the U.S. Navy stated:

> The Navy has a robust program for formal investigations of energy control problems on board Navy vessels. * * * It is this intense focus on and formal resolution of smaller problems that results in the elimination of more serious problems. All safety programs need to include a formal investigation process which should include documented problem definition, cause analysis and corrective action determination (Ex. 132.2).

OSHA believes that incidents or near misses may occur as a result of procedural mistakes, lack of knowledge, or employee error. It is from examining incidents that the employer can determine which corrective actions to take so that such incidents do not recur.

Paragraph (p)(5) requires that the employer review the written incident report with each employee having job tasks related to the findings of the incident investigation. This review must include contract employees, when applicable. This review will provide employers with an opportunity to discuss and reinforce the importance of corrective actions and to identify any training or other deficiencies not included in the written report.

Paragraph (p)(6) requires that the investigation and report be completed, and any necessary corrective actions taken, within 30 days of the incident. OSHA believes that 30 days is ample time for employers to assess the incident and, in most cases, implement corrective measures. Otherwise, the employer runs the risk of a repeat incident. However, there will be some situations that cannot be corrected within 30 days. In those situations, paragraph (p)(7) requires the employer to prepare a written abatement plan that explains the circumstances of the delay, a proposed timeline for corrective actions to be implemented, and a summary of the interim steps that the employer will take to protect employees. Thus, when the employer cannot take corrective actions within 30 days of the incident, the employer must take positive steps to do so in a timely manner.

Paragraph (q)—Program Audits (Proposed § 1915.89(b)(6))

The standard requires that the employer perform periodic audits at least annually to ensure that energy-control procedures are working properly. OSHA explained in the preamble to the proposed standard that the audit (referred to as "inspection" in the proposal) must make four findings: (1) Whether the steps in the energy-control procedures are being followed; (2) whether the employees involved know their responsibilities under the procedures; (3) whether the procedures are adequate to provide the necessary protection; and (4) what changes, if any, are needed to correct identified deficiencies (72 FR 72452, 72494, Dec. 20, 2007).

OSHA proposed this section as "periodic inspection," but changed the title to "program audits" for this final standard since many commenters referred to the inspections as audits. OSHA proposed that periodic inspections of "each" energy-control procedure be conducted at least annually, to ensure that the procedures were being followed, and to correct any deficiencies. OSHA received several comments regarding the change from § 1910.147(c)(6) that required an inspection of "the" energy-control procedure (Exs. 105.1; 116.2; 120.1). American Seafoods Company commented:

> It is not clear why OSHA has added the language, "conduct a periodic inspection of *each* procedure." This is a change from the General Industry standard which requires a periodic inspection of "*the* energy control procedure" [1910.147(c)(6)]. How will a facility inspect *each* procedure? For instance, if a facility has 200 procedures, and not all of them are used every year, it is not reasonable for an employer to have to make someone perform each procedure just so they can inspect it. Indeed, it would be exceedingly onerous to [expect someone to perform] each procedure each year for a shipyard, ship repair facility, or vessel that has hundreds of procedures even if they were performed at least once (Ex. 105.1).

Similarly, Northrop Grumman–Newport News also stated:

> This section requires annual inspection of *each* energy control procedure and a review of certain information and responsibilities with *each* authorized employee. For instance, in our Facilities-based program alone we have approximately 10,000 energy control procedures (because very few pieces of equipment/systems have a single source of energy) and approximately 1,300 authorized employees.
>
> There are thousands of jobs on a single aircraft carrier each day that require isolation of hazardous energy. As indicated above, once the work is complete, the procedure (work permit and support expert based assessment) are obsolete. Performing an inspection of obsolete procedures annually makes no sense and the number of distinct procedures (work permits) are too great to

accomplish a full inspection even if the procedures were not obsolete. We recommend that this section be deleted and a section requiring an annual Hazardous Energy Control audit be added (Ex. 116.2).

OSHA acknowledges the validity of these concerns, and modified the final standard in two ways. First, final paragraph (q)(1) clarifies that the required audits apply to program and procedures currently in use. Thus, if an energy-control program was implemented at some point during the previous year, but the servicing has been completed and the program discontinued, the employer need not audit the discontinued program. Second, in final paragraph (q)(1), OSHA deleted the proposed requirement for auditing "each" energy-control program. The employer instead may inspect a representative sample of the equipment the procedure cover, and consult with the authorized employees who implement the procedure on that equipment. Accordingly, equipment that has the same type and magnitude of hazardous energy, and has the same or similar type of controls, may be grouped together and inspected by type of procedure (Ex. 36, Letter to Thomas J. Civic, Mar. 9, 2004). Moreover, as stated by OSHA in an interpretation letter regarding the general industry requirement for periodic inspections (Ex. 35, Letter to Lawrence P. Halprin, Sept. 19, 1995), a group of detailed individual procedures are considered a single procedure for the purposes of periodic inspection, provided all of the procedures have the same:

- Planned equipment use;
- Procedures for applying controls (*i.e.,* shut down, isolation, blocking, and securing equipment);
- Procedures for placing, removing and transferring lockout/tags-plus devices, and identifying who has responsibility for these procedures; and
- Requirements for testing the machinery, equipment, or system and verifying the effectiveness of lockout/tags-plus devices and other control measures.

In 1993, prior to the above-mentioned Agency interpretations, SESAC raised similar concerns about the large percentage of equipment that employers must inspect to determine whether the energy-control procedures are working properly and whether employees understand their responsibilities under the procedures (Docket SESAC 1993–3, Ex. 104X, pp. 164–169). OSHA believes the interpretations incorporated and discussed herein address SESAC's concerns, and the concerns of the commenters.

Under final paragraph (d) of this section, OSHA requires procedures to be developed for the control of hazardous energy during servicing of any machinery, equipment, or system. However, OSHA does not require employers to develop a procedure for every single machine, equipment, or system for each type or class of vessel. In the Note to paragraph (d)(1) of this section, OSHA clearly stated that employers must develop procedures only for types of machinery, equipment, or systems. Paragraph (d)(2) provides an exemption to the requirement for written procedures under specified conditions. The Agency recognizes the large number of servicing operations that occur on a large vessel such as an aircraft carrier, and, therefore, does not require in this final standard that employers have a procedure, or conduct an audit of every procedure, for every servicing operation.

A properly conducted program audit will determine whether an employer's lockout/tags-plus program and procedures are effective, and whether the employer is implementing the program and procedures properly. In addition, audits will ensure that employees implementing the program and procedures remain familiar with their responsibilities, whether they are affected employees, authorized employees, or employees working on the same vessel while servicing operations are being performed. The audit will also ensure that the employer identifies any deficiencies in the program and procedures, as well as in employee training.

Comments and testimony confirmed that employers already are performing annual audits of hazardous-energy control programs and procedures. Northrop Grumman–Newport News testified regarding audit procedures at its landside operations:

> [A]ll of our procedures that are formal shipyard procedures enter into what we call our quality control system, so each of those systems is spelled out. If there is an annual requirement for review, updating, and inspection, that is automatic, so, in other words, we will get a trigger from the quality system that says procedure Y1022 is now up for review, and that stimulates us then to go and even if we have forgotten, to go and perform that review and analysis of that procedure consistent with the requirement, our quality control system. So, yes, even though we have a large number of procedures, we check them out (Ex. 168, p. 324).

Foss Maritime testified that it also perform annual audits:

> At least annually. We try to do it twice a year. * * * It's something that I do twice a year walking our facility. For my walks, I would generate other questions. But the electricians and the pipefitters who are probably the ones who are involved in lockout/tags-plus are the ones I go to and let them audit the programs (Ex. 198, p. 32).

Based on these comments stating that periodic audits are accepted practice in some shipyards, and on OSHA's experience with periodic audits in other industries, OSHA is retaining the requirement that annual audits be conducted.

Final paragraph (q)(2)(i) (proposed paragraph (b)(6)(A)) requires that the audit be performed by an authorized employee other than the employee using the energy-control procedures being reviewed. As an alternative to paragraph (q)(2)(i), OSHA added final paragraph (q)(2)(ii) to the final standard, which allows employers to perform the required audit using other individuals knowledgeable about the employer's lockout/tags-plus program and procedures and the machinery, equipment, or systems being reviewed. OSHA specified a similar alternative in final paragraph (p)(3), which allows employers to employ outside consultants, such as safety and health professionals, to participate in incident investigations. OSHA concludes that having such an outside consultant is a reasonable alternative to having an employee conduct the audit, especially since the consultant may provide a fresh perspective on the review process. However, this individual must be knowledgeable about the employer's program and procedures, as well as knowledgeable about the machinery, equipment, or systems that are being serviced on vessels and in landside facilities. OSHA did not receive any comments on the requirements of paragraph (q)(2)(i) (proposed as § 1915.89(b)(6)(i)(A)), and is retaining these provisions, along with the new (q)(2)(ii), in this final standard.

In proposed paragraph (b)(6)(i)(B), OSHA required the inspection of energy-control procedures to include a review, conducted between the inspector and each authorized employee, of the authorized employee's responsibilities under the energy-control program. In proposed paragraph (b)(6)(i)(C), if the employer used a tags-plus system, the inspector's review of employee responsibilities would include affected employees. OSHA also proposed, for tags-plus systems, that the inspection include a review, with authorized and affected employees, of the limitations of tags. Northrop Grumman–Newport News stated:

> We recommend that the periodic inspection be modified to require 'a review

of a statistically significant sample of procedures annually by a person knowledgeable of the operation and energy control procedures.' We recommend that the review of responsibilities and other information with authorized employees be moved to a performance-based requirement in the training section to ensure employees are knowledgeable of their responsibilities (Exs. 116.1; 120.1).

After reviewing the record, OSHA decided not to include these proposed provisions in the final standard. However, similar requirements for authorized employees are provided in the training section of the final standard. OSHA believes that these training requirements cover the responsibilities of the authorized employees, as well as other crucial training elements. (See summary and explanation of § 1915.89(o)(4) above.)

In paragraph (q)(3), OSHA revised the specifications for the program audit. Although the proposed rule included a requirement to review the energy-control program procedures (proposed § 1915.89(b)(6)), it did not specify what records the employer needed to review as part of the audit. The final rule identifies what records the employer must examine as part of the audit.

Paragraph (q)(3)(i) requires that the auditor review the written lockout/tags-plus program and procedures. This requirement will ensure that the employer addresses all of the machinery, equipment, and systems and the specific procedures for energy control in the worksite, as well as confirm that the employer is in compliance with paragraph (b) of this section. Paragraphs (q)(3)(ii) and (iii) require the auditor to review the current lockout/tags-plus log and verify its accuracy. By reviewing the log, the auditor will determine if it is up to date, if all possible sources of hazardous energy supplied to machinery, equipment, or systems have been properly isolated, and if the lockout/tags-plus coordinator is properly approving and authorizing each lock or tagout application. Finally, under paragraph (q)(3)(iv), the auditor must review any incident reports that have been completed since the last audit. By reviewing the incident reports, the auditor will analyze information that could lead to further incidents. This review also will ensure that the employer implements any corrective actions identified in the incident report, and that the employer conducts any necessary retraining. Reviewing this information will allow the auditor to determine whether the corrective actions were appropriate and effective in decreasing the possibility of future near-misses. Paragraphs (q)(3)(v) and (vi), like proposed paragraphs (b)(6)(i)(B) and (C), require employees to ensure that the auditor reviews with authorized employees their responsibilities under the lockout systems being audited, and with affected and authorized employees their responsibilities under the tags-plus systems being audited. These requirements are essential to the auditor's understanding of whether the employer's lockout/tags-plus procedures are understood and being followed by the applicable employees.

Paragraph (q)(4) of the final rule requires the employer to prepare a written audit report that includes, among other things, audit findings and recommendations for corrective actions. The final rule expands the requirement in the proposed rule, which was limited to certifying the date of the inspection, the equipment inspected, the employees included in the inspection, and the person performing it. The proposed rule did not require that the certification include the inspection findings and recommendations for corrective action, which OSHA believes to be the heart of the audit. OSHA believes the final rule provides more useful information to employers and will assist them to maintain an effective lockout/tags-plus program. For example, if a more detailed audit report is available, employers can refer to it when investigating subsequent incidents or near misses. A detailed report also provides employers with information that will assist them to determine, during the next program audit, whether they have improved the effectiveness of their lockout/tags-plus program. Finally, requiring a detailed audit report also ensures that the employer uses a systematic approach in evaluating the lockout/tags-plus program.

Paragraphs (q)(4)(i) and (ii) require the employer to ensure that the auditors prepare, and deliver to the employer, a written audit report that includes the date of the audit and the identity of the individual(s) performing the audit. The auditors must prepare and deliver the report within 15 days after completing the audit. Paragraph (q)(4)(iii) requires that the written report contain the identity of the procedure, and the applicable machinery, equipment, or system, being audited. Paragraph (q)(4)(iv) requires the written audit report to contain the findings of the program audit and all recommendations for correcting deviations or deficiencies identified during the audit. Paragraph (q)(4)(v) specifies that the written audit report also must contain any incident-investigation reports prepared since the previous audit (see § 1915.89(p)). Finally, paragraph (q)(4)(vi) requires the report to contain a description of any corrective actions that the employer performed in response to the findings and recommendations of any incident reports prepared since the previous audit.

Paragraphs (q)(5) and (q)(6) require that the employer promptly communicate the audit report findings and recommendations to each employee having a job task that may be affected by the audit and, within 15 days following receipt of the audit report, correct any deviations or inadequacies in the lockout/tags-plus program. These two paragraphs are new in the final standard. OSHA believes that it is important for employers to promptly communicate the findings of the report to employees, and to have a set period of time in which to correct the deviations and deficiencies, thereby protecting workers from the release of hazardous energy. OSHA designed the program audits to provide feedback to employers on hazardous-energy control programs so that the employers will correct promptly any deviations or deficiencies found in the lockout/tags-plus program. These audits also serve to ensure that employers are implementing the procedures properly, and that all employees receive information about the status of the program and procedures. OSHA believes that program audits permit employers to monitor significant safety procedures, and ensure compliance with the requirements of this section.

Paragraph (r)—Recordkeeping

Paragraph (r), which is a new paragraph in the final standard, consolidates in a single location the records in this section that employers must retain, and the period of time they must retain these records. Table 3 to subpart F, "Retention of Records Required by § 1915.89," provides a summary of these recordkeeping requirements. OSHA discussed each of these records in the respective sections of the summary and explanation. In developing these recordkeeping requirements, OSHA balanced the need to review records relating to the employer's lockout/tags-plus program with the burden of retaining outdated records.

As required by final paragraphs (b) and (d), the employer must establish and implement a written lockout/tags-plus program and procedures. OSHA concluded that employers must maintain these documents until they are replaced by updated programs or procedures. Employers should have no

difficulty meeting this requirement as it does not impose a significant document maintenance burden. Rather, it ensures that documentation of the employer's lockout/tags-plus program, and the resulting safety to employees, continues uninterrupted, even if the program and/or procedures change. Paragraph (o)(7) requires the employer to maintain records that employees accomplished training on lockout/tags-plus, and that this training is current. The employer must maintain these records until replaced by updated records for each type of training. Paragraph (o)(1) requires that employees receive initial training at whatever level they are working (i.e., employee, affected employee, authorized employee, or coordinator), and paragraph (o)(6) requires retraining as necessary. Over the course of an employee's career, he/she may participate in numerous training sessions. OSHA concluded that employers need to document various types and levels of training that employees receive pursuant to the lockout/tags-plus standard to prevent any omission in training required for an employee. This requirement will also aid employers to determine when retraining is necessary. This requirement should not impose an undue burden on employees since the standard, at final paragraph (o)(7), requires only that the training record contain the employees' names, dates of training, and the subject of training received.

Paragraph (p)(4) requires the employer to prepare a written incident-investigation report. The employer must maintain this report at least until completing the next program audit. This requirement will aid auditors in determining whether the employer successfully adopted the corrective actions recommended in the investigation report. Furthermore, paragraph (q)(4)(v) specifically requires that audit reports include, among other information, incident-investigation reports generated since the previous audit. To comply with paragraph (q)(4)(v), the employer must retain all investigation reports prepared since the previous audit.

Finally, paragraph (q)(4) requires that the employer prepare a written audit report. OSHA concluded that employers must maintain this report for at least 12 months after being replaced by the next audit report. Since audits must be conducted at least once a year, the retention of audit reports for one year after being replaced by the next audit report provides the employer with at least two audit reports at any one time. Inspection of these reports will give the employer an indication of safety trends in the workplace, as well as information about components of the employer's lockout/tags-plus program that may need improvement.

Paragraph (s)—Appendices

This final standard includes a non-mandatory appendix that employers and employees can use to implement the requirements of this section. The appendix also provides other information on the control of hazardous energy. OSHA included this appendix in the proposal. In this final standard, OSHA updated the appendix to include changes to the final lockout/tags-plus provisions. None of the information in this appendix adds or detracts from any of the requirements of this section.

Appendix A to § 1915.89 (Non-Mandatory)—Typical Minimal Lockout/Tags-plus Procedures

General

Lockout/Tags-Plus Procedure

Lockout/Tags-plus Procedure for

[Name of company for single procedure or identification of machinery, equipment, or system if multiple procedures used.]

Purpose

This procedure establishes the minimum requirements for the lockout/tags-plus application of energy-isolating devices on vessels and vessel sections, and for landside facilities whenever servicing is done on machinery, equipment, or systems in shipyards. This procedure shall be used to ensure that all potentially hazardous-energy sources have been isolated and the machinery, equipment, or system to be serviced has been rendered inoperative through the use of lockout or tags-plus procedures before employees perform any servicing when the energization or start-up of the machinery, equipment, or system, or the release hazardous energy could cause injury.

Compliance with This Program

All employees are required to comply with the restrictions and limitations imposed on them during the use of lockout or tags-plus applications. Authorized employees are required to perform each lockout or tags-plus application in accordance with this procedure. No employee, upon observing that machinery, equipment, or systems are secured using lockout or tags-plus applications, shall attempt to start, open, close, energize, or operate that machinery, equipment, or system.

Type of compliance enforcement to be taken for violation of the above.

Procedures for Lockout/Tags-plus Systems

(1) Notify each affected employee that servicing is required on the machinery, equipment, or system, and that it must be isolated and rendered inoperative using a lockout or tags-plus system.

Method of notifying all affected employees.

(2) The authorized employee shall refer to shipyard employer's procedures to identify the type and magnitude of the energy source(s) that the machinery, equipment, or system uses, shall understand the hazards of the energy, and shall know the methods to control the energy source(s).

Type(s) and magnitude(s) of energy, its hazards and the methods to control the energy.

(3) If the machinery, equipment, or system is operating, shut it down in accordance with the written procedures (depress the stop button, open switch, close valve, etc.) established by the employer.

Type(s) and location(s) of machinery, equipment, or system operating controls.

(4) Secure each energy-isolating device(s) through the use of a lockout or tags-plus system (for instance, disconnecting, blanking, and affixing tags) so that the energy source is isolated and the machinery, equipment, or system rendered inoperative.

Type(s) and location(s) of energy-isolating devices.

(5) *Lockout System.* Affix a lock to each energy-isolating device(s) with assigned individual lock(s) that will hold the energy-isolating device(s) in a safe or off position. Potentially hazardous energy (such as that found in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must be controlled by methods such as grounding, repositioning, blocking, bleeding down, etc.

(6) *Tags-plus System.* Affix a tag to each energy-isolating device and provide at least one additional safety measure that clearly indicates that removal of the device from the safe or off position is prohibited. Potentially hazardous energy (such as that found in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems and air, gas, steam, or water pressure, etc.) must be controlled by methods such as grounding, repositioning, blocking, bleeding down, etc.

Type(s) of hazardous energy—methods used to control them.

(7) Ensure that the machinery, equipment, or system is relieved, disconnected, restrained, or rendered safe from the release of all potentially hazardous energy by checking that no personnel are exposed, and then verifying the isolation of energy to the machine, equipment, or system by operating the push button or other normal operating control(s), or by testing to make certain it will not operate.

CAUTION: Return operating control(s) to the safe or off position after verifying the isolation of the machinery, equipment, or system.

Method of verifying the isolation of the machinery, equipment, or system.

(8) The machinery, equipment, or system is now secured by a lockout or tags-plus system, and servicing by the authorized person may be performed.

Procedures for Removal of Lockout/Tags-plus Systems

When servicing is complete and the machinery, equipment, or system is ready to return to normal operating condition, the following steps shall be taken:

(1) Notify each authorized and affected employee(s) that the lockout/tags-plus system will be removed and the machinery, equipment, or system reenergized.

(2) Inspect the work area to ensure that all employees have been safely positioned or removed.

(3) Inspect the machinery, equipment, or system and the immediate area around the machinery, equipment, or system to ensure that nonessential items have been removed and that the machinery, equipment, or system components are operationally intact.

(4) Reconnect the necessary components, remove the lockout/tags-plus material and hardware, and reenergize the machinery, equipment, or system through the established detailed procedures determined by the employer.

(5) Notify all affected employees that servicing is complete and the machinery, equipment, or system is ready for testing or use.

Section 1915.90—Safety Color Code for Marking Physical Hazards

Section 1915.90 of the final rule, like the proposal, incorporates by reference 29 CFR 1910.144, the general industry standard on safety color-coding for marking physical hazards.

The provisions of § 1910.144, which already apply to shipyard employment, both onshore and on vessels, require that the color red shall be the basic color for the identification of dangerous conditions such as red paint used for containers of flammable liquids, red lights at barricades and temporary obstructions, and red danger signs. The general industry standard also specifies that red shall be the color used for emergency stop buttons, electric switches, and machine stop bars. In addition, the standard requires that yellow be used as the basic color for designating caution and marking physical hazards such as slip, trip, and fall hazards.

Some stakeholders raised questions about the application of the provision on vessels (Exs. 101.1; 105.1; 124; 126; 128; 130.1; 132.2). For instance, American Seafoods Company requested clarification about whether employers, specifically shipyard and ship-repair employers, would be required to color-code physical hazards on vessels undergoing repair and maintenance in shipyards (Ex. 105.1). Other stakeholders questioned whether shipyard employers would have to color-code physical hazards on vessels that they do not own before they begin work (Exs. 101.1; 124; 126; 128; 130.1). One stakeholder recommended that OSHA limit application of the provision to landside facilities and temporary systems placed onboard vessels during repair (Ex. 132.2).

As discussed in section I(D), "Hazards," of this preamble to the final rule, work on vessels involves many serious hazards and dangerous conditions. If these hazards are not marked in a uniform and readily apparent way that is recognizable to all workers, those workers may be at risk of serious harm. The OSH Act requires that employers provide employees with employment and a place of employment that is free from recognized hazards (29 U.S.C. 654). This means that shipyard employers must ensure that their employees are protected from physical hazards wherever they work, including onboard any vessel undergoing repair and maintenance. Therefore, whenever the potential exists for employees to be exposed to a physical hazard on shore or onboard any vessel, shipyards and repair facilities are required to color-code all physical hazards on vessels undergoing repair and maintenance.

This standard has been applicable to shipyard employment, including work on vessels, since OSHA adopted it pursuant to section 6(a) of the OSH Act. Therefore, OSHA does not believe that employers should have difficulty complying with it. In addition, the standard gives employers flexibility in determining what methods or material they use to color-code physical hazards. For example, employers would be free to color-code hazards using tape, paint, ties, or other similar methods.

American Seafoods Company indicated that OSHA should add the requirements in §§ 1910.144 and 1910.145 (discussed in § 1915.91 of this preamble) to part 1915, subpart F, because they think that it is "onerous" for employers to have to refer to both part 1915 and part 1910 to determine what standards are applicable to shipyard employment (Ex. 105.1). OSHA believes that simply stating that §§ 1910.144 and 1910.145 apply to shipyard employment addresses the stakeholder's concern. By specifically referencing §§ 1910.144 and 1910.145 in §§ 1915.90 and 1915.91, respectively, shipyard employers will instantly know that those general industry sections are applicable to them. It eliminates what the stakeholder calls an "onerous" step of having to examine whether any or all of the provisions in §§ 1910.144 and 1910.145 apply. Moreover, the ready availability of OSHA standards on the OSHA Web site makes it easy for employers to obtain copies of any standards that apply to shipyard employment, whether they are in part 1910 or part 1915.

Section 1915.91—Accident Prevention Signs and Tags

Section 1915.91 of the final rule, like the proposed rule, incorporates by reference the general industry standard on accident prevention signs and tags, 29 CFR 1910.145. Section 1910.145 requirements address the classification, design, and wording of accident prevention signs and tags. OSHA believes that incorporating the general industry standard is necessary to provide consistent protection whenever shipyard employees are exposed to potentially hazardous conditions. It also ensures that important warning and danger signs and tags are uniform in design and use, which OSHA believes will increase their effectiveness.

The provisions addressing accident prevention signs are already applicable to shipyard employment on vessels and on shore (§ 1910.145(a) through (e)). The general industry provisions also require that accident prevention tags be used when employees are exposed to potentially hazardous conditions, equipment, or operations that are "out of the ordinary, unexpected or not readily apparent" (§ 1910.145(f)). Tags are required to be uniform for message, legibility, positioning/affixing, and comprehensibility. However, as explained in the proposed rule, the general industry standard expressly excludes the application of accident prevention "tags" to maritime (§ 1910.145(f)(ii)). OSHA believes that applying the requirements on accident prevention tags to shipyard employment provides needed protection since part 1915 does not have comprehensive, uniform requirements for the application and use of such tags. The final rule ensures that all of § 1910.145 is applicable to shipyard employment.

To eliminate any confusion, the final rule both incorporates by reference § 1910.145, and removes the maritime exclusions from that section (for example, "marine regulations" (§ 1910.145(a)(1)) and "maritime" (§ 1910.145(f)(ii)). OSHA recognizes that the terms "maritime" and "marine" sometimes collectively refer to shipyard employment, marine terminals, and longshoring. Removing the maritime and marine references from these general industry sections does not make the general industry standard applicable to marine terminals and longshoring. In this regard, §§ 1910.16, 1917.1(a)(2), and

1918.1(b) exclude marine terminals (29 CFR part 1917) and longshoring (29 CFR part 1918) from coverage under § 1910.145 because § 1910.145 is not incorporated into §§ 1910.16, 1917.1(a)(2) or 1918.1(b) and, therefore, does not apply to marine terminals or longshoring.

OSHA believes that incorporating the general industry requirements should not pose problems for shipyard employers since accident-prevention tags are universally recognized. Moreover, the use of both accident-prevention signs and tags, specified in § 1910.145, is already applicable to shipyard employment.

Several commenters questioned whether the shipyard or repair facility is responsible for posting signs on vessels that are undergoing repairs or maintenance (Exs. 99; 101.1; 104.1; 107.1; 124; 126; 128; 130.1). Shipyard employers are responsible for posting accident prevention signs and tags to identify hazards on vessels on which their employees perform repair or maintenance work. This includes applying accident prevention signs and tags to protect workers from identified hazards in their work and at the workplace, regardless of who owns the vessel on which they may be working. Therefore, whenever there is a potential for employees to be exposed to a hazard, either on a vessel or shoreside, the shipyard employer must post accident prevention signs and tags to prevent potential injury, illness, or fatality.

Section 1915.92—Retention of DOT Markings, Placards, and Labels

In § 1915.92, OSHA is retaining, with minor editorial changes, the existing requirements in § 1915.100 on the retention of DOT markings, placards, and labels on hazardous materials the shipyard receives. This final standard includes minor editorial changes from the proposed rule.

Paragraphs (a) and (b) of this section require that employers not remove labels and markings on any hazardous materials or freight containers, rail freight cars, motor vehicles, or transportation vehicles that the U.S. Department of Transportation regulations require to be marked, until the hazardous materials are removed, and that employers clean any residue and purge any vapors to prevent potential hazards. These requirements apply regardless of how the shipyard receives the hazardous material packages (for example, single packages, in bulk).

Paragraph (c) requires that the markings, placards, and labels on the hazardous materials be maintained so that they are "readily visible." Paragraph (d) states that employers are considered in compliance with this section if the markings or labels on non-bulk packages that will not be reshipped are affixed in accordance with the Hazard Communication standard, § 1910.1200. Paragraph (e) specifies that the definition of "hazardous materials" and other undefined terms have the same definition as the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 through 180).

OSHA did not receive any comments on proposed § 1915.92. The Agency concludes that DOT markings, placards, and labels on hazardous materials need to be visible to workers for as long as a hazard is present so workers can protect themselves and others. Therefore, OSHA retained these provisions in the final standard with no change.

Section 1915.93—Vehicle Safety Equipment, Operation, and Maintenance

The purpose of this section is to address the hazards associated with the use of motor vehicles at worksites engaged in shipyard employment by setting forth requirements for motor vehicle safety equipment, and for the safe operation and maintenance of motor vehicles. Statistics provided in the proposal, collected from the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries database, reported that 27 shipyard employees were killed in transportation accidents over an 11-year period (1993–2003) (Ex. 69). These fatalities accounted for 17 percent of the deaths during that time. The BLS data also reveal that since 1998, an estimated 225 shipyard employees have suffered motor vehicle-related injuries serious enough to involve days away from work. In 2002 alone, 63 shipyard employees suffered injuries involving days away from work in transportation accidents (72 FR 72500–72501, Dec. 20, 2007). Due to the significant number of reported fatalities and injuries involving transportation accidents among shipyard employees, OSHA concluded that the motor vehicle safety provisions are necessary, and that the requirements set forth in § 1915.93 will reduce the number of motor vehicle-related fatalities and injuries.

Paragraph (a)—Application.

In proposed § 1915.95, OSHA defined the term "motor vehicle" to mean any motor-driven vehicle operated by an employee that is used to transport employees, materials, or property. The proposed definition of "motor vehicles" included passenger cars, light trucks, vans, motorcycles, all-terrain vehicles, powered industrial trucks, and other similar vehicles. During the hearing, two shipyard employers testified that they use Mules™, which are small utility vehicles comparable to large golf carts, for transporting employees, materials, or property in shipyards. Northrop Grumman Shipbuilding – Newport News stated:

> We have experimented with some things that we affectionately call mules that [I] think is a trade name. It's a little motorized kind of a small scooter with a little cargo box in the back, and we have a few of those, so those are some examples of how employees get around (Ex. 168, p. 296).

Bath Iron Works also provided information on these vehicles, stating: "We have recently introduced what they call the mule, the 4-wheel drive, caboose cab with seat belts and a little place to put material in the back to haul to job sites" (Ex. 168, p. 297). Based on these comments, the Agency added to the final rule the phrase "small utility vehicles" to the definition of "motor vehicle."

Proposed paragraph (a)(1) limited the scope of this section to any motor vehicle used to transport employees, materials, or property at shipyards; however, the purpose of this provision was to apply to all worksites engaged in shipyard employment. Thus, OSHA changed the scope of this section in the final rule for clarity to include any motor vehicle used to transport employees, materials, or property at worksites engaged in shipyard employment. Paragraph (a)(1) also makes clear that the requirements set forth in § 1915.93 do not apply to the operation of motor vehicles on public streets and highways. This provision was carried over from the proposal to the final rule with no change. OSHA did not receive any comments on this proposed provision.

OSHA believes that Federal, State, and local laws and regulations, such as safety belt and vehicle inspection laws, already provide adequate protection on public roads. Thus, this section is directed to conditions where those laws and regulations may not apply to motor vehicles used in shipyard employment (for example, on shipyard property when transporting employees between work areas or worksites, or when moving materials or property). Nonetheless, OSHA believes the rule's benefits will extend beyond motor vehicle operation at shipyard worksites by fostering good safety, driving, and vehicle-maintenance habits. For example, OSHA believes that an employee who is required by an employer to wear a safety belt while

riding in a motor vehicle on shipyard property is more likely to continue to wear it when the vehicle leaves the shipyard, even if the employee leaves the shipyard in a private motor vehicle. Likewise, a motor vehicle that is maintained in safe operating condition for use in shipyard employment will also be safe when it is used on public roads.

Paragraph (a)(2), which is carried over unchanged from the proposal, limits most of the requirements of this section to motor vehicles the employer provides. However, because some employers allow employees to use their own motor vehicles to transport themselves, other employees, and materials within the shipyard, paragraph (a)(2) specifies that three provisions in this section also apply to motor vehicles that employees provide. Those provisions are the requirements that each worker riding in a motor vehicle use safety belts (§ 1915.93(b)(2)), that motor vehicles have seats for each employee being transported (§ 1915.93(b)(4)), and that tools and materials transported by motor vehicles be firmly secured (§ 1915.93(c)(2)). OSHA did not receive any comments on proposed paragraph (a)(2).

OSHA concludes that these safety provisions are necessary to protect workers using or riding in motor vehicles during shipyard employment. The requirements ensure that employers are providing their workers with safe and serviceable motor vehicles. In addition, this section enhances the safety of workers using their own vehicles on the job by requiring employers to ensure safe driving practices while those employees are on shipyard property.

Paragraph (a)(3) specifies that the motor vehicle safety equipment requirements in paragraph (b)(1) through (b)(3) apply to the operation of powered industrial trucks (for example, forklifts) in shipyards. Employers must ensure that powered industrial trucks used in shipyard employment be equipped with safety belts (paragraph (b)(1)); that employees use safety belts while operating powered industrial trucks (paragraph (b)(2)); and that safety equipment is not removed from powered industrial trucks (paragraph (b)(3)). In addition, employers must replace safety equipment that is removed from any powered industrial truck (paragraph (b)(3)). OSHA did not receive any comments on proposed paragraph (a)(3).

The provisions in paragraph (b)(1) through (b)(3) supplement requirements in the general industry standard on powered industrial trucks (29 CFR 1910.178) that are applicable to shipyard employment through 29 CFR 1910.5(c)(2). Section 1910.178 does not require powered industrial trucks to be equipped with safety belts. Much of the general industry standard was promulgated pursuant to section 6(a) of the OSH Act (29 U.S.C. 655(a)), which permitted OSHA in the first two years after the effective date of the OSH Act (April 28, 1971) to adopt as OSHA standards any established Federal occupational safety and health standards or national consensus standards. The OSHA powered industrial truck standard was drawn from the ANSI standard on low-lift and high-lift trucks in effect at the time (ANSI B56.1–1969). The 1969 ANSI standard did not have a safety belt requirement, but when the ANSI standard was revised in 1993, provisions were added to it requiring that powered industrial trucks manufactured after 1992 be equipped with safety belts, and also requiring that operators use them. The current ANSI/ASME standard has the same requirements. Although the general industry standard has not been updated to include safety belt requirements, OSHA, when issuing its 5(a)(1) enforcement policy, said that the provisions in ANSI/ASME B56.1–1992 demonstrate "recognition of the hazard of powered industrial truck tipover and the need for the use of an operator restraint system" (Ex. 25, Memorandum dated October 9, 1996, to Regional Administrators from John Miles). Paragraph (a)(3) codifies OSHA's enforcement policy. OSHA believes that applying paragraphs (b)(1) through (b)(3) to powered industrial trucks used in shipyard employment supplements applicable general industry requirements with important protection for workers.

Paragraph (a)(3) indicates that the seating requirements in paragraph (b)(4) do not apply to powered industrial trucks since some powered industrial trucks are manufactured to operate in a standing position and are not equipped with seats. In addition, paragraph (m)(3) of § 1910.178 already requires that a safe place to ride be provided in situations in which riding is permitted.

Paragraph (a)(3) also makes clear that employers must continue to comply with the maintenance, inspection, operation, and training requirements for powered industrial trucks in § 1910.178; therefore, the motor vehicle operation and maintenance requirements in this section do not apply to powered industrial trucks. The requirements in § 1910.178 are more comprehensive and provide more specific protection to employees using powered industrial trucks than the more general motor vehicle operation and maintenance requirements described in § 1915.93 (see 29 CFR 1910.5(c)(1)).

Paragraph (b)—Motor Vehicle Safety Equipment

Paragraph (b) of the final rule requires employers to ensure that motor vehicles used in shipyard employment are equipped with motor vehicle safety equipment and that the safety equipment is used while motor vehicles are operated.

Paragraph (b)(1), which is identical to the proposed rule, requires that employers ensure that each motor vehicle acquired by the employer or put in service for the first time after the final rule becomes effective is equipped with a safety belt for each employee operating or riding in the vehicle. It is well documented that safety belts reduce the risk of injury and death; therefore, OSHA believes this requirement is necessary and appropriate (Exs. 12; 14, p. 61; 15, p. 6; 16; 17; 18; 21; 28). There have been injuries and fatalities in shipyard employment and in other industries resulting from not using safety belts while operating or riding in motor vehicles, including powered industrial trucks and other off-road vehicles (Ex. 19). Recognition of the hazards of operating motor vehicles without safety belts is also shown by the national consensus standards that require motor vehicles to be equipped with operator restraints, and that specify that operators and passengers use them (Ex. 38 at Ex. 3–13, SAE J386—1997, Operator Restraint Systems for Off-Road Work Machines, and Ex. 3–10, ANSI/ASME B56.1–2000, Safety Standard For Low Lift and High Lift Trucks). Requiring the use of safety belts makes this section consistent with those standards.

Paragraph (b)(1) limits the application of this requirement to motor vehicles acquired or put into initial service by the employer after the final rule becomes effective. Although OSHA believes that the vast majority of motor vehicles acquired or put into initial service after the effective date of the final rule will be new vehicles manufactured with safety belts, paragraph (b)(1) also requires that any used motor vehicle that an employer acquires and uses for the first time after the effective date also must have safety belts. Uniformly applying this section to all motor vehicles acquired or used for the first time after the effective date ensures that employees operating these vehicles will have full protection

regardless of which motor vehicle they operate or ride in.

Several stakeholders said they already require the use of safety belts in motor vehicles, including powered industrial trucks used in shipyard employment at their facilities. Northrop Grumman Shipbuilding – Newport News stated: "Seatbelts are required and worn when operating forklifts and other mobile equipment" (Exs. 116.2; 120.1). Todd Pacific Shipyards Corporation testified that it requires workers to use safety belts when operating forklifts and battery-powered carts at its facility (Ex. 198, pp. 53–54). Additionally, Trident Seafoods Corporation commented that workers who operate forklifts must wear seatbelts. Trident's enforcement policies are described as:

> We have a progressive system in place there that our shipyard competent person at our facility and manager, and any manager at that facility is encouraged to support, [and] that [is] if you see someone not wearing a seatbelt, we have a chit system where we write them up and put [the write-ups] in their files (Ex. 198 p. 135).

OSHA believes that the record supports including the safety belt requirement in the final rule, and that employers will not have any difficulty meeting these provisions. Therefore, the Agency believes the requirements set forth in paragraph (b)(1) are necessary and will prevent workers from being injured or killed if they are in a motor vehicle accident while working.

Paragraph (b)(1) includes an exception to the safety belt requirement for those motor vehicles not originally manufactured with them (for example, buses). This exception relieves employers of the burden of retrofitting those motor vehicles, already in service, that were not originally manufactured with safety belts. However, if safety belts have been removed from any motor vehicle manufactured with them, the employer must replace the safety belts or remove the motor vehicle from service.

Paragraph (b)(2) of the final rule is a companion to (b)(1). Identical to the proposed rule, it requires the employer to ensure that employees use safety belts at all times while operating or riding in a motor vehicle. As mentioned above, motor vehicle accidents are a significant cause of employee injury and death, and safety belts have been shown to reduce that risk. OSHA notes that the requirement in paragraph (b)(2) applies to all motor vehicles used at shipyards, including powered industrial trucks and motor vehicles that workers provide. Forklift trucks, for example, are particularly susceptible to tipovers if they are operated on uneven ground, sand, or railways; hit potholes; turn corners sharply; or strike objects with their mast. These conditions are often found in shipyards. In many forklift tipover accidents, operators have been injured or killed because they were thrown from the forklift, or were struck or crushed by the forklift when they tried to jump free. In 2001, BLS reported that, across private industry, 35 of 123 forklift fatalities (28 percent) involved tipovers or falling from a moving forklift. In contrast, in many cases when forklift operators were wearing safety belts, the injuries were more limited. In one tipping accident, an OSHA inspector noted that the operator was wearing a safety belt, and the injuries were limited to four fingers on one hand (Ex. 69).

In the preamble for the proposed rule, OSHA requested comment on concerns that some forklift operators have raised about using safety belts when operating the trucks near water (72 FR 72500–72501, Dec. 20, 2007). Northrop Grumman Shipbuilding–Newport News said it was not aware of such concerns, and requires the use of safety belts when operating forklifts (Exs. 116.2; 120.1). Similarly, other stakeholders who commented on this section said they require the use of safety belts when operating powered industrial trucks (Exs. 135; 198, pp. 53–54). Accordingly, OSHA is specifying in this final rule that the requirements in paragraph (b)(2) apply whenever powered industrial trucks are used in shipyard employment.

Paragraph (b)(2) also requires the employer to ensure that employees wear safety belts securely and tightly fastened at all times while operating or riding in motor vehicles. The proposed rule contained an identical requirement. OSHA believes this language is necessary because, if the safety belt is not properly fastened, it may not hold or restrain the employee within the motor vehicle compartment in the event of an accident or tipover.

As stated above, the safety belt requirement applies to both employer- and employee-provided motor vehicles used to transport employees, materials, or property on shipyard premises. The risk of injury exists regardless of whether employees operate or ride in employer- or employee-provided motor vehicles on shipyard property. Applying this provision to all motor vehicles used in shipyard employment will ensure that employees have full and uniform protection any time they are in a motor vehicle during shipyard employment. OSHA did not receive any comments opposing paragraph (b)(2).

Paragraph (b)(3), which is identical to the proposal, requires employers to ensure that motor vehicle safety equipment is not removed from employer-provided vehicles and, if such equipment is removed, the employer must replace it. For purposes of this paragraph, motor vehicle safety equipment is defined in § 1915.80(b) to include items such as safety belts, airbags, headlights, tail lights, emergency/hazard lights, windshield wipers, defogging or defrosting devices, brakes, mirrors, horns, windshields and other windows, and locks. This provision must be read in conjunction with paragraph (c)(1), discussed below, which requires that employers equip motor vehicles with safety equipment that is in serviceable and safe operating condition. OSHA did not receive any comments on proposed paragraph (b)(3).

Paragraph (b)(4) requires that motor vehicles used to transport employees have a firmly secured seat for each employee being transported. It also requires the employer to ensure that employees use the seat when they are being transported. OSHA is aware that some shipyards transport employees from one worksite to another in the back of pickup trucks that are not equipped with seats. For example, Northrop Grumman Shipbuilding–Newport News stated:

> Employees are permitted to ride seated in the bed of pickups, in addition [to] riding in passenger vehicle seats. We enforce a maximum speed limit of 15 mph in the shipyard. We prefer to continue this practice within our shipyard. There have been no accidents or injuries associated with this practice in the history of the shipyard (Exs. 116.2, 120.1).

However, other stakeholders recognized that transporting workers in open areas of motor vehicles without appropriate seating poses a risk of injury or death. For instance, Bath Iron Works testified: "We don't allow anybody riding in the back of pickups" (Ex. 168, p. 297). The Agency believes that the practice of allowing employees to ride in the back of pickup trucks places employees at risk of injury from falling out of or being thrown from the vehicle, even at low speeds. In 2001, for instance, a construction employee riding in the back of a pick-up while placing cones on a highway fell out and was killed even though the truck was traveling only 10 to 15 mph, which is the speed limit in many shipyards that have established speed limits.

OSHA believes that ensuring that employers use motor vehicles equipped with safe seating to transport workers in shipyards will protect them from possible injury or death. Thus,

employers need to ensure that motor vehicles used to move employees throughout the shipyard have seats for each employee transported, and to prohibit motor vehicles that do not have such seating from being used to transport employees. As mentioned earlier, OSHA is applying this provision to employee-provided motor vehicles, as well as employer-provided motor vehicles. This requirement will ensure that every vehicle transporting employees in shipyards provides the same protection to employees.

Paragraph (b)(4), as in the proposal, also requires that the seating be firmly secured. Portable seating that is not firmly attached to the motor vehicle would not be permitted as a means to comply with this provision. OSHA believes that employers should not have problems complying with this provision since several shipyard employers already use vans and automobiles that have firmly secured seats to transport employees (Exs. 168, p. 328; 198, pp. 17–18).

Paragraph (c)—Motor Vehicle Maintenance and Operation

Paragraph (c) covers requirements for the maintenance and operation of motor vehicles used in shipyard employment.

Paragraph (c)(1), which is identical to the proposal, requires employers to ensure that each vehicle is maintained in a "serviceable and safe operating condition." Safe operating condition refers to the condition of equipment that directly affects the safe operation of the vehicle. For example, motor vehicle safety equipment, which is defined in § 1915.80(b) to include items such as safety belts, airbags, headlights, tail lights, emergency/hazard lights, windshield wipers, defogging or defrosting devices, brakes, mirrors, horns, windshields and other windows, and locks must be in safe working order. The term "serviceable condition" is defined as the state or ability of a vehicle to operate as prescribed by the manufacturer. Accordingly, motor vehicles maintained and operated in accordance with manufacturers' instructions and recommendations are considered to be in compliance with this provision.

Paragraph (c)(1) also requires that motor vehicles be removed from service if they are not in a serviceable and safe operating condition. The motor vehicle may not be used for shipyard employment until the problem is resolved or the damage repaired. OSHA does not believe employers will have difficulty complying with this provision. In this regard, the Shipbuilders Council of America commented that motor vehicles used by shipbuilders "are frequently inspected by in-house Maintenance departments to ensure all functions of the vehicles are working properly" (Exs. 202.1; see also 116.2; 120.1).

OSHA believes that properly functioning and maintained safety equipment in motor vehicles is essential to protect all workers who may come in contact with the vehicle. A vehicle that is not maintained in a serviceable and safe operating condition presents a danger to operators, passengers, bicyclists, and pedestrians. Therefore, the requirements of paragraph (c)(1) will protect employees from injury or death in shipyard-employment workplaces.

Paragraph (c)(2) requires that tools or equipment being transported in a motor vehicle, whether employer- or employee-provided, must be secured to prevent unsafe movement of the tools or equipment that could endanger employees. This provision will help to reduce the risk of injury due to heavy or sharp tools or equipment sliding into or hitting operators or passengers. It will also prevent tools and materials from falling or being thrown from a motor vehicle and striking workers who may be in the area. No comments were received on this paragraph. OSHA has included paragraph (c)(2) into the final standard with no change from the proposal.

Paragraph (c)(3) addresses hazards associated with intermingling pedestrian, bicycle, and motor vehicle traffic in shipyard employment. When pedestrians, bicyclists, and motor vehicles share shipyard roadways, collisions may occur if motor vehicle operators do not see pedestrians or bicyclists in time to avoid hitting them. Depending on the size and configuration of the shipyard employment work areas or worksites, there may be a significant mixture of motor vehicle, bicycle, and pedestrian traffic. Narrow or unmarked roads between work areas and worksites are likely to increase the risk of collision.

Many employers provide bicycles or allow employees to use their own to get from one work location to another (Exs. 116.2; 120.1; 168, p. 296). As the use of bicycles has grown, so too have reports of collisions. For example, an employee riding a bicycle to perform regularly assigned work tasks in a Mississippi shipyard was killed when he collided with a motor vehicle (Ex. 11). With the intermingling of traffic in shipyards, OSHA believes it is important to ensure that employees riding bicycles and walking can be seen by motor vehicle operators so they will not be injured or killed.

Paragraph (c)(3), as proposed, required that employers implement measures to ensure that motor vehicle operators can see and avoid hitting pedestrians and bicyclists traveling in shipyards. The proposal identified examples of some measures that employers may implement to comply with the requirement. Proposed paragraphs (c)(3)(i) through (c)(3)(vi) identified the following examples that employers might use to protect pedestrians and bicyclists: Establishing dedicated travel lanes for motor vehicles, bicyclists, and pedestrians; installing crosswalks and traffic control devices such as stop signs or physical barriers; establishing speed limits and "no drive" times; providing reflective vests or similar gear to pedestrians and bicyclists; and ensuring that bicycles have equipment, such as reflectors and lights, to maximize visibility.

Many stakeholders said that they have already implemented a number of these measures. In addition, several stakeholders recommended that OSHA include additional measures in the final rule. Although the measures in proposed paragraph (c)(3) were not a complete listing of examples, some stakeholders believed that adding additional examples would give employers greater flexibility in protecting pedestrians and bicyclists. For example Electric Boat stated:

> Electric Boat agrees that pedestrian safety should be addressed in the final rule; however a performance-based regulation should be established due to the wide range of motor vehicles used in the facility and the site configuration. A combination of training, procedures, barriers, and signage should be allowed to meet the goal of pedestrian safety (Ex. 108.2).

The Shipbuilders Council of America commented:

> Shipyards are dynamic environments, and it is not uncommon for employees to be in roadways and vehicles to be in 'walkways.' SCA recommends some flexibility with shipyard specific operational controls, such as 'right of way' rules, to ensure the safety of employees (Ex. 114.1).

General Dynamics NASSCO added:

> Shipyards are dynamic environments, and it is not uncommon for employees to be in roadways and vehicles to be in walkways. Rather than requiring an unattainable standard, some flexibility is recommended with shipyard specific operational controls to augment engineering controls to ensure the safety of employees. NASSCO would offer the following language[:]
>
> Establishing dedicated travel lanes or "right of way" rules for motor vehicles, bicyclists, and pedestrians [Emphasis in original](Ex. 119.1).

In addition, ASA provided several additional examples of effective ways to protect pedestrians and bicyclists:

> Some of our facilities have crosswalks at high volume crossing points and walkways in some areas. However, due to the age of some facilities many buildings border roadways, and there is little or no room for separate pedestrian paths. Rigorous control of speed, use of mirrors at blind spots, operator training, and general awareness training are the primary means used to minimize the risk of pedestrian and vehicular collisions. These measures have proved effective over many years of experience (Ex. 204.1).

Further, Northrop Grumman Shipbuilding – Newport News and Bath Iron Works said that they have established speed limits for all motor vehicles, and "no drive" times to allow for the safe movement of pedestrians (Exs. 116.2; 120.1; 168, pp. 294–295). Northrop Grumman said: "We have a speed limit of 15 mph, reduced to 10 mph in certain areas of the shipyard" (Exs. 116.2; 120.1). They also testified:

> [A]t shift change, and at lunch, we have no drive periods that are 10 minutes around the beginning of the shift, lunch, and then the end of the shift that all vehicular traffic stops so as to allow pedestrians time * * * to transit, to come and go from the yard. Also, around lunchtime so if * * * they are moving throughout that yard to get a sandwich or something, they can do so and minimize the risk (Ex. 168, pp. 294–295).

OSHA agrees that implementation of the measures provided by the stakeholders will control the hazards associated with motor vehicles, bicyclists, and pedestrians sharing accessways in the shipyard. Therefore, the Agency included these measures in final paragraphs (c)(3). Specifically, paragraph (c)(3)(ii) adds mirrors at blind intersections to the examples of traffic-control devices. Establishing speed limits for motor vehicles and "no drive" times are included in paragraphs (c)(3)(iii) and (c)(3)(iv), respectively. That said, OSHA stresses that the list of measures in the final rule that employers may use to protect pedestrians and bicyclists is not exhaustive. Thus, new paragraph (c)(3)(vii) states that employers may also use other effective measures to protect pedestrians and bicyclists from being injured by motor vehicles, as long as the employer can demonstrate that those measures are as effective as the ones specified in paragraphs (c)(3)(i) through (vi).

In addition to these new measures, OSHA is including in the final rule all of the measures mentioned above that were proposed in paragraph (c)(3). OSHA believes employers should not have difficulty implementing these measures since employers already are using similar measures and have found them to be effective.

The International Safety Equipment Association recommended that OSHA require that high-visibility safety apparel comply with "ANSI/ISEA 107–2004, American National Standard for High Visibility Safety Apparel and Headwear" (Ex. 113.1). OSHA decided to retain a performance-based approach for the examples of safety measures included in paragraph (c)(3) of the final rule. Whether employers elect to use reflective vests or other apparel, they must ensure that motor vehicle operators are able to see and avoid pedestrians and bicyclists. This performance-based approach also means that employers may need to implement more than one type of safety measure to ensure that the required performance is met.

Section 1915.94—Servicing Multi-Piece and Single-Piece Rim Wheels

Section 1915.94 of the final rule, like the proposal, incorporates the general industry standard and non-mandatory appendices on servicing multi-piece and single-piece rim wheels, 29 CFR 1910.177. The standard applies to servicing multi-piece and single-piece rim wheels on large vehicles such as trucks, tractors, trailers, buses, and off-road machines, all of which are used in shipyard employment. The standard does not apply to servicing rim wheels on automobiles, or on pick-up trucks or vans using either automobile or "LT" (light truck) tires (see § 1910.177(a)(1)). Also, the standard establishes requirements for the following four major areas: (1) Training for all tire-servicing employees (§ 1910.177(c)); (2) the use of proper equipment such as clip-on chucks, restraining devices, or barriers to retain the wheel components in the event of an incident during the inflation of tires (§ 1910.177(d)); (3) the use of compatible components (§ 1910.177(e)); and (4) the use of safe operating procedures for servicing multi-piece and single-piece rim wheels (§§ 1910.177(f) and (g)).

The general industry standard exempted shipyard employment. However, OSHA understands that shipyards use many large motor vehicles, and was concerned that workers could be injured or killed if shipyards were servicing the tires on those vehicles. Northrop Grumman Shipbuilding – Newport News commented that it services multi-piece and single-piece rim wheels, and added that it already follows the requirements set forth in the general industry standard (Exs. 116.2; 120.1). Northrop Grumman's practice supports what OSHA noted in the preamble to the proposed provision: shipyards that service the tires on their vehicles are likely to be aware of and follow the safety provisions in § 1910.177. As such, OSHA believes that applying the general industry standard to shipyards should not pose a problem for shipyard employers.

To avoid confusion, OSHA also amended § 1910.177 to remove the shipyard-employment exemption.

Deletions

OSHA proposed to not include in revised subpart F the following provisions that are currently applicable to shipyard employment. The hazards and working conditions these provisions address are not present in the shipyard industry.

Section 1910.141(f)—OSHA proposed not to retain the existing requirement to provide facilities to dry work clothing (for example, protective clothing) before it is worn again. Information from site visits and industry meetings indicates that the provision may not be necessary because shipyards almost exclusively provide disposable protective clothing. OSHA requested comments or information about whether this provision was still needed in the shipyard industry. No comments were received on this provision; therefore, it will be deleted from 29 CFR part 1910.

Section 1910.141(h)—OSHA proposed not to retain the existing requirements addressing food handling. OSHA believes that existing State and local health codes provide adequate protection for the hazards this section intended to address. OSHA requested comments as to whether this provision was still needed. No comments were received on this provision; therefore, it will be deleted from 29 CFR 1910.

Section 1915.97(a)—OSHA proposed not to retain the existing requirement on controls and personal protective equipment (PPE). This provision was adopted 30 years ago, prior to promulgation of standards addressing specific hazards and the PPE requirements in subpart I of part 1915. Those standards identify and require the controls and PPE this section addresses. No comments were received on this provision; therefore, it will be deleted from 29 CFR part 1915.

Section 1915.97(e)—OSHA proposed to delete the existing prohibition that minors under 18 years of age not be employed in shipbreaking or related employments. This prohibition is the only OSHA rule that regulates the working activities allowed for youth employees and is duplicative of OSHA's

sister agency in the Department of Labor, the Employment Standards Administration (ESA) order 15 of the Part 570 subpart E, which prohibits minors from working in all occupations in wrecking, demolition, and shipbreaking operations. These operations are defined as "all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel" (§ 570.66).

In addition to regulations set by ESA, States also have numerous rules regulating work conditions for youth employees. OSHA asked for comments on the provisions of this section as to the extent to which youth employees are working in the shipyard industries, what occupations they work in, data on work-related injuries and illnesses occurring to youth employees, and whether the § 1915.97(e) prohibition was needed to protect youth employees. No comments were received on this provision. However, after further reexamination by the Agency, OSHA believes it worthwhile to retain this provision to ensure that the regulations set by ESA are widely understood and followed. Therefore, the provision in § 1915.97(e) will be retained in the final standard with no change.

IV. Final Economic Analysis and Regulatory Flexibility Act Analysis

A. Introduction

The OSH Act requires OSHA to demonstrate the technological and economic feasibility of its rules. Executive Order (EO) 12866 and the Regulatory Flexibility Act (RFA), as amended in 1996 (5 U.S.C. 601 *et seq.*), require Federal agencies to analyze the costs, benefits, and other consequences and impacts, including small business impacts, of their rules. Consistent with these requirements, OSHA prepared a Final Economic Analysis (FEA) and RFA analysis for the final rule.

OSHA determined that this rule is not an economically "significant regulatory action" under EO 12866 or the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532(a)), or a "major rule" under the Congressional Review Act (CRA) (5 U.S.C. 804(2)). Although some stakeholders said the final rule would "exceed by far the $100 million threshold" that triggers additional scrutiny under the EO and UMRA (Ex. 168.1), OSHA's analysis estimates that the final rule imposes far less than $100 million in annual costs on the economy and does not meet any other criteria specified for a significant regulatory action or major rule under the EO, UMRA, or CRA.

The purpose of this analysis is to identify the establishments and industries that the final rule affects; evaluate its costs, benefits, and economic impacts; and assess the technological and economic feasibility of the rule for the affected industries. In accordance with the RFA, this analysis identifies and estimates the impacts of the rule on small businesses, using the Small Business Administration's (SBA's) industry-specific definitions of small businesses, plus an alternate definition of small businesses developed by OSHA. Also, OSHA assessed the impacts of the rule on very small businesses (those with fewer than 20 employees). Based on this analysis, OSHA determined that the final rule will not have a significant economic impact on a substantial number of small entities.

This final rule updates current requirements to reflect advances in industry practices and technology, consolidates and streamlines some existing safety and health requirements into single sections, and provides protection from hazards not addressed by existing standards, including requirements regarding cardiopulmonary resuscitation (CPR) training for first aid providers, the control of hazardous energy, servicing single- and multi-piece rim wheels, and motor-vehicle safety. The costs and benefits of the final rule are driven by the new requirements. OSHA believes the new provisions will reduce the risk of injury and death, and increase the survivability of employees if a serious accident or injury occurs. OSHA believes that the benefits of the final rule will have a positive impact on affected employers and employees, and increase awareness of employee safety and health in the workplace.

The justification for imposing appropriate occupational safety and health standards, and for adopting these changes into the standard for general working conditions in shipyard employment in particular, is that, without these requirements, fatality and injury risks to employees would remain unacceptably high. Workplace risks and resulting injuries and costs would be too high from a moral- and social-preference perspective. In addition, risks would be too high in terms of imposing large net costs (both pecuniary and non-pecuniary) on society, producing an inefficient allocation of resources, and reducing overall social welfare. By passing the Occupational Safety and Health Act, Congress demonstrated that it believes that workplace risks are too high and that government intervention is needed to achieve a morally and socially optimal level of workplace safety and health.

Market failure is a term used by economists to describe when the allocation of goods and services by a market is not efficient, in the sense that it is possible for at least one person to be made better off without making anyone else worse off (termed "Pareto efficiency"). One common cause of market failure is that the person responsible for a decision does not bear the full costs or consequences of that decision. When this situation occurs, the person responsible for the decision will not fully consider all of the costs involved, and, as a result, may arrive at an inappropriate decision. In the case of occupational injuries, the employer has the primary decision-making responsibility, and does not bear the full costs of occupational injuries. As a result, employers tend to allocate fewer resources to occupational safety and health than would be efficient if all costs of occupational injuries and illnesses were considered.

Who bears the costs of an employee injury or illness, which include loss of income, medical care costs, the non-monetary burdens the injury or illness imposes, and other outcomes? Some of these costs, particularly medical costs and a portion of income loss, are paid for through workers' compensation. While some employers self insure, and pay the workers' compensation costs directly, the overwhelming majority of employers purchase (and are required to purchase) workers' compensation insurance. Thus, in most cases, employers do not directly pay for workers' compensation to the injured worker. The remainder of the costs of the injury or illness is normally borne by the employee, though some of the costs may be borne by the government in the form of welfare. In almost all states, workers' compensation is an exclusive remedy, meaning that an employee may not sue his employer for a work-related injury.

In principle, both employees and insurers could contract with employers for payment in advance for the risks incurred. Insurers charge premiums for their insurance. Workers could, in theory, demand increased pay for increased risk. In this situation, there is not an externality, which is defined as damage to an outside party who is not party to a market agreement. There are, however, several informational and institutional problems that prevent an ideal set of payments for risks incurred.

The first requirement for reasonable evaluation of risk in transfers of risk

between parties is that the risk be known. Further, for the estimate of risk to affect the behavior of employers, it is necessary that employees and insurers be able to differentiate the risk among different employers, not just be able to assess the risk across all employers in an industry. When accidents are relatively rare, simply looking at the past record will not provide much useful information concerning relative risk among employers. The employers themselves may be equally uncertain about the risks associated with their practices.

Even if such information on past performance were available, there is no guarantee that future performance will be identical to past performance. Different management, or even the same management with different objectives, financial performance, or schedule, may act differently than they have in the past. Further, once the risk has been transferred by contract to employees and insurers, the employer has reduced incentives to maintain a low level of risk. This phenomenon is a constant problem in insurance, where it is known as a moral hazard—the tendency of the insured to act with less care as a result of having insurance. In addition, workers' compensation insurance uses, and in most states is required by law to use, a class rating system. Class rating bases the premium on the risk experiences for all persons with similar occupations to those the firm employs. This information is sometimes combined with the actual experience of the firm in the past three years. For very small firms, this means that, in practice, the individual firm's record has no impact on their insurance premium. Even quite large firms pay, through insurance premium increases, less than the full costs of accidents. Further, the use of class rating makes it difficult for insurers to make use of information from monitoring and inspection of safety practices, even if they had such information.

Employees also have problems obtaining and using this information. First, employees may simply be unacquainted with safe. Second, information on safety is commonly not available before taking a job. Third, wages are sometimes determined by industry contracts, with no room for added risk premiums for individual employers. Finally, there are significant costs in many cases to leaving a job, which means that even if the employee realizes a job is less safe than some other available jobs, the employee may be reluctant to leave the job.

In summary, the market failure in workplace safety is that employers commonly transfer the costs of job safety to other parties, which, in combination of informational and institutional constraints, prevents the costs of the transfer from actually reflecting the risk to the individual employer; instead, employers pay to transfer the risk at a cost closer to the average costs for the occupation rather than their own costs reflecting their own risks. As a result, employers do not pay the full costs if they have above-average risks or poor safety practices. Under these circumstances, the need for regulation is established by the significant risk present in shipyard employment.

Net Benefits and Cost Effectiveness of the Final General Working Conditions in Shipyards Standard

Annualized Costs	
Sanitation	$748,709
Medical Services and First Aid	$418,349
Lockout/Tags-plus	$3,004,397
Vehicle Safety	$13,887
Total Annual Costs	$4,185,342
Annual Benefits	
Number of Injuries Prevented	348.4
Number of Fatalities Prevented	1.2
Monetized Benefits (assuming $67,000 per injury $8.7 million per fatality prevented)	$33.8 million
OSHA standards that are updated and consistent with voluntary standards	Unquantified
Net Benefits (benefits minus costs)	$29.6 million

Cost Effectiveness: Compliance with the standard would result in the prevention of 1 fatality and 81 injuries per $2 million spent, or alternatively, $7.06 in benefits per dollar of cost.

Provisions in the Standard Without Major Cost Impacts

There are several provisions in the final rule that the Agency estimates will not impose additional compliance costs on employers. Table 4 identifies these provisions and the reasons supporting OSHA's determination. These determinations were presented as part of the PEA, and OSHA solicited comment on the issues. No objections were raised except where noted.

TABLE 4—REVISIONS AND NEW REQUIREMENTS WITH NO MAJOR COST IMPACTS

Subpart F revisions and new requirements	OSHA analysis
§ 1915.81 Housekeeping § 1915.81(a)(2)(i) and (ii) (a)(2) The employer must eliminate slippery conditions, such as snow and ice, on walkways and working surfaces as necessary. If it is not practicable for the employer to remove slippery conditions, the employer either must: (i) Restrict employees to designated walkways and working surfaces where the employer has eliminated slippery conditions; or (ii) Provide slip-resistant footwear in accordance with 29 CFR part 1915, subpart I.	The revisions to the existing housekeeping requirements (§ 1915.91, § 1910.22, § 1910.141) simply consolidate, streamline, and clarify existing provisions. They do not impose new obligations or costs. To the extent that the employer must provide and pay for protective footgear for wet processes, the rulemaking on PPE payment already has figured those costs.
§ 1915.82 Lighting § 1915.82(a)(1), (a)(2), and (a)(3) (a)(1) The employer must ensure that each work area and walkway is adequately lighted whenever an employee is present. (a)(2) For landside areas, the employer must provide illumination that meets the levels set forth in Table F–1. (a)(3) For vessels and vessel sections, the employer must provide illumination that meets the levels set forth in Table F–1 or meet ANSI/IESNA RP–7–01 (incorporated by reference, see 1915.5).	The standard adopts and adapts the illumination intensities in Table F–1 from the Hazardous Waste Operations (§ 1910.120) and construction (§ 1926.56) standards, as well as national consensus standards that have been in effect for more than 40 years. The lighting levels in Table F–1 are minimum requirements, and OSHA believes that lighting levels in shipyards already meets or exceeds these levels. The final rule differs in paragraph (a)(3) from the proposal by allowing employers to either meet the illumination levels in Table F–1 or ANSI/IESNA RP–7–01 for vessels and vessel sections. Therefore, with the flexibility OSHA provided to employers, the Agency estimates the rule should not impose new costs.
§ 1915.82(b)(1) The employer must ensure that temporary lights with bulbs that are not "completely" recessed are equipped with guards to prevent accidental contact with the bulb.	The provision is similar to existing § 1915.92(b)(1), which requires guarding if bulbs in temporary lights are not "deeply" recessed. OSHA assumes that shipyards already equip lights with guards when the bulb is not fully recessed; therefore, the rule should not impose new costs.
§ 1915.82(b)(2) Temporary lights must be equipped with electric cords designed with sufficient capacity to carry the electric load.	The standard is similar to the existing requirement to use "heavy duty" electric cords with temporary lights (§ 1915.92(b)(2)). The rule simply provides employers with greater flexibility in meeting the existing requirement. Thus, the standard should not impose new costs.
§ 1915.82(b)(7) Splices on temporary lights must have insulation with a capacity that "exceeds" that of the original insulation of the cord.	The existing provision requires that splices on temporary lights have insulation that is "equal" to that of the cable (§ 1915.92(b)(2)). Although OSHA is requiring that the insulation capacity "exceed" that of the original insulation of the cord, in this final rule, there should be no new costs associated with this change.
§ 1915.82(c)(1) In any dark area that does not have permanent or temporary lights, where lights are not working, or where lights are not readily accessible, the employer shall provide portable or emergency lights and ensure that employees do not enter those areas without such lights.	The existing provision prohibits employees from entering dark spaces without a portable light (§ 1915.92(e)). Due to comments received and testimony heard, OSHA modified the final provision to allow employers to provide portable or emergency lights in any dark area that doesn't have permanent or temporary lighting. OSHA believes that employers already provide, at a minimum, portable lights to employees in such instances. In addition, allowing emergency lights, such as a generator linked with a lighting system, affords employers the option to determine which type of backup lighting is best. Therefore, the standard should not impose new costs.
§ 1915.82(c)(2) When the only means of illumination on a vessel or vessel section are from lighting sources that are not part of the vessel or vessel section, the employer must provide portable or emergency lights for the safe movement of each employee. If natural sunlight provides sufficient illumination, portable or emergency lights are not required.	The standard clarifies the existing requirement to provide portable lighting and adds the use of emergency lights for "safe movement of employees" to ensure that work areas have adequate lighting. OSHA estimates that employers provide work areas with portable or emergency lighting while employees are working or moving in areas where there is no onboard lighting source. Therefore, the rule should not impose new costs.
§ 1915.83 Utilities § 1915.83(a) The employer must ensure that the vessel's steam piping system, including hoses, is designed to safely handle the working pressure prior to supplying steam from an outside source.	The provision deletes the existing requirement to have the pressure check performed by a "responsible vessel's representative" (§ 1915.93(a)(1)). Instead, the employer may determine this information from a responsible vessel's representative, a contractor, or any other person who is qualified by training, knowledge, or experience to make such determination. Thus, the rule does not impose additional costs, but rather provides employers with greater flexibility in meeting the existing requirement.
§ 1915.83(a)(2)(iv) The employer must ensure that each pressure gauge and relief valve is legible and located so it is visible and readily accessible.	The provision adds to existing § 1915.93(a)(1) a requirement that pressure gauges and relief valves be easily readable (e.g., writing is large enough to read). Since OSHA estimates that employers currently use gauges and valves that are legible, this requirement should add no new costs.
§ 1915.83(b)(4) The employer must ensure that each steam hose or temporary steam piping system, including metal fittings and couplings that pass through a "walking or working area," is shielded to protect employees from contact.	The standard expands coverage of existing § 1915.93(a)(4) from "normal work areas" to include areas where employees may walk or pass through to get to work areas. OSHA estimates that shipyard employers shield hoses and piping wherever employees may be present; therefore, the rule should not impose new costs.

TABLE 4—REVISIONS AND NEW REQUIREMENTS WITH NO MAJOR COST IMPACTS—Continued

Subpart F revisions and new requirements	OSHA analysis
§ 1915.83(c)(3) When a vessel is supplied with electric shore power, the employer must ensure that vessel circuits to be energized are in a safe condition prior to energizing them. This information must be determined by a "responsible vessel's representative," a contractor, or any other person who is qualified by training, knowledge, or experience.	The provision deletes the existing requirement to have circuits checked by a "responsible vessel's representative" (§ 1915.93(b)(1)(ii)). The rule does not impose new costs, but rather provides employers with greater flexibility in meeting the existing requirement.
§ 1915.83(d) The employer must ensure that heat lamps, including the face, are equipped with surround-type guards to prevent contact with the lamp and bulb.	The standard expands the existing § 1915.93(c) to include all heat lamps, not just infrared electric lamps, and requires that the lamp face also be guarded to prevent contact. Existing § 1915. 93(c) also provides an exception for the lamp face. OSHA believes that all heat lamps currently in use in shipyards have guarding that completely surrounds the lamp, including the face; therefore, the rule should not impose new costs.
§ 1915.84 Working alone § 1915.84(a)(1) and (a)(2), and (b) (a)Whenever an employee is working alone, such as in a confined space or isolated location, the employer must account for each employee: (1) Throughout each workshift at regular intervals appropriate to the job assignment to ensure the employee's safety and health; and (2) At the end of the job assignment or at the end of the workshift, whichever occurs first. (b) The employer must account for each employee by sight or verbal communication.	The standard adds a requirement to account for employees employees, either by sight or verbal communication, at regular intervals appropriate to the job assignment and at the end of each job assignment or workshift if they are working alone, such as in confined space or isolated location. This provision expands on the current requirement (§ 1915.94) to frequently check on these employees. OSHA estimates that shipyard employers already account for employees who work alone. Therefore, the rule should not impose new costs.
§ 1915.85 Vessel radar and communication systems § 1915.85(b) The employer must secure each vessel's radar and communication system so it is incapable of energizing or emitting radiation before any employee begins work: (1) On or in the vicinity of the system; (2) On or in the vicinity of a system equipped with a dummy load; or (3) Aloft, such as on a mast or king post.	The standard expands existing § 1915.95(a), which cover workers repairing the radar or radio systems. OSHA believes that the revision should not impose new costs since employers already are required to have procedures in place for protecting workers, other than radar or radio repair technicians.
§ 1915.86 Lifeboats § 1915.86(b) The employer must not permit any employee to be in a lifeboat while it is being hoisted or lowered, except when necessary to conduct operational tests or drills over water, or in the event of an emergency.	The standard expands the existing prohibition (§ 1915.96(b)) against employees riding in lifeboats being hoisted into final stowed position by prohibiting employees from riding in lifeboats while being hoisted or lowered, unless it is deemed necessary to conduct operational tests or drills over water, or in the event of an emergency. OSHA believes that expanding this work practice requirement to a more flexible provision should not impose any additional costs to employers.
§ 1915.87 Medical services and first aid § 1915.87(d)(1) In the absence of an on-site infirmary or clinic that maintains first aid supplies, the employer must provide and maintain adequate first aid supplies that are readily accessible to each worksite.	The standard combines existing § 1910.151(b) and § 1915.98(a) and clarifies that first aid supplies must be provided and maintained, and be readily accessible to each worksite when needed. The standard also revises existing § 1915.98(b), which contains a list of items that first aid kits must contain. The standard replaces that list with factors that employers must consider in determining the content, amount, and location of first aid kits and supplies they must provide. The standard provides employers with greater flexibility in meeting the requirement; therefore, the standard should not impose additional costs.
§ 1915.87(e) Where the potential exists for an employee to be splashed with a substance that may result in an acute or serious injury, the employer must provide facilities for quick-drenching or flushing the eyes and body. The employer must ensure that such a facility is located for immediate emergency use within close proximity to operations where such substances are being used.	The standard expands existing § 1910.151(c), which requires quick drenching or flushing facilities where employees may be injured by "corrosive materials." The standard requires such facilities when employees may be exposed to receiving an acute or serious injury, as defined in the standard. The standard should not impose additional costs since employers already are required to provide quick drench/flushing facilities in the work area for immediate use.
§ 1915.87(f)(1) The employer must provide an adequate number of basket stretchers, or the equivalent, readily accessible to where work is being performed on a vessel or vessel section. The employer is not required to provide basket stretchers or the equivalent where emergency response services have basket stretchers or the equivalent that meet the requirements of this paragraph.	1915.87(f)(1) modifies existing § 1915.98(d), which requires that a minimum of 2 stretchers be located at any shipyard work location. The final provision gives employers more flexibility by allowing basket stretchers, or the equivalent, provided by emergency-response services to meet the "adequate number" requirement for work performed on vessels and vessel sections. OSHA estimates that the standard should not impose additional costs because the existing standard already requires employers to provide a minimum of 2 stretchers at any shipyard work location. In addition, the standard gives employers greater flexibility in meeting the "adequate number" requirement because it allows them to rely on any readily accessible emergency-response services (i.e., offsite rescue) that have basket stretchers.

TABLE 4—REVISIONS AND NEW REQUIREMENTS WITH NO MAJOR COST IMPACTS—Continued

Subpart F revisions and new requirements	OSHA analysis
§ 1915.87(f)(2)(i) The employer must ensure that each stretcher is equipped with permanent lifting bridles that enable the basket stretcher to be attached to hoisting gear that are capable of lifting at least 5,000 pounds.	The standard adds to existing § 1915.98(d) specifications for lifting bridles. OSHA estimates that shipyards already have stretchers that meet the specifications; therefore, the standard should not impose new costs.
§ 1915.88 Sanitation	The standard expands existing § 1910.141(b)(1)(iii) to also allow employers to provide potable water in single-use bottles. The standard should not impose additional costs; rather, it provides employers with greater flexibility in meeting the existing requirement.
§ 1915.88(b)(3) The employer must dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. The employer must prohibit the use of shared drinking cups, dippers, and water bottles.	
§ 1915.88(d)(3) The employer must provide portable toilets, pursuant to paragraph (d)(2)(i) of this section, only when the employer demonstrates that it is not feasible to provide sewered toilets, or when there is a temporary increase in the number of employees.	The standard does not change the number of sewered toilet facilities shipyard employers must provide. The standard allows, but does not require, employers to provide portable toilets to supplement the required number of sewered toilets. Therefore, the standard should not impose new costs.
§ 1915.88(g) When an employer provides protective clothing to prevent employee exposure to hazardous or toxic substances, the employer must provide changing rooms that provide privacy for each sex; and storage facilities for street clothes, as well as separate storage facilities for protective clothing.	The standard expands existing § 1910.141(e), which requires changing rooms whenever another OSHA standard requires that the employer provide protective clothing, to require that employers provide change rooms whenever they provide protective clothing. OSHA estimates the standard should not impose any costs because shipyards already have changing rooms.
§ 1915.88(h) The employer must ensure that food, beverages, and tobacco products are not consumed or stored in any area where employees may be exposed to hazardous or toxic substances.	The standard expands the existing prohibitions (§ 1910.141(g) and § 1915.97(c)) on eating and drinking to include prohibitions on eating, drinking, and smoking in areas where hazardous or toxic substances may be present. "Hazardous and toxic substances" is defined in the final rule as any corrosive substance, or any environmental contaminant that may expose employees to injury, illness, or disease. OSHA estimates that prohibiting these activities in such areas should not impose additional costs on employers.
§ 1915.88(j)(1) To the extent reasonably practicable, the employer must clean and maintain the workplace in a manner that prevents vermin infestation. § 1915.88(j)(2) Where vermin are detected, the employer shall implement and maintain an effective control program.	The standard expands the existing § 1910.141(a)(5) to cover outdoor shipyard areas. OSHA estimates that employers currently control vermin in all shipyard areas to ensure that vermin do not get into enclosed spaces; therefore, the standard should not impose new costs.
§ 1915.90 safety color code for marking physical hazards	The standard simply incorporates by reference a general industry standard (§ 1910.144) that already is applicable to shipyards; therefore, the standard does not impose new costs.
§ 1915.91 Accident prevention signs and tags All new and replacement danger, caution, and safety instruction signs shall meet design and wording specifications. Injury/illness prevention tags shall be used where employees are exposed to hazardous conditions, equipment, operations that are unexpected, out of the ordinary or not readily apparent and remain in place until the hazard is eliminated or the hazardous operation is completed. Tags shall meet general criteria requirements.	The standard simply incorporates by reference the existing general industry standard (§ 1910.145) on signs and tags that is already applicable to shipyards; therefore, the standard does not impose new costs.
§ 1915.92 Retention of DOT markings, placards, and labels	OSHA is retaining the existing § 1915.100 requirements, with minor editorial changes, on the retention of DOT markings, placards, and labels on hazardous materials the shipyard receives. Therefore, this section should not impose any new costs.
§ 1915.93 Motor vehicle safety equipment, operation, and maintenance	The standard adds a new safety belt requirement; however, the requirement should not impose costs on existing facilities because it applies only prospectively.
§ 1915.93(b)(1) The employer must ensure that each motor vehicle acquired or initially used after 180 days after the final rule is published is equipped with a safety belt for each employee operating or riding in a motor vehicle. This requirement does not apply to any motor vehicle that was not equipped with safety belts at the time of manufacture.	(The economic analysis includes costs for § 1915.93(b)(3), which requires employers to replace safety equipment (e.g., safety belts) that have been removed from employer-provided vehicles.)
§ 1915.93(b)(4) The employer must ensure that each motor vehicle used to transport an employee has firmly secured seats for each employee being transported and that all employees being transported are using such seats.	The standard adds a requirement that all employees being transported in a vehicle be seated in firmly secured seats. This will require some employers to change their methods of transporting workers which may involve costs to the employer. OSHA does not believe that this will be a significant cost and therefore has not included the costs that may be associated with this requirement in this analysis.
§ 1915.93(c)(1) The employer must ensure that each motor vehicle is maintained in a serviceable and safe operating condition and removed from service if it is not in such condition.	The standard adds a new requirement; however, OSHA estimates that shipyard employers already maintain motor vehicles that employers provide. Therefore, the standard should not impose new costs.
§ 1915.93(c)(2) The employer must ensure that before a motor vehicle is operated, any tools and materials being transported are secured if their movement may create a hazard for employees.	The standard adds a new requirement. OSHA estimates that tools and materials are secured if their movement could pose a hazard for employees; therefore, the standard should not impose new costs.

TABLE 4—REVISIONS AND NEW REQUIREMENTS WITH NO MAJOR COST IMPACTS—Continued

Subpart F revisions and new requirements	OSHA analysis
§ 1915.93(c)(3) The employer must implement measures to ensure that motor vehicle operators are able to see and avoid injuring pedestrians and bicyclists at shipyards.	The standard adds a new requirement. OSHA estimates that shipyard employers already have implemented bike and pedestrian safety measures as a good practice in shipyards; therefore, the standard should not impose new costs.
§ 1915.94 Servicing multi-piece and single-piece rim wheels The employer shall furnish a restraining device for inflating tires on multi-piece and single-piece rim wheels. The requirements applicable to shipyard employment under this section are identical to the requirements set forth at 29 CFR 1910.177.	The standard adds general industry requirements on servicing rim wheels, including requirements to furnish tire servicing equipment (§ 1910.177(d)). OSHA estimates that shipyards that currently service rim wheels on large vehicles already have servicing equipment; therefore, the standard should not impose additional costs. (However, this FEA includes costs for training employees to service rim wheels.)

Source: OSHA Office of Regulatory Analysis.

Some stakeholders said that several of the requirements discussed above would impose significant costs. For example, Doug Dixon, of Pacific Fisherman Shipyard and Electric, LLC, said the revisions to the current lighting requirements would increase costs (Ex. 131.1). The lighting requirements have been in existence since OSHA adopted them pursuant to Section 6(a) of the OSH Act, and OSHA believes that all affected employers are in compliance with them. The clarifications and updates to those lighting requirements that OSHA incorporated in the final rule do not substantially change the existing requirements; therefore, OSHA believes that they will not impose major costs. Some requirements may result in minor costs to some establishments; for example, the final rule has a provision requiring that temporary lights have insulation capacity that exceeds that of the original insulation of the cord while the current provision requires that the insulation capacity is "equal" to that of the cable. In this analysis, OSHA took explicit costs only for provisions that could impose sizable costs on establishments and evaluated explicit benefits for provisions that would result in a measurable reduction in injuries or fatalities. It is not always possible, nor is it necessary in terms of establishing feasibility, to account for extremely small changes in costs or benefits.

Northrop Grumman—Newport News said that the sanitation provisions would require a 25 percent increase in the number of toilets they provide, at a cost of $7.5 million for the Newport News, VA, shipyard alone (Ex. 120.1). However, Northrop Grumman did not provide any information explaining how they derived the costs; therefore, OSHA cannot ascertain the basis for the costs or analyze whether they are representative of affected establishments.

Provisions in the Standard With Major Cost Impacts

Section 1915.8 Medical Services and First Aid

The final rule requires that employers ensure that there are an adequate number of qualified employees at each work location during each workshift to render first aid, including cardiopulmonary resuscitation (CPR). The Agency estimates that some shipyards will need to train additional first aid providers for this purpose. Commercial vessels have long-standing first aid standards established by the U.S. Coast Guard (USCG), and OSHA believes that employees on commercial vessels—even those that are not USCG inspected and certified—are currently complying with the OSHA standard. However, the Agency estimated that some commercial vessels would need additional employees trained to administer first aid, including CPR. Employees properly trained to administer first aid and CPR could reduce the number of deaths that occur in the workplace.

Section 1910.88 Sanitation

Paragraph (e)(1) requires that employers provide handwashing facilities adjacent to each toilet facility. Paragraph (e)(2) requires that employers ensure that each handwashing facility is equipped with either hot and cold or lukewarm running water and soap, or with waterless skin cleansing agents that are capable of disinfecting the skin or neutralizing the contaminants to which the employee may be exposed. The Agency estimates that employers in the shipbuilding, ship repair, and shipbreaking industry (hereafter referred to as shipyards) already have handwashing facilities at sewered toilets, but not at all portable toilets. To comply with this provision, OSHA assumed that employers will provide waterless skin cleansing agents at portable toilet facilities as the simplest and least expensive way to comply with this requirement. This provision applies only to shipyards and will not impose any additional requirements on commercial vessels, which OSHA concludes have adequate sanitation facilities onboard.

Section 1915.89 Control of Hazardous Energy (Lockout/Tags-Plus).

The final rule adds requirements for the control of hazardous energy in servicing operations in shipyard employment, including servicing operations in landside facilities, as well as on vessels and vessel sections. The lockout/tags-plus requirements comprise the major portion of the costs of the final rule.

Section 1915.89(b) Lockout/Tags-Plus Program

The standard requires that employers establish a program to protect employees from energization or startup, or release of hazardous energy, during the servicing of machinery, equipment, and systems in shipyard employment. This program would have to include: (1) Procedures for lockout/tags-plus systems, including a lockout/tags-plus coordination process (§ 1915.89(b)–(c)); (2) procedures for protecting employees involved in servicing (§ 1915.89(d)–(m)); (3) specification for locks and tags-plus hardware (§ 1915.89(n)); (4) employee training (§ 1915.89(o)); (5) incident investigations (§ 1915.89(p)); and (6) program audits (§ 1915.89(q)). Only the time and costs to actually develop the program (the written lockout/tags-plus procedures) and the lockout/tags-plus coordination process are considered in this section.

The final lockout/tags-plus rule adds a requirement that employers establish and implement lockout/tags-plus coordination (1) when employees on vessels and in vessel sections are servicing multiple machinery, equipment, or systems at the same time; and (2) when employees on vessels, in

vessel sections, and at landside facilities are performing multiple servicing operations on the same machinery, equipment, or system at the same time.

The lockout/tags-plus coordination process requires that employers have a lockout/tags-plus coordinator and a lockout/tags-plus log. The coordinator is responsible for overseeing and approving the application of each lockout/tags-plus system, verification of isolation of hazardous energy before servicing is started, and removal of each lockout/tags-plus system. The coordinator will also maintain and administer the lockout/tags-plus log.

The lockout/tags-plus log must contain the following information on each lockout/tags-plus system: (1) Location of machinery, equipment, or system to be serviced; (2) type of machinery, equipment, or system to be serviced; (3) name of the authorized employee applying lockout/tags-plus system; (4) date the lockout/tags-plus system is applied; (5) name of the authorized employee removing the lockout/tags-plus system; and (6) date the lockout/tags-plus system is removed.

Section 1915.89 (c)–(m) Procedures for Securing Energy Sources

The final rule requires that, before any servicing is performed, all energy sources are identified and isolated, and the machinery, equipment, or system is rendered inoperative (§ 1915.89(c)(1)). It also requires that employers implement measures to prevent hazards by following certain procedures for shutting down equipment, isolating power sources, verifying deenergization, and applying lockout or tags-plus devices (§ 1915.89(d)–(m)).

The final rule requires that, when energy-isolating devices are capable of being locked, the employer must use a lock to prevent energization or startup, or the release of hazardous energy, before beginning servicing, unless the employer can demonstrate that the utilization of a tags-plus system will provide full employee protection (§ 1915.89(c)(2)). When energy-isolating devices are not capable of being locked, the final rule requires that the employer apply a tags-plus system to prevent energization or startup, or the release of hazardous energy, before starting servicing (§ 1915.89(c)(3)). The tags-plus system shall consist of at least one energy-isolating device with a tag affixed to it; and at least one additional safety measure that will provide the equivalent safety available from the use of a lock (§ 1915.89(c)(4)). Additional safety measures include, but are not limited to, the removal of an isolating circuit element, the blocking of a controlling switch, the opening of an extra disconnecting device, the removal or wiring in place of a valve handle (§ 1915.80(b)(1)).

These provisions include as costs the time necessary to implement the lockout/tags-plus procedures, apply locks or tags-plus systems, implement additional safety measures, and notify affected employees of the lockout/tags-plus application. These costs do not include the time to find the circuit, as OSHA considers this a part of existing duties.

Section 1915.89(n) Specifications for Locks and Tags-Plus Materials and Hardware

The rule requires employers to provide locks and tags-plus system hardware used for isolating, securing, or blocking any machinery, equipment, or system that is to be serviced. The final rule addresses the specific characteristics of these devices with regard to durability, color, shape, and size uniformity throughout the establishment. Also, the rule states that locks and tags-plus devices must be singularly identified, must be the only devices used for controlling energy, and must not be used for other purposes. OSHA attributed to this paragraph the costs for the time to choose and purchase the appropriate locks and tags-plus materials and hardware and the costs of that material and hardware.

Section 1915.89(o) Information and Training

The final rule requires employers to provide training to ensure that the purpose and function of the lockout/tags-plus program are understood by employees, and that the knowledge and skills required for the safe application, usage, and removal of lockout/tags-plus systems are acquired by employees. The rule requires training for employees who are, or may be, in an area where the lockout/tags-plus systems are being used so they know the (1) Purpose and function of the employer's lockout/tags-plus program and procedures; (2) unique identity and standardization of locks and tags used in the lockout/tags-plus system; (3) three basic components of the tags-plus system; (4) prohibition against removing or tampering with any lockout/tags-plus system; and (5) prohibition against reenergizing or restarting any machinery, equipment, or system that is being serviced under a lockout/tags-plus system.

Affected employees also must be trained in the following: (1) The use of the employer's lockout/tags-plus program and procedures; (2) the prohibition against affected employees applying or removing any lockout/tags-plus system; and (3) the prohibition against them bypassing, ignoring, or defeating a lockout/tags-plus system.

In addition to the training requirements for general employees and affected employees, authorized employees must be trained so they know: (1) The steps necessary for the safe application, use, and removal of lockout/tags-plus systems; (2) the types and magnitudes of energy sources at the worksite; (3) the means and methods for isolating and controlling hazardous energy; (4) the means for determining exposure status of employees in a servicing group for which the authorized employee is in charge; (5) the requirement that tags be legible and understandable; (6) the requirement that tags and their means of attachment be made of materials that will withstand environmental conditions; (7) the requirements that tags be securely attached so they cannot be accidentally removed; (8) the knowledge that tags are simply warning devices, and alone do not provide a physical barrier against energization; and (9) that tags must be used in conjunction with energy-isolating devices and measures.

Finally, lockout/tags-plus coordinators, in addition to receiving the general employee, affected employee, and authorized employee training, must be trained in the following: (1) How to identify and isolate any machinery, equipment, or system that is being serviced; and (2) how to accurately document lockout/tags-plus systems and maintain the lockout/tags-plus log.

In addition to the required initial training, the final rule requires employers to provide retraining when: (1) There is a change in the employee's job that presents new hazards or requires a greater degree of knowledge about the lockout/tags-plus program or procedures; (2) there is a change in machinery, equipment, or systems that presents a new hazard; (3) there is a change in the employer's lockout/tags-plus program or procedures; (4) it is necessary to maintain the employee's proficiency; and (5) an incident investigation or program audit reveals deficiencies in the lockout/tags-plus program or procedures or in the employee's knowledge of it.

The rule also requires employers to maintain records that employee training has been accomplished and is being kept up to date. The training records would have to contain each employee's name, dates of the training, and subject of training. OSHA attributed to this

paragraph all costs associated with training.

Section 1915.89(p) Incident Investigations

The final rule requires employers to promptly investigate each incident that resulted in, or could have resulted in, energization or startup, or the release of hazardous energy. The incident investigation must be conducted by at least one employee who has knowledge and experience in the employer's lockout/tags-plus program and procedures, as well as in investigating and analyzing incidents involving the release of hazardous energy.

The rule requires that a written incident report be prepared that includes: (1) The date and time of the incident; (2) date and time the investigation began; (3) incident location; (4) description of the incident; (5) factors contributing to the incident; (6) a copy of the current lockout/tags-plus log; and (7) corrective actions needed. The incident investigation, the written report, and corrective actions must be completed with 30 days following the incident. If corrective actions cannot be implemented within 30 days, the employer must prepare a written abatement plan that includes an explanation for the delay, an abatement timetable, and a summary of interim steps the employer is taking to protect employees from hazardous energy while servicing machinery, equipment, or systems.

Section 1915.89(q) Program Audits

The final rule requires that employers conduct a program audit of the current lockout/tags-plus program and procedures at least annually to ensure that the procedures and the requirements of the rule are being followed, and to correct any deficiencies. The program audit must be performed by an authorized employee other than the one(s) using the energy-control procedure being reviewed, or other persons knowledgeable about the employer's lockout/tags-plus program and procedures and the machinery, equipment, or systems being reviewed. The program audit shall include a review of the lockout/tags-plus program and procedures, the current lockout/tags-plus log, and the incident reports since the last audit; and verification of the accuracy of the lockout/tags-plus log.

The final rule requires that the written audit report be delivered to the employer within 15 days after completion of the audit and include: (1) The audit date; (2) the persons performing the audit; (3) the procedure and machinery, equipment, or system being audited; (4) the audit findings and recommendations; (5) previous incident investigation report; and (6) description of corrective actions taken in response to incident investigation finding. Finally, the final rule also requires that the employer promptly communicate audit findings and recommendations to each employee whose jobs tasks may be affected. OSHA assumed that all employers would incur the costs necessary to implement this provision.

Section 1915.93 Motor Vehicle Safety Equipment, Operation, and Maintenance

The final rule requires employers to ensure that motor vehicle safety equipment is not removed from any employer-provided vehicle. The employer would have to replace safety equipment that is removed. The Agency believes that employers engaged in shipyard employment are generally in compliance with the rule as it applies to safety equipment on new motor vehicles, and that motor vehicle equipment is not being used onboard commercial vessels. The Agency estimated that employers may sometimes remove safety equipment from older vehicles. Thus, employers would need to reinstall this safety equipment.

Section 1915.94 Servicing Multi-Piece and Single-Piece Rim Wheels

The standard incorporates by reference the requirement set forth in 29 CFR 1910.177. This section applies to the servicing of multi-piece and single-piece rim wheels used on large vehicles such as trucks, tractors, trailers, buses, and off-road machines, and requires that employers train employees who will perform the servicing. It does not apply to servicing rim wheels used on automobiles, or on pickup trucks and vans using automobile tires or trucks tires designated "LT." The Agency believes that servicing rim wheels in shipyards is similar to such servicing in general industry. OSHA estimates that the costs associated with this servicing are limited to training time for initial training and additional training as necessary.

B. Industrial Profile

OSHA's final rule affects those establishments within OSHA's authority that are engaged in shipyard employment operations onboard vessels, on vessel sections, and at landside operations, regardless of geographic location. This category of establishments includes employers engaged in shipyard-employment operations onboard commercial vessels not inspected by the U.S. Coast Guard (USCG).

Some stakeholders commented that OSHA's preliminary economic analysis (PEA) underestimated the number of vessels the rule would affect. For example, Gerry Mulligan of Prowler LLC and Ocean Prowler LLC said:

> OSHA's [preliminary] estimate of a total of 639 establishments effected by the rule significantly underestimates the economic impacts of the rule. * * * [T]his rule will impact the more than 2500 uninspected vessels working in Washington and Alaska on which the ship's crews performs repairs. * * * Clearly the rule affects many more entities than just shipyards, most of which do not seem to be addressed in the economic impact statements (Ex. 100.1; see also Ex. 123).

Based on stakeholder comments and other information in the record, OSHA added to the FEA industries with commercial vessels not inspected by the USCG. The final rule applies to the extent that these establishments are performing shipyard-employment operations, such as servicing machinery, equipment, or systems, onboard vessels. The PEA did not include these industries; however, OSHA determined that these employers are within OSHA's authority and perform shipyard-employment operations. Thus, the FEA is including these industries in the analysis.

Affected Establishments and Employees

This section describes OSHA's method for estimating the number of affected establishments and employees engaged in shipyard employment, which includes shipbuilding, ship repair and shipbreaking establishments (NAICS 336611), and establishments in industries involving commercial vessels, including commercial fishing (NAICS 11411), fish processing onboard vessels (included in NAICS 311712), tug and towing boats (included in NAICS 488330), coastal and Great Lakes passenger transportation (NAICS 483114), and inland water passenger transportation (NAICS 483212).

The Agency derived estimates of the number of affected establishments and employees primarily from 2006 Small Business Administration (SBA) data on establishments, employees, and annual payroll, and from 2007 U.S. Bureau of the Census (Census Bureau) data on value of shipments (revenues). The Agency used the SBA data because they contain a detailed breakdown by establishment and employment size classes. The PEA used Census Bureau data, but inadequate detail on size class for transportation industries and a lack

of available 2007 Economic Census data for some industries led OSHA to update and expand estimates in the FEA using 2006 SBA data, which provided adequate size class detail and which are the most current data available.

OSHA assumed that the final rule would affect all establishments engaged in shipbuilding, ship repair, and shipbreaking, and those establishments engaged in shipyard-employment operations in commercial fishing establishments, on processing vessels in the fish-processing and -packaging industry, in establishments with tug and towing boats (other than seagoing tugs and towboats), and in establishments with some very small non-seagoing passenger vessels (those vessels carrying fewer than 6 passengers). The Agency estimated that 90 percent of tow and tugboat establishments employ non-seagoing vessels and non-Great Lakes barges. The Agency also estimated that 33 percent of passenger vessels operating on the Great Lakes and inland waterways carry fewer than 6 passengers for hire; thus, they are not USCG-inspected.

The final rule does not affect establishments with USCG-inspected vessels, including freight vessels, nautical-school vessels, offshore-supply vessels, ferries and other passenger vessels, sailing-school vessels, seagoing barges, seagoing motor vessels, small passenger vessels, steam vessels, tank vessels, fish-processing vessels (more than 5,000 gross tons), fish-tender vessels (more than 500 gross tons), Great Lakes barges, and oil-spill response vessels.

For the purposes of illustrating a clear industrial profile, OSHA used the following employment size classes: 1–19, 20–99, 100–199, 200–499, 500–999, and 1,000 and more employees (Table 5). In NAICS 336611, which includes shipbuilding, ship repair, and shipbreaking, OSHA estimated that all establishments with 100 or more employees are shipyards; that about 73 percent of establishments with 20–99 employees are contractors who work at shipyards or off-site establishments that perform shipyard employment operations; and that all very small establishments with fewer than 20 employees are contractors or off-site establishments.

Table 5

Industrial Profile for the Final Rule

Industry Code	Industry Name	Size Class	Firms	Establishments	Employees	Production Employees	Annual ($1,000) Payroll	Annual ($1,000) Revenues
NAICS 336611	Shipyards	1,000 & Up	18	40	65,921	47,463	$2,964,390	$12,583,832
		500-999	15	25	5,261	3,788	$253,892	$1,077,771
		200-499	28	32	7,326	5,276	$332,492	$1,411,428
		100-199	45	51	4,310	3,103	$197,341	$837,712
		20-99	29	31	1,303	938	$55,781	$891,085
	Contractor/Off-Site	20-99	81	85	1,957	1,409	$154,133	$354,512
		1-19	371	371	2,041	1,470	$101,775	$432,035
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	3	7	5,000	4,200	$84,581	$1,542,511
		500-999	2	3	1,000	840	$16,916	$308,502
		200-499	1	1	300	252	$5,075	$92,551
		100-199	7	8	800	672	$13,533	$246,802
		20-99	21	25	667	560	$31,856	$580,966
		1-19	1,076	1,076	1,394	1,171	$73,055	$1,332,313
NAICS 311712	Fish Processing Vessels	1,000 & Up	6	22	9,964	8,370	$206,449	$2,037,287
		500-999	2	6	996	837	$20,645	$203,729
		200-499	8	11	2,246	1,887	$46,545	$459,316
		100-199	14	17	1,667	1,400	$34,533	$340,782
		20-99	46	46	2,039	1,713	$49,946	$492,877
		1-19	96	98	558	469	$25,796	$254,565
NAICS 488330	Tug & Towing Services	1,000 & Up	7	45	5,097	4,282	$138,658	$539,013
		500-999	7	27	4,051	3,403	$91,258	$354,751
		200-499	6	8	1,539	1,293	$16,597	$64,518
		100-199	11	13	1,270	1,066	$70,810	$275,261
		20-99	74	88	2,901	2,437	$151,936	$590,626
		1-19	465	468	1,464	1,230	$97,392	$378,597
NAICS 483	Passenger Vessels	20-99	17	20	595	500	$23,556	$76,394
		1-19	101	101	374	314	$15,273	$54,837
		TOTAL	2,558	2,725	132,044	100,342	$5,274,214	$27,814,572

Source: Office of Regulatory Analysis

Comment in the record questioned OSHA's estimated affected establishments saying "[t]he U.S. Coast Guard lists 79,565 commercial fishing vessels and acknowledges that number is not complete" (Ex. 199, p. 257) and questioned whether OSHA's estimate of 2,090 commercial vessels establishments underestimated the industry being regulated. OSHA develops an industrial profile on an establishment basis and, in some cases, one establishment in a commercial vessel industry will have more than one vessel, which means there is not a one-to-one translation from USCG-reported vessels and Census Bureau-reported establishments. There are also approximately 65,000 nonemployer establishments (those with no employees and taxable revenue) in the commercial fishing industry according to data from the Census Bureau's Economic Census. Establishments with

no employees do not fall within OSHA jurisdiction and therefore are not included in the profile of affected industries.

For this analysis, OSHA assumes that most small and all very small establishments in NAICS 336611 are contractors working at shipyards, and are not shipyards. These contract employers, in most cases, will not incur the full cost of compliance due to either their adherence to the host employer's programs or the type of work they perform at shipyards. For example, if a contractor provides electrical services to shipyards, the contractor likely would have its employees follow the host employer's program for the control of hazardous energy, and may not incur the full cost to develop a program. Moreover, to the extent that these contractors also perform services for companies in general industry, they already may have implemented a lockout/tagout program and incurred some startup costs. In the PEA, the Agency estimated that contractors primarily exist in two size classifications: 1–19 employees and 20–99 employees. OSHA did not receive any comments indicating that its estimate of the number of contractors and off-site employers was inaccurate, or that some of these establishments should be considered shipyards. The record also does not indicate that contractors and off-site employers will incur greater costs to develop and implement a lockout/tags-plus program than was estimated in the PEA.

The estimates presented in Table 5 are derived from 2006 SBA data. Shipyards and off-site shipyards are classified as NAICS 336611, commercial fishing as NAICS 11411, fish-processing onboard vessels as part of NAICS 311712, tug and towing vessels as part of NAICS 488330, and passenger vessels as NAICS 483114 and NAICS 483212. Complete firm and establishment data were largely available from SBA, but OSHA had to make some estimates for shipyards; establishments with fish-processing factories aboard ships; and establishments with tug and towing boats. OSHA estimates that there are 200 floating fish factories currently in operation. The Agency assumes that those factories are distributed across employment size classes in a manner identical to the establishment size distribution in the industry (NAICS 311712) as a whole. Allen Rainsberger, of the Puget Sound Shipbuilder's Association, commented that OSHA's preliminary estimate of 2,500 employees working on fish processing vessels was not accurate. Quoting OSHA, he wrote:

> "OSHA estimates there are about 200 fish processing vessels operating in * * * US territorial waters. * * * OSHA estimates that each vessel employs about 100–120 processing employees * * * for a total of 2,500 employees." There is an error in this equation as 200 × 100 = 20,000 employees. In the North Pacific there are about 85–90 vessels that process fish, with crews anywhere from 10 to 200 employees each (Ex. 124).

By estimating employment and size class distribution based on the characteristics of the fish processing industry as a whole, the Agency eliminated this error. OSHA made similar assumptions for tug and towboat industries, distributing the 722 tug and towing boat establishments reported in the 2007 Economic Census across employment-size classes using the same ratios reported for the industry under which they were classified in the 2006 SBA data.

The firm estimates for shipyards presented in Table 6 are derived by using a firm-to-establishment ratio from 1997 SBA data. To maintain consistency in the data from the preliminary to the final analysis, OSHA used the estimation method employed in the PEA with updated data for establishments from the 2006 SBA. In the PEA, OSHA applied a "firms-per-establishment" ratio (developed using 1997 SBA data) to the Census Bureau establishment estimates to develop the estimated number of firms. This process is illustrated in Table 6. For example, 2002 SBA data reported that there are 27 firms in NAICS 336611 with 500 or more employees. However, Census Bureau data report that there are only 21 establishments with 500 or more employees for the same year. OSHA used a ratio of firms-to-establishments to reconcile the two data sets.

Table 6

Derivation of Firms Using 2006 SBA Data and 1997 SBA Percentages

Industry Code	Industry Name	Size Class	1997 SBA Firms	1997 SBA Estab's	Firms Per Establishment	2006 SBA Estab's	2006 Firm Estimates	2006 SBA Employees	Employees Per Establishments
NAICS 336611	Shipyards	1,000 & Up	9	20	0.45	40	18	65,921	1,648
		500-999	29	49	0.59	25	15	5,261	210
		200-499	24	27	0.89	32	28	7,328	229
		100-199	46	52	0.88	51	45	4,310	85
		20-99	42	44	0.95	31	29	1,303	42
	Contractor/Off-Site	20-99	107	113	0.95	85	81	3,602	42
		0-19	412	412	1.00	371	371	2,041	6
		TOTAL	669	717		635	587	89,766	

Source: Office of Regulatory Analysis

Table 7 presents the total number of affected establishments and employees. In this table, OSHA used a 32.5 percent turnover rate estimated by the Bureau of Labor Statistics (BLS, 2006) to estimate the number of new employees and new production employees affected by the final rule in any given year. Production employees were estimated to be 84 percent of total employees, based on Census Bureau data. Since the large firms in these industries employ most of the employees, the Agency assumed that most large firms (using the alternate definition of 200 or more employees) have full-time safety and health professionals; thus, they have in-house expertise to help the establishment to comply with the final rule. OSHA did not receive any comments indicating that large firms do not have full-time safety and health professionals, or that OSHA was incorrect in reaching this conclusion.

Table 7
Affected Establishments and Employees

Industry Code	Industry Name	Size Class	Establishments	Employees	Production Employees	New Employees	New Production Employees
NAICS 336611	Shipyards	1,000 & Up	40	65,921	47,463	21,424	11,391
		500-999	25	5,261	3,788	1,710	909
		200-499	32	7,328	5,276	2,382	1,266
		100-199	51	4,310	3,103	1,401	745
		20-99	31	1,303	938	424	225
	Contractor/Off-Site	20-99	85	1,957	1,409	636	338
		1-19	371	2,041	1,470	663	353
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	7	5,000	4,200	2,150	1,806
		500-999	3	1,000	840	430	361
		200-499	1	300	252	129	108
		100-199	8	800	672	344	289
		20-99	25	667	560	287	241
		1-19	1,076	1,394	1,171	599	504
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	9,964	8,370	3,238	2,720
		500-999	6	996	837	324	272
		200-499	11	2,246	1,887	730	613
		100-199	17	1,667	1,400	542	455
		20-99	46	2,039	1,713	663	557
		1-19	98	558	469	181	152
NAICS 488330	Tug & Towing Services	1,000 & Up	45	5,097	4,282	1,657	1,392
		500-999	27	4,051	3,403	1,317	1,106
		200-499	8	1,539	1,293	500	420
		100-199	13	1,270	1,066	413	347
		20-99	88	2,901	2,437	943	792
		1-19	468	1,464	1,230	476	400
NAICS 483	Passenger Vessels	20-99	20	595	500	193	162
		1-19	101	374	314	122	102
		TOTAL	2,725	132,044	100,342	43,876	28,026

Source: Office of Regulatory Analysis

Employment

OSHA used SBA data to estimate total employment in the affected industries. SBA reported employment for most, but not all, size classes and industries. When SBA data did not disclose employment, the Agency estimated employment by assuming firm employment averaged to the midpoint of each size class, and multiplying that estimated employment per firm by the SBA-reported number of firms for each size class. For example, if there were 2 firms in the 30–34 employees size class, the Agency assumed an average of 32 employees at each firm, for a total of 64 employees in the 30–34 employees size class. When employment estimated in this manner exceeded the reported total industry employment, OSHA reduced assumed average employment to the lowest value in a given size class.

OSHA acknowledges that not every employee in the affected industries will be affected by this rule. Many employees in affected industries do not perform shipyard-employment operations, and, therefore, the industries in which they are employed will incur compliance costs for only a fraction of these employees. However, to develop a complete representation of the affected industries, the Agency presents the total employment in the affected industries in this profile, and addresses the scope of affected employees in the Costs of Compliance section of this FEA.

In 2006, employment in NAICS 336611 was estimated at 88,121. About 75 percent of these employees work in the largest shipyards—those with 1,000 or more employees. Another 6 percent work in shipyards with 500–999 employees. Establishments with fewer than 200 employees account for only 20 percent of total employment, and shipyard contractors account for less than one-half (about 45 percent) of the 20 percent.

Among the 9,161 commercial fishing employees and 17,470 fish-processing employees, 55 percent and 57 percent of these employees, respectively, work for employers with 1,000 or more employees, while 11 percent and 6 percent, respectively, work for employers with 500–999 employees. Establishments with fewer than 200 employees account for 31 percent of commercial fishing employees, and 24 percent of employees are involved in fish-processing onboard commercial vessels.

The total employment for passenger vessel industries is 13,280, but many of these employees work onboard USCG-inspected vessels; therefore, they are not affected by this rule. OSHA estimates that 969 employees working on passenger vessels will be affected by this rule, all of whom work at establishments with fewer than 100 employees. Thirty-one percent of employees working aboard tug or towing boats work for employers with 1,000 or more employees, with an additional 25 percent working for employers having between 500–999 employees. Establishments with fewer than 200 employees account for 44

percent of employment in the tug and towboat industry.

Payroll

Based on the 2006 SBA data, annual payroll for all industries affected by this final rule was about $5.3 billion. Of this amount, commercial fishing had an annual payroll of $225 million, or an average of $24,562 per employee. Fish processing vessels had an annual payroll of $384 million or an average of $21,975 per employee. The affected commercial passenger transportation industries had an annual payroll of $38.8 million, or an average of $40,090 per employee. The payroll for shipyards was an average of $46,071 per employee for a total payroll of $4.1 billion. Tug and towboat industries had annual payroll expenses of $567 million, or an average of $34,715 per employee.

Overall, the payroll of the affected industries averaged $39,943 per employee. For a full year, this is equivalent to an hourly wage of $19.20. The payroll per employee did not show any consistent pattern across employment size classes.

Wages

Taking the ratio of total payroll (from SBA) to total employment, OSHA calculated an average annual salary of $39,943 per employee for all affected industries combined. The average annual salary estimate includes both production and non-production employees.

The average employee in the shipyard industry earned $46,071. The average salary for water-transportation employees, which includes tug and towing services and passenger vessels, was $40,090, while the average tug and towing-boat employee earned $34,715. The average salary for commercial fishing and fish processing was $35,550. These estimates of average salaries include both production and non-production employees.

OSHA compared the $39,943 annual salary estimate, which was based on payroll data, with a salary estimate based on weekly earnings reported by BLS (*Employment, Hours, and Earnings from the Current Employment Survey,* 2006). In 2006, BLS reported weekly earnings of $862.46 for a production or non-supervisory water-transportation employee, and $800.61 for an employee working in the shipyard industry. The annual salaries for employees in these two industries, calculated from BLS, reported weekly earnings of $44,848 and $41,632 (fringe benefits not included), respectively. The salary estimates based on the BLS data differ from the salary estimates based on payroll data. The Agency chose to rely on the BLS data for this analysis because it includes breakdowns of different employment categories and wage and salary information for industries such as commercial fishing. OSHA estimated, for the PEA, that the supervisors' wage rate is 25 percent higher than the average wage rate for production employees. OSHA did not receive any objections.

The wage estimates for employees in the affected industries include base rate, cost-of-living allowances, guaranteed pay, hazardous-duty pay, incentive pay (including commissions and production bonuses), on-call pay, and tips. The estimates exclude back pay, jury-duty pay, overtime pay, severance pay, shift differentials, non-production bonuses, and tuition reimbursements (BLS, 2000). To produce a total wage that realistically reflects total compensation for employees in affected industries, OSHA adjusted the average base wage to include fringe benefits. The BLS reports total employee compensation, based on survey data for aggregate worker categories (BLS, 2002). In this analysis, OSHA used an average fringe benefits rate of 38 percent based on data from the BLS *Employer Costs for Employee Compensation* survey.

C. Technological Feasibility

The OSH Act mandates that OSHA, when promulgating standards for protecting workers, consider the feasibility of the new workplace rules. Court decisions have subsequently clarified "feasibility" in economic and technological terms. Consistent with the legal framework established by the OSH Act and court decisions, OSHA assessed the technological feasibility of the final rule. The rule addresses various workplace hazards in shipyard employment, including control of hazardous energy and motor vehicle safety. The final rule does not require technology that is not already in use in many affected establishments. For example, OSHA received comments stating that many employers engaged in shipyard employment already have implemented effective programs for the control of hazardous energy (Exs. 108.1; 114.1; 116.1; 121.1; 123; 132.2; 168, pp.70, 192, 322–24). Similarly, several stakeholders offered examples of practices they currently use to protect workers, including pedestrians, from motor-vehicle accidents at their worksites (Exs. 116.1; 119.1; 121.1; 168, pp. 71–73, 247–48). Many of the requirements involve implementing work-practice controls that can be communicated to employees through training, which some stakeholders said they currently provide (Exs. 116.1; 120.1). In addition, some stakeholders said they already provide CPR training for their on-site first aid providers (Exs. 116.1; 120.1; 168, pp. 87–89, 259, 260, 299). Based on current industry practice and OSHA's findings, the Agency determined that the rule is technologically feasible.

D. Benefits

E.O. 12866 requires that Federal agencies assess both the costs and benefits of any regulation and make a "reasoned determination that the benefits * * * justify its costs" (E.O. 12866, Section 1(b)(6)). Agencies are to base regulatory decisions on "the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation" (E.O. 12866 Section 1(b)(7)).

This chapter reviews the population at risk of occupational injury, illness, or death in affected establishments and industries, and assesses the potential benefits associated with the final rule. OSHA believes that compliance with the rule will yield substantial benefits in terms of lives saved, injuries avoided, and accident-related cost savings. In assessing the benefits of the final rule, OSHA focused on the rule's primary and substantial new requirements: (1) CPR training for first aid providers; (2) the control of hazardous energy during servicing operations (lockout/tags-plus); (3) motor vehicle safety, including pedestrian safety at shipyards; and (4) servicing multi-piece and single-piece rim wheels. Although the final rule also includes other provisions, they primarily update, consolidate, and clarify existing requirements. Although OSHA believes that all provisions in the final rule will help to increase safety and health in shipyard employment, the Agency is only estimating quantitative benefits for the new provisions listed above (refer to the Non-quantified Benefits section below for a further discussion of the non-monetized benefits). OSHA believes that compliance with these new provisions will decrease the number of injuries and fatalities which, in turn, will reduce expenditures for medical care, rehabilitation, death benefits, lost-work time, and repairs to damaged facilities and equipment.

To assess the benefits, the Agency used OSHA and BLS data to conduct a historical analysis of the frequency of fatalities and injuries among employees engaged in shipyard employment landside and onboard commercial vessels. These data were used to calculate the frequency of accidents

caused by improperly controlling hazardous energy during maintenance operations, and while operating motor vehicles. The Agency did not identify any injuries or fatalities relating to servicing rim wheels, and did not receive any reports of such injuries or fatalities from industry in the docket. The following sections estimate the number of fatalities and injuries OSHA expects the rule to prevent, and describes the methodology used to develop these estimates.

Fatality Benefits

OSHA's analysis of the number of fatalities estimated to be averted by the final rule proceeds in two steps: (1) Determine the number of fatalities currently occurring and the types and causes of these fatalities; and (2) determine the rule's effectiveness in averting various types of fatalities (assuming full compliance). Only those fatalities that would have been prevented through compliance with the new provisions noted above were estimated in this benefits analysis.

In 1995, OSHA analyzed fatalities in shipbuilding and repair (SIC 3731) that occurred from 1974 to 1995. OSHA concluded that, of the total number of fatalities (314), electrocutions accounted for 8.6 percent (or 27). More recently, OSHA reviewed 248 abstracts of fatal accidents from the OSHA Integrated Management Information System (IMIS) database from 1987 to 2002, to determine if any shipyard-employment accidents were the result of, or caused by, hazardous energy, motor vehicles, lack of medical services and first aid, and servicing rim wheels. Review of these 248 fatal accidents led OSHA to conclude that 38 (15.3 percent) were related to hazards the final rule addresses. Included in the 38 deaths were 10 fatalities that resulted from heart attacks for which the abstract did not note a history of cardiovascular disease. Of the 38 fatalities, 13 (34 percent) were deaths that the final rule could have prevented. Of the 10 heart-attack deaths, OSHA believes that 2 deaths (20 percent) could have been averted by the final rule. While OSHA's analysis of heart-attack deaths focused on those deaths that were work related, the Agency notes that the requirements for CPR-trained first aid providers may also reduce mortality due to non-work-related heart attacks that occur in the work environment. As a result, OSHA believes that the benefits of this provision may be greatly underestimated.

To determine an annual estimate of the number of fatalities in shipyard employment that the final rule would prevent, OSHA used 11 years (1992–2002) of BLS Census of Fatal Occupational Injury (CFOI) data. That data showed, on average, 14.6 worker deaths occurred in SIC 3731 (shipbuilding and repair industry, which includes shipbreaking) per year. OSHA multiplied that average by 15.3 percent (the percentage of IMIS deaths related to hazards covered by the rule) to reach a total of 2.2 deaths per year related to hazards covered by the rule. Then, OSHA multiplied the 2.2 deaths by 39.5 percent (percentage of IMIS fatalities estimated to be prevented by the rule) to reach 0.9 deaths in shipyards (SIC 3731/NAICS 336611) that could be prevented by the rule (avoidable deaths).

To determine the annual estimate of the number of fatalities aboard covered commercial vessels that the rule would prevent, OSHA used 17 years (2002–2008) of BLS CFOI data. That data showed, on average, 47 worker deaths per year in the commercial vessels industries, a majority of those deaths being in the commercial fishing industry. OSHA multiplied that average by 0.9 percent, which was the percentage of IMIS deaths related to hazards covered by the rule, multiplied by the ratio of fish-processing vessels to total fish processing establishments. This calculation accounted for, and removed from the estimate, those fatalities that occurred at land-based fish-processing facilities. Based on this calculation, OSHA reached an estimate of 0.4 deaths per year onboard commercial vessels that were related to hazards covered by the final rule. OSHA estimated that 66 percent of the deaths related to hazards covered by the rule could have been prevented for a total of 0.3 avoidable deaths per year onboard commercial vessels. OSHA estimates that, in total, 1.2 deaths (0.9 deaths in shipyards plus 0.3 onboard commercial vessels covered by the rule) per year could be prevented by the final rule (see Table 8).

Table 8

Estimated Fatality Benefits Attributed to the Final Rule

	Average
CFOI Fatalities in Shipyards (Annual Average from 1992-2008)	14.6
Percent of IMIS Fatalities in Shipyards Related to Hazards Covered by the Final Rule	15.3%
Number of CFOI Fatalities in Shipyards Related to Hazards Covered by the Final Rule	2.2
Percentage of Avoidable Deaths in Shipyards from IMIS Data	39.5%
Avoidable Fatalities in Shipyards (Annually)	0.9
CFOI Fatalities Onboard Commercial Vessels (Annual Average from 1992-2008)	46
Percent of IMIS Fatalities Onboard Commercial Vessels Related Hazards Covered by the Final Rule	0.9%
Number of CFOI Fatalities Onboard Commercial Vessels Related to Hazards Covered by the Final Rule	0.4
Percentage of Avoidable Deaths Onboard Commercial Vessels from IMIS Data	66.0%
Avoidable Fatalities Onboard Commercial Vessels (Annually)	0.3
Total Avoidable Fatalities (Annually)	1.2
Source: Office of Regulatory Analysis	

Injury Benefits

The numbers and characteristics of injuries in SIC 3731 (NAICS 336611), SIC 0910 (NAICS 11411), SIC 2092 (NAICS 311712), SIC 4499 (NAICS 488330), and SIC 4489 (NAICS 483114 and NAICS 483212) are outlined in the BLS *Annual Survey of Occupational Injuries and Illnesses*. This survey is based on employer injury and illness reports (OSHA Form 200 or 300) collected by state agencies and BLS

from roughly 250,000 private establishments. The survey compiles demographic information, data on employee occupation, length-of-service statistics, employee hours worked, the employer's principal products or services, selected injury or illness characteristics, and the severity of the accident (in terms of lost workdays). Thus, data from the BLS injury and illness survey can be used to develop a profile of the risks facing employee groups, such as those engaged in shipyard-employment activities. Unfortunately, this BLS database does not characterize injuries that do not involve days away from work in a way that would permit OSHA to determine causality. OSHA notes that, in most sectors, the number of injuries and illnesses that do not involve days away from work equals or exceeds the number of cases involving days away from work.

According to BLS data from 1992 to 2001, in SIC 3731 there were an average of 6,088 injuries per year involving days away from work. BLS publishes certain broad categories of injuries and illnesses by source for all SICs, and now for NAICS.

To estimate the number of injuries due to the absence or inadequacy of procedures for the control of hazardous energy, OSHA multiplied the number of total cases involving days away from work by the percentage of cases estimated to be caused by the absence or inadequacy of protection against hazardous energy. In the general industry lockout/tagout standard, OSHA determined that 2 percent of all injuries were related to hazardous energy (OSHA, 1989). OSHA multiplied the product by 39.5 percent (the percentage of IMIS fatalities estimated to be prevented by the final rule). The results are presented in Table 9. OSHA then used the 2 percent figure to estimate the non-lost workday injuries resulting from the lockout/tagout activities. This product was also multiplied by 39.5 percent (the percentage of IMIS fatalities estimated to be prevented by the final rule). This calculation results in 48.1 lost workday and 89.1 non-lost workday lockout/tagout injury cases.

According to the BLS data from 1992–2001, there were an average of 1,800 injuries per year in the fish-processing industry involving days away from work. Based on IMIS accident reports, the Agency estimated that 28 percent of injuries in the fish-processing industry were related to inadequacy or absence of controls to protect employees from hazardous energy. These injuries were generally serious (often amputations). OSHA estimated lost workdays related to hazardous-energy injuries for the fish-processing industry by multiplying the injury cases involving days away from work by the percent of injuries related to lockout/tagout (28 percent). OSHA concluded that injuries onboard floating fish-processing factories were occurring in the same proportion to injuries at land-based fish-processing factories. To estimate the number of hazardous-energy injuries onboard fish-processing vessels, OSHA multiplied the number of hazardous energy injury cases involving days away by 36 percent (the ratio of fish-processing vessels (200) to total fish-processing establishments (552)). The Agency concluded that the final rule would prevent all of those injuries, resulting in an estimated 184.3 avoidable lockout/tags-plus injury cases per year involving days away from work.

The injuries related to motor vehicle operation and maintenance were calculated by applying the 15.3 percent (the percentage of IMIS deaths related to the rule used in the fatality estimates) to the BLS estimates for motor vehicle-related injuries (lost workday and non-lost workday estimates), and then multiplying this product by 39.5 percent (the percentage of IMIS fatalities estimated to be prevented by the rule); this calculation results in 9.5 lost workday and 17.4 non-lost workday injuries related to motor vehicles. This injury category includes injuries while operating or riding in motor vehicles, as well as being struck by motor vehicles in the workplace. This estimate, combined with the hazardous-energy injury reductions, totals of 348.4 avoidable injury cases (which includes both cases involving days away from work and non-lost workday cases) that the final rule would prevent (see Table 9). The available data did not allow OSHA to identify injuries related to the absence, or inadequate training, of CPR providers, nor injuries that occurred while servicing rim wheels.

Table 9	
Estimated Injury Benefits Attributed to the Final Rule	
BLS Injury Data	Average
Cases Involving Days Away From Work (CIDAFW) in Shipyards	6,088
Non-Lost Workday Injuries (NLWD) in Shipyards	11,291
Total Cases (CIDAFW + NLWDI)	17,379
Cases Involving Days Away From Work (CIDAFW) in Fish Processing	1,800
Non-Lost Workday Injuries (NLWD) in Fish Processing	2,506
Total Cases (CIDAFW + NLWDI)	4,306
Estimated Injury Benefits by Injury Source	
Number of CIDAFW Lockout/Tagout Injuries in Shipyards	121.8
Avoided CIDAFW (LO/TO) in Shipyards	48.1
Number of NLWD Lockout/Tagout Injuries in Shipyards	225.8
Avoided NLWD Cases (LO/TO) in Shipyards	89.1
Number of CIDAFW Lockout/Tagout Injuries in Fish Processing	508.7
Avoided CIDAFW (LO/TO) on Fish Processing Vessels	184.3
Number of Vehicle Injury Cases (from BLS)	157.4
Avoided Vehicle Injury Cases	9.5
NLWD Vehicle Injury Cases	287.2
Avoided NLWD Vehicle Injury Cases	17.4
Total Avoided CIDAFW Injuries	241.9
Total Avoided NLWD Injuries	106.5
Total Avoided Cases	**348.4**
Source: Office of Regulatory Analysis	

Monetized Benefits

For informational purposes, the Agency monetized both avoidable fatalities and injuries based on willingness-to-pay (WTP) values of $8.7 million per death and $67,000 per injury. In estimating the value of preventing a fatality, OSHA followed the approach established by the U.S. Environmental Protection Agency (EPA). EPA's *Guidelines for Preparing Economic Analyses* provides a detailed review of the methods for estimating mortality risk values, and summarizes the values obtained in the literature (EPA, 2000). Synthesizing the results from 26 relevant studies, EPA arrived at a mean value of a statistical life (VSL) of $4.8 million (in 1990 dollars). EPA recommends this central estimate, updated for inflation (the value is $8.7 million in 2010 dollars), for application in regulatory analyses. This VSL estimate also is within the range of the substantial majority of such estimates in the literature ($1 million to $10 million per statistical life), as discussed in OMB Circular A–4 (OMB, 2003). Applying a VSL of $8.7 million to the estimated number of prevented fatalities, OSHA estimates that the dollar value of the prevented deaths resulting from compliance with the final rule will be $10.4 million annually.

OSHA also reviewed the available research literature regarding the dollar value of preventing an injury. Kip Viscusi and Joseph Aldy conducted a critical review of 39 studies estimating the value of a statistical injury (Viscusi and Aldy, 2003, Ex. 9). In their published article, Viscusi and Aldy reviewed the available WTP literature to identify a suitable range of estimates. Using WTP to value non-fatal injuries is the approach OMB recommends in OMB Circular A–4.

Viscusi and Aldy found that most studies resulted in estimates in the range of $20,000 to $70,000 per injury, although several studies resulted in even higher estimates. This range of values is partly explained by the fact that some studies used an overall injury rate, and others used only injuries resulting in lost workdays. The injuries that would be prevented by this final rule often involve hospitalization and, therefore, are likely to be more severe than the majority of injuries involving days away from work.

Thus, it is reasonable to believe that the value of a statistical injury for this rulemaking will be in the upper part of the reported range of estimates. Nevertheless, OSHA used an estimate of $67,000 in 2010 dollars to assess monetized benefits for this analysis. Thus, with 348.4 injuries (injuries involving days away from work and non-lost workday injuries) a year potentially prevented by the final rule, OSHA estimates that the dollar value of prevented injuries through compliance with the rule will total $23.4 million annually.

The total monetized benefits for prevented deaths and injuries are estimated to be $33.8 million in total monetized benefits.

Non-Quantified Benefits

OSHA believes that non-quantified benefits also are likely to result from the final rule; therefore, the 1.2 prevented fatalities and 348.4 avoided injuries each year should be considered

minimum estimates. For example, the provisions for accounting for employees at the end of the workshift, lifeboat safety, housekeeping, rim-wheel repair, lighting, and utilities are expected to result in safer working conditions that will reduce fatalities and injuries. The revision of the sanitation and vermin-control standard also are expected to result in fewer heat-, hydration-, and sanitation-related deaths and illnesses. However, these cases are difficult to quantify as they are commonly unreported or not recognized as work-related cases.

The provisions for improved first aid and medical treatment, along with the requirement to account for working-alone employees at the end of the job assignment or workshift (whichever occurs first), are expected to result in benefits due to improved survivability from an injury, and fewer medical complications resulting from delayed or ineffective treatment. Also, OSHA believes that employers and employees will benefit from the reorganization and plain-language features of the final rule, which will make it easier for employers to comply with the rule and, thus, improve safety and health in general working conditions in shipyard employment.

Appendix

In estimating the preventable fatalities under the final rule, the Agency reviewed accident abstracts from OSHA's IMIS database from the years 1992–2008 (16 years). The table of accidents (by accident numbers) below gives a brief description of the accidents and provides OSHA's determination on the provisions that could have prevented the accident. The table does not include examples of the 20 percent of heart-attack deaths that are estimated to be preventable if the requirements of this rule are followed.

Accident number	Brief description	OSHA's findings
014337851	While attempting to repair a hoist, the employee did not check the brake to ensure that it was locked in. He had removed all but one bolt when the drum and gear started freewheeling. The paw and spring broke off. The two large gears on the opposite side jammed and the motor shaft started turning. The hub flew off the shaft and stuck the employee in the chest, killing him.	Control of Hazardous Energy.
101350262	Employees were working in an aerial lift basket on an elevator platform (hanger deck level) with the boom extended to the underside of the flight deck. The employees had finished their work and were lowering themselves to hanger deck level, when the elevator unexpectedly ascended towards the flight deck. Both employees were crushed under the lip of the flight deck, while in the basket.	Control of Hazardous Energy.
200840650	Employees were working on a steering mechanism belonging to a tow boat. The electricity was turned off and secured, but the residual energy belonging to the hydraulics was not. A component of this steering mechanism shifted without warning killing one employee.	Control of Hazardous Energy.
170611206	Employee was electrocuted while working alone on a transformer. He seemed to be manually cleaning the ceramic terminals and checking them for cracks. The oil switch to the mound was purportedly in the open position; however, the panel lights indicated that the circuit breaking controlling electric power to the mound was closed. No signs, tags, or locks had been used.	Control of Hazardous Energy.
014534143	While an electrician was working on a switchboard, which was de-energized and tagged, a ship's crew member inadvertently energized the circuit. He was electrocuted.	Control of Hazardous Energy.
014509350	Employees, conducting valve repair operations on a steam piping system, were burned when scalded by stored steam.	Control of Hazardous Energy.
302101134	Employees came in contact with 4160 volts coming from a secondary switch which had not been locked open to de-energize the high voltage going to the load side of panel ZZ4020 and ZZ4025.	Control of Hazardous Energy.
014436075	Accidental energization occurred when an employee was standing in the conveyor when one of the ship's crew turned the conveyor on. The ship's crewman was unaware of the other employees' presence. There was no lockout procedure in effect.	Control of Hazardous Energy.
200552248	A pickup truck with automatic transmission began to roll back and apparently the victim tried to reach through the driver's side window to put the truck gear in park when he fell and the front driver's side tire rolled over him.	Motor Vehicle Safety.
201580073	The driver of a straddle lift truck struck and killed an employee who had been walking on the pier.	Motor Vehicle Safety.
000603621	An employee was riding a bicycle while performing regularly assigned tasks when he was hit by a bus.	Motor Vehicle Safety.
200550820	While standing near the right rear tire, employee was operating a battery charger and pushing the loader's button when he apparently contacted a control that caused the machine to suddenly move forward. He was run over by the large rear tire and was killed.	Control of Hazardous Energy.
000648550	While an employee was hammering wood wedges in the seal where the floor meets the wall, a bobcat operator backed over him pinning him between the bobcat and the dry dock wall. The employee later died at the hospital after this accident.	Motor Vehicle Safety.

Source: Occupational Safety and Health Administration Integrated Management Information System Database.

E. Costs of Compliance

This chapter presents OSHA's estimate of the rule's costs of compliance for affected establishments and industries. OSHA based the costs on the profile of affected employers and workers presented in the Industrial Profile section of this FEA, on estimates based on data provided by the "General Industry Lockout/Tagout Regulatory Impact Analysis" (OSHA, 1989), and on the "Supporting Statement for the Information Collection Requirements in the Control of Hazardous Energy

(Lockout/Tagout) rule"[13] (29 CFR 1910.147, OMB Control Number 1218–0150 (June 2004)).

This chapter is organized into three sections. The first section reviews the methodology and describes the type of costs. The second section presents OSHA's baseline data and analytical assumptions used to estimate costs. The final section summarizes the costs of compliance by establishment and provision.

Methodology

To estimate the compliance costs that the final rule would impose on employers, it was necessary to assess the extent to which current industry practice already meets the rule's requirements. Based on that assessment, the Agency identified five areas in the final rule that would generate new costs: sanitation, medical services and first aid, control of hazardous energy, motor-vehicle safety, and servicing multi-piece and single-piece rim wheels. For the purposes of this FEA, OSHA assumed that affected firms will seek to minimize their compliance costs and, thus, calculated the least-cost option to comply with the provisions of the rule. All cost estimates assume employers will fully comply with the final rule. Costs are reported as annualized costs, with capital or one-time costs based on a 7 percent discount rate (as recommended by OMB) for costs in future years. All one-time costs are assumed to have a 10-year life.

This cost analysis does not account for any changes in production methods, investment effects, or macroeconomic effects of the rule. Taking into account all of these effects could increase or decrease the cost estimate presented, although the macroeconomic effects of any rule with costs as low as these are likely to be minimal. OSHA believes that this approach, determining the benefits and costs of the final rule for industry as it is today, is the most reliable and least speculative way of presenting them.

Baseline Data and Analytical Assumptions

This section presents the technical specifications, unit costs, and analytical assumptions underlying OSHA's cost analysis. For those provisions in the final rule that simply update, consolidate, or clarify existing requirements, OSHA assumes that no new costs will be imposed. The Agency did not receive any comments indicating that the provisions that update, consolidate, or clarify existing requirements would impose new costs.

The Agency solicited comment in the record on whether these provisions imposed new additional costs, and received comments that the sanitation standard would require a 25 percent increase in toilets at a cost of $7.5 million for the Newport News, VA, shipyard (James Thornton, Northrop Grumman, Ex. 120.1), and that the lighting requirements and housekeeping requirements would increase costs without increasing safety (Doug Dixon, Pacific Fisherman Shipyard and Electric, LLC, Ex. 131.1). The Agency considered these comments and concluded that firms would not incur costs to comply with these provisions if they were currently complying with the existing shipyard standards.

Section 1915.87 Medical Services and First Aid

Paragraph (c)(1) requires employers to ensure that there is an adequate number of employees trained as first aid providers at each worksite during each work shift to render first aid, including CPR. The Agency estimates that 2 percent of employees will serve as first aid providers, and that 50 percent of those employees will need to be trained or retrained to provide adequate care. According to American Red Cross data, the cost per person for first aid (including CPR) training ranges from $35 to $80 plus 4 hours of employee time to receive the training (ARC, 2010). The Agency is using the median cost of $55 for this analysis. The per-employee time cost to receive this training is 4 hours multiplied by the employee's hourly wage rate of $26.51 for shipyard employees; $28.61 for tug and towing-boat and passenger-vessel employees; $31.62 for fish-processing vessel employees; and $16.30 for commercial fishing employees. The total training cost is $55 times the number of employees needing training.

First aid equipment and first aid and CPR training on certain uninspected commercial fishing vessels are regulated by the USCG (46 CFR 28.210). The Agency was unable to obtain data to adequately estimate the number of commercial fishing vessels subject to USCG first aid and CPR requirements. Therefore, OSHA estimated costs as if they would apply to all commercial fishing vessels. This approach likely will overstate costs for first aid training including CPR training in the commercial fishing industry. Due to the presence of USCG first aid training regulations, OSHA believes that commercial vessels already have an adequate number of first aid providers onboard. The Agency estimated the total cost related to this provision at $418,349. Table 10 outlines the total annual costs for first aid training including CPR training.

[13] The purpose of the Supporting Statement is to analyze and describe burden hours and cost associated with provisions of this standard that contain paperwork requirements. The Supporting Statement does not provide information or guidance on how to comply with, or how to enforce, these provisions.

Table 10
Annual CPR Training for First Aid Providers

Industry Code	Industry Name	Size Class	Estab.	EE's Per Estab.	Needing Training	Training Cost	Employee Time Cost	Training Cost	Annual Cost
		1,000 & Up	40	1,648	16	$55	$69,902	$36,257	$106,159
NAICS 336611	Shipyards	500-999	25	210	2	$55	$5,579	$2,894	$8,472
		200-499	32	229	2	$55	$15,541	$4,030	$19,572
		100-199	51	85	1	$55	$9,141	$2,371	$11,511
		20-99	31	42	1	$55	$2,764	$1,695	$4,460
	Contractor/Off-Site	20-99	85	23	1	$55	$9,032	$2,342	$11,374
		1-19	371	6	1	$55	$39,341	$10,203	$49,543
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	7	714	7	$55	$3,260	$2,750	$6,010
		500-999	3	333	3	$55	$652	$550	$1,202
		200-499	1	300	3	$55	$196	$165	$361
		100-199	8	100	1	$55	$522	$440	$962
		20-99	25	27	1	$55	$1,630	$1,375	$3,005
		1-19	1,076	1	1	$55	$35,073	$29,590	$64,663
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	451	5	$55	$12,601	$5,480	$18,081
		500-999	6	162	2	$55	$1,260	$548	$1,808
		200-499	11	207	2	$55	$2,841	$1,236	$4,076
		100-199	17	100	1	$55	$2,108	$917	$3,024
		20-99	46	44	1	$55	$5,865	$2,551	$8,416
		1-19	98	6	1	$55	$6,186	$2,690	$8,876
NAICS 488330	Tug & Towing Services	1,000 & Up	45	112	1	$55	$5,833	$2,803	$8,636
		500-999	27	152	2	$55	$4,636	$2,228	$6,864
		200-499	8	190	2	$55	$1,762	$847	$2,608
		100-199	13	98	1	$55	$1,453	$698	$2,151
		20-99	88	33	1	$55	$10,106	$4,857	$14,963
		1-19	468	3	1	$55	$26,794	$12,879	$39,673
NAICS 483	Passenger Vessels	20-99	20	30	1	$55	$2,266	$1,089	$3,355
		1-19	101	4	1	$55	$5,759	$2,768	$8,527
		TOTAL	2,725	5,309	59				$418,349

Source: Office of Regulatory Analysis

Section 1915.88 Sanitation

Paragraph (e)(1) requires that employers provide handwashing facilities at, or adjacent to, each toilet facility. Paragraph (e)(2)(i) requires employers to ensure that each handwashing facility is equipped with either hot and cold or lukewarm running water and soap, or, when it is impracticable to provide running water, with waterless skin cleansing agents that are capable of disinfecting the skin and neutralizing the contaminants to which the employee may be exposed.

For shipbuilding and repair establishments, OSHA concluded that they already have handwashing facilities at sewered toilets, but not at all portable toilets. Thus, they would incur costs for providing additional handwashing facilities. The Agency also concluded that commercial vessels have adequate toilet and handwashing facilities onboard vessels. As such, commercial vessel employers would not have to provide portable toilet facilities or additional handwashing facilities to meet employee health and personal needs.

To comply with the requirement to provide handwashing facilities at portable toilets, OSHA calculated the least-cost option, which is to supply each portable toilet with waterless skin cleansing agents. OSHA assumes that employers in the shipyard industry already are providing lockable, unisex portable toilets, especially when work is being performed onboard vessels. OSHA estimates that about one-third of employees at each shipyard establishment might need to use portable toilets. OSHA also estimates that employers will provide portable toilets using the same formula they would use in determining the adequate number of sewered toilets (Table F–2 in § 1915.88(d)(2)).

OSHA estimates that waterless cleaning agents for each portable toilet will be refilled each time the toilet is serviced, which OSHA assumes will be at least weekly. Further, the Agency estimates that each bottle of cleanser costs $5 and that the annual cost of cleanser for each portable toilet is $260 ($5 per bottle times 52 weeks). This is the annual unit cost. The total annual cost to comply is the unit cost multiplied by the total number of portable toilets that employers on each size class will provide, multiplied by the number of establishments in that size class. Table 11 outlines the costs associated with this requirement which are estimated to be $748,709. Note that for this analysis, the Agency assumed for the baseline that establishments in the shipyard industry currently do not provide handwashing products at portable toilets. To the extent that employers are providing such services or products, the final cost estimates may be lower. Moreover, if an establishment operates on only a seasonal basis or is shutdown at any time during the year, the costs also may be lower. OSHA did not receive any comments indicating that the costs the Agency estimated for providing waterless cleansing agents were understated.

Table 11
Annual Costs for Waterless Cleaning Agents

Industry Code	Industry Name	Size Class	Estab.	Production Employes	EE's Per Estab.	33% of Ee's Using Portables	Portables Per Estab.	Unit Cost	Total Cost
NAICS 336611	Shipyards	1,000 & Up	40	47,463	1,648	544	57	$260	$592,800
		500-999	25	3,788	210	69	9	$260	$58,500
		200-499	32	5,276	229	76	5	$260	$41,600
	Contractor/Off-Site	100-199	51	3,103	85	28	3	$260	$39,780
		20-99	31	938	42	14	2	$260	$16,029
		Total	179	60,569					$748,709
Source: Office of Regulatory Analysis									

Section 1915.89 Control of Hazardous Energy (Lockout/Tags-plus)

These provisions apply to the servicing of machinery, equipment, and systems, including servicing machinery, equipment, and systems onboard vessels and vessel sections. This also applies to the extent that other sections in subpart F and part 1915 either involve servicing operations or require the use of lockout/tags-plus applications. There are several areas in which employers will incur costs, which are discussed below.

The standard requires that employers establish a program to protect employees from energization, startup, or release of hazardous energy during the servicing of machinery, equipment and systems in shipyard employment. This program would have to include: (1) Procedures for lockout/tags-plus systems, including a lockout/tags-plus coordination process; (2) procedures for protecting employees involved in servicing; (3) specification for locks and tags-plus hardware; (4) employee training; (5) incident investigations; and (6) program audits.

In estimating the costs for complying with various lockout/tags-plus applications, OSHA used the following parameters:

- Affected employers were categorized as large (500 employees or more), medium (100–499 employees), small (20–99 employees); and very small (fewer than 20 employees);
- Employment categories and wages used were:
  - Supervisors ($32.98 per hour for shipyard establishments, $44.13 per hour for water transportation, $33.53 per hour for fish-processing vessels, $20.37 per hour for commercial fishing)—to develop the lockout/tags-plus program and procedures, coordinate lockout/tags-plus applications, and perform training and retraining;
  - Authorized employees ($23.72 per hour for shipyard establishments, $46.46 per hour for water transportation, $31.78 per hour for fish-processing vessels, $16.30 for commercial fishing)—to perform operations involving locking, tagging, and isolation of hazardous energy sources; to perform servicing; and to conduct incident investigations and program audits; and
  - Affected employees ($19.51 per hour for shipbuilding and repair establishments, $30.58 per hour for water transportation, $18.09 per hour for fish-processing vessels, and $16.30 per hour for commercial fishing)—to adapt their work routine because of lockout/tags-plus applications.
- Lockout/Tags-plus Program Costs:
  - Time to develop and maintain lockout/tags-plus program and procedures by employer size;
  - Large—the Agency concluded, based on comment in the record, that all large employers already have a written lockout/tags-plus program and will not incur costs related to the development of a program. However, OSHA estimates that large employers will require 20 hours initially to update their programs to comply with the final rule, and 20 hours each year thereafter to update the program;
  - Medium—40 hours initially to develop a lockout/tags-plus program, and 12 hours annually thereafter to update the program;
  - Small—12 hours initially, and 4 hours thereafter; and
  - Very Small—2 hours initially, and 30 minutes thereafter.

Based on the supervisor's wage rate, the Agency estimated the annualized costs to develop the lockout/tags-plus program and procedures at $91,890, as shown in Table 12, with recurring annual costs of $275,116 shown in Table 12a. The Agency concluded that employers will have to update their lockout/tags-plus programs and procedures at least annually due to the changes at the workplace or in machinery, equipment, or systems being serviced. OSHA received no comment in the docket indicating that the estimated number of hours required to develop and maintain a lockout/tags-plus program were understated.

In addition to the costs for shipyard establishments, many other establishments or contractors engaged in shipyard-employment operations also would have to develop lockout/tags-plus programs. In the PEA, the Agency estimated that there are four types of these establishments: (1) Establishments that do not perform the type of activities requiring them to develop and implement a lockout/tags-plus program (10%); (2) establishments using a shipyard's program (15%); (3) establishments developing their own program (50%); and (4) establishments developing a joint program with a shipyard (25%). While the final rule requires contractors working for a host employer to follow that host employer's lockout/tags-plus program, OSHA maintained some costs for contractors and other establishments because the Agency believes that they will spend some time on program development, familiarization, or implementation.

Table 12

Lockout/Tags-plus Program Costs by Establishment Size

Industry Code	Industry Name	Size Class	Affected Estab.	Supevisor's Wage	Time (Hours)	Unit Cost Per Establishment	Unit Cost Annualized	Annualized Cost
NAICS 336611	Shipyards	1,000 & Up	40	$32.98	20	$659.60	$93.91	$3,757
		500-999	25	$32.98	20	$659.60	$93.91	$2,348
		200-499	32	$32.98	80	$2,638.42	$375.65	$12,021
		100-249	51	$32.98	40	$1,319.21	$187.83	$9,579
		20-99	31	$32.98	12	$395.76	$56.35	$1,737
	Contractor/Off-Site	20-99*	85	$32.98	12	$395.76	$56.35	$4,799
		1-19*	371	$32.98	2	$65.96	$9.39	$3,484
NAICS 11411	Commercial Fishing	1,000 & Up	7	$20.37	20	$407.45	$58.01	$406
		500-999	3	$20.37	20	$407.45	$58.01	$174
		200-499	1	$20.37	80	$1,629.78	$232.04	$232
		100-199	8	$20.37	40	$814.89	$116.02	$928
		20-99	25	$20.37	12	$244.47	$34.81	$870
		0-19	1,076	$20.37	2	$40.74	$5.80	$6,242
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	$33.53	20	$670.60	$95.48	$2,110
		500-999	6	$33.53	20	$670.60	$95.48	$588
		200-499	11	$33.53	80	$2,682.42	$381.92	$4,151
		100-199	17	$33.53	40	$1,341.21	$190.96	$3,183
		20-99	46	$33.53	12	$402.36	$57.29	$2,657
		0-19	98	$33.53	2	$67.06	$9.55	$934
NAICS 488330	Tug & Towing Services	1,000 & Up	45	$44.13	20	$882.51	$125.65	$5,701
		500-999	27	$44.13	20	$882.51	$125.65	$3,360
		200-499	8	$44.13	80	$3,530.04	$502.60	$4,072
		100-199	13	$44.13	40	$1,765.02	$251.30	$3,258
		20-99	88	$44.13	12	$529.51	$75.39	$6,658
		0-19	468	$44.13	2	$88.25	$12.56	$5,884
NAICS 483	Passenger Vessels	20-99	20	$44.13	12	$529.51	$75.39	$1,493
		0-19	101	$44.13	2	$88.25	$12.56	$1,265
		Total	2,725					$91,890

* These establishments will follow the program established by the shipyard but may incur costs related to development, familiarization, or implementation

Source: Office of Regulatory Analysis, OSHA

Table 12a

Recurring Annual Costs for Lockout/Tags-plus Program Updates

Industry Code	Industry Name	Size Class	Affected Estab.	Supevisor's Wage	Time (Hours)	Cost Per Establishment	Annual Cost
NAICS 336611	Shipyards	1,000 & Up	40	$32.98	20	$659.60	$26,384
		500-999	25	$32.98	20	$659.60	$16,490
		200-499	32	$32.98	20	$659.60	$21,107
		100-249	51	$32.98	12	$395.76	$20,184
		20-99	31	$32.98	4	$131.92	$4,066
	Contractor/Off-Site	20-99*	85	$32.98	4	$131.92	$11,236
		1-19*	371	$32.98	0.5	$16.49	$6,118
NAICS 11411	Commercial Fishing	1,000 & Up	7	$20.37	20	$407.45	$2,852
		500-999	3	$20.37	20	$407.45	$1,222
		200-499	1	$20.37	20	$407.45	$407
		100-199	8	$20.37	12	$244.47	$1,956
		20-99	25	$20.37	4	$81.49	$2,037
		0-19	1076	$20.37	0.5	$10.19	$10,960
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	$33.53	20	$670.60	$14,821
		500-999	6	$33.53	20	$670.60	$4,131
		200-499	11	$33.53	20	$670.60	$7,289
		100-199	17	$33.53	12	$402.36	$6,706
		20-99	46	$33.53	4	$134.12	$6,220
		0-19	98	$33.53	0.5	$16.77	$1,640
NAICS 488330	Tug & Towing Services	1,000 & Up	45	$44.13	20	$882.51	$40,042
		500-999	27	$44.13	20	$882.51	$23,596
		200-499	8	$44.13	20	$882.51	$7,150
		100-199	13	$44.13	12	$529.51	$6,864
		20-99	88	$44.13	4	$176.50	$15,588
		0-19	468	$44.13	0.5	$22.06	$10,332
NAICS 483	Passenger Vessels	20-99	20	$44.13	4	$176.50	$3,495
		0-19	101	$44.13	0.5	$22.06	$2,221
		Total	2,725				$275,116

* These establishments will follow the program established by the shipyard but may incur costs related to development, familiarization, or implementation

Source: Office of Regulatory Analysis, OSHA

Numerous stakeholders asserted that OSHA understated the costs associated with developing and implementing a lockout/tags-plus program. Cynthia Brown of the American Shipbuilding Association (ASA) said that ASA conservatively estimated that the lockout/tagout provisions would cost "well over $200 million." She also said that the first-year costs for the Newport News shipyard to implement the lockout/tagout requirements were $85 million, with recurring annual costs of $79 million (Ex. 204.1). John H. James, Jr., Executive Director of Logistics, Maintenance, and Industrial Operations for the Navy, said that it would cost each shipyard over $30 million to implement a lockout/tagout program (Ex. 132.2). Stacy Ballow, of ASA, testified at the hearing in Washington, DC, regarding the cost of the proposed hazardous-energy requirements:

> [T]he proposed [lockout/tagout] rule will result in a cost to the American taxpayers well over $200 million. This figure is based on an estimated cost of approximately [$]100 million for the six ASA member shipyards in addition to the Navy's [$]120 million cost estimate for its four nuclear shipyards. The largest contributor to this estimate is the proposal's required individual employee involvement in group lockout/tagout (Ex. 168, p. 238).

James Thornton, Director of Environmental Health and Safety for Northrop Grumman (Ex. 120.1), concurred that the proposed group lockout/tagout provisions would pose the greatest costs, which he estimated would be at least $19 million annually for the Newport News shipyard. None of these commenters provided the Agency with specific or background information on their cost models. Thus, OSHA cannot fully address their cost concerns. The record for this rule includes evidence that individual shipyards have successfully implemented lockout/tags-plus programs similar to the general industry lockout/tagout standard. This indicates that it is feasible and not overly burdensome for shipyards to comply with a hazardous energy control program.

The rule requires that employers follow certain procedures to: shutdown machinery, equipment or systems; deenergize machinery, equipment or systems; isolate and secure power sources; verify isolation; and apply locks or tags-plus systems. The costs for this subsection include: (1) The time to implement the required procedures; (2) the time to apply lockout/tags-plus applications to power sources or energy-

isolating devices; (3) the time to implement additional safety measures; (4) the time to apply tags to the energy-isolating device; and (5) the time to complete the required lockout/tags-plus log.

The power sources considered in this analysis include electrical (primary), air, hydraulic, and steam (primary); electrical (secondary); air, hydraulic, and steam (secondary); and all non-vessel sources (for example, electrical panel boxes in buildings and in off-site establishments) to which locks or tags-plus systems are applied. The unit costs are presented in Table 13, and are based on the following estimates:

• Large shipyards and commercial vessels industries (those with 500 or more employees) are already employing some form of energy control when performing work on electrical systems or equipment. OSHA estimates that those shipyards and commercial-vessel industries will not incur any additional costs associated with applying a lockout or tags-plus system. This estimate is consistent with evidence presented in the rulemaking record.

• OSHA estimates that medium, small, and very small shipyards and commercial-vessel industries (those with fewer than 500 employees) do not currently employ any form of lockout or tags-plus system when performing electrical work other than as required by 29 CFR 1915, subpart J (Ship's Machinery and Piping Systems), and subpart L (Electrical Machinery). Additional costs will include the time to go to the system, tag it, and attach a clip. Also included is the cost of the required hardware. The labor-time estimate includes the time to notify the affected employees of the application and removal of lockout or tags-plus devices.

○ OSHA estimates that the cost of the tag is $1.00 [14] and the cost of a tie is $0.03. Tags can be used an estimated 7 times, so that the cost per use is $0.14. There may be some additional hardware costs, but the unit cost per use is very low, and additional hardware costs will not affect the feasibility of compliance with the final rule. The labor cost is 2 minutes of time at an authorized employee's wage rate. The total unit cost of securing a primary electric power source is $1.07 for shipyards, $0.53 for commercial fishing, $1.20 for fish-processing vessels, and $1.69 for water transportation. The unit cost for securing hydraulic or air-powered power sources is estimated at $24.69 for shipyards, $12.77 for commercial fishing, $32.74 for fish-processing vessels, and $47.42 for water transportation. OSHA estimates that 1 hour of authorized employee time is needed to secure air and hydraulic power sources.

• The Agency is retaining the estimates from the PEA of the cost to provide full employee protection which includes implementing an additional safety measures to reduce the likelihood of inadvertent energization so that a tags-plus system provides the equivalent safety available from the use of a lock. OSHA estimated 6 lockouts or tags-plus systems applied per authorized employee per year to secure backup electrical systems, and 1 lockout or tags-plus system applied per year per authorized employee to secure air or hydraulic secondary systems, except for contract employees and off-site employees, who will perform 20 such lockout or tags-plus activities per year of backup electrical systems. Current regulations do not cover back-up power systems, nor are they generally isolated and/or locked or tagged under current practice. OSHA believes that all establishments will incur costs to comply with this requirement, and that the same procedure will be used for securing back-up systems as for primary systems with the same type of power. The additional costs to comply with this requirement will include the time to go to the system and implement the additional safety measure which OSHA estimates will take 2 minutes for electrical back-up power sources and 1 hour for air and hydraulic power sources. Estimates of the number of secondary or multiple-source lockouts or tags-plus applications are presented in Table 14.

• OSHA estimated that small and very small contractors and off-site establishments in the shipyards industry will install, on average, one lockout or tags-plus system per week, that medium shipyards will install five lockout or tags-plus systems per day, and that commercial vessels will install five lockout or tags-plus systems per year.

• OSHA estimated that half of the activities that require lockout or tags-plus systems are already covered under 29 CFR 1915, subparts L and J, and that subpart F will only require lockout or tags-plus systems to be applied in half of the cases estimated above.

• The Agency also estimates that one out of every twenty lockout or tags-plus applications will be installed on air or hydraulic systems, and that the rest of the applications will be on electrical systems.

OSHA estimated that 10 percent of production workers would be considered authorized employees. The Agency presented this estimate in the PEA, and did not receive any comments in the record indicating that the estimate of authorized employees was understated. The number of affected employees was estimated in the PEA to be 20 percent of production workers. Comment in the record from Cynthia Brown of the ASA (Ex. 204.1) expressed concern that estimates of affected employees may not be capturing all employees affected by lockout/tags-plus applications. Ms. Brown reported that an estimate of affected employees used in a project to assess the costs of implementing lockout/tags-plus for Northrop Grumman Shipbuilding–Newport News may have excluded personnel in trades other than primary trades and, therefore, underestimated costs. OSHA concludes that personnel, other than those servicing machinery, equipment, or systems, may be affected by lockout/tags-plus applications by their proximity to those machines, equipment, or systems, but believes that employers can reduce the number of affected employees by removing nonessential personnel from the area where servicing in lockout/tags-plus is being performed. The Agency also believes that all employees currently receive an introduction to lockout/tags-plus procedures during the general workplace orientation which provides adequate training for employees affected only by their proximity to work being performed on electrical equipment or systems. OSHA estimated the total costs of securing energy sources to be $513,406.

[14] This estimate is taken from the General Industry Regulatory Impact and Regulatory Flexibility Analysis of 29 CFR 1910.147 "Control of Hazardous Energy Sources (Lockout/Tagout)" standard. In reviewing the cost of a tag, the Agency found that tags average from $0.88 to $1.24 each. Thus, the estimate of $1.00 per tag seems reasonable.

Table 13
Annual Costs of Securing Energy Sources by Establishment Size

Industry Code	Industry Name	Size Class	Establishments	Number of electrical systems	Number of hydraulic systems	Cost of securing electrical	Cost of securing hydraulic	Total Annual Cost
NAICS 336611	Shipyards	1,000 & Up	40	32,992	5,499	$35,301	$135,760	$171,062
		500-999	25	2,633	439	$2,817	$10,835	$13,652
		200-499	32	22,816	1,651	$24,413	$40,769	$65,183
		100-199	51	34,315	2,071	$36,717	$51,131	$87,848
		20-99	31	1,234	145	$1,321	$3,582	$4,902
	Contractor/Off-Site	20-99	85	2,333	243	$2,497	$6,002	$8,498
		1-19	371	5,918	437	$6,333	$10,788	$17,120
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	7	2,502	417	$1,335	$5,326	$6,661
		500-999	3	500	83	$267	$1,065	$1,332
		200-499	1	152	26	$81	$326	$407
		100-199	8	416	71	$222	$903	$1,125
		20-99	25	384	68	$205	$870	$1,075
		1-19	1,076	2,850	654	$1,521	$8,355	$9,876
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	4,987	831	$5,981	$27,210	$33,191
		500-999	6	499	83	$598	$2,721	$3,319
		200-499	11	1,146	193	$1,374	$6,313	$7,687
		100-199	17	867	147	$1,040	$4,824	$5,865
		20-99	46	1,113	193	$1,335	$6,328	$7,663
		1-19	98	475	95	$570	$3,125	$3,695
NAICS 488330	Tug & Towing Services	1,000 & Up	45	272	45	$460	$2,152	$2,611
		500-999	27	160	27	$271	$1,268	$1,539
		200-499	8	65	12	$109	$576	$686
		100-199	13	104	19	$175	$922	$1,097
		20-99	88	707	132	$1,193	$6,282	$7,475
		1-19	468	3,746	702	$6,327	$33,313	$39,640
NAICS 483	Passenger Vessels	20-99	20	158	30	$268	$1,408	$1,676
		1-19	101	805	151	$1,360	$7,160	$8,520
		Total	2,725			$134,091	$379,316	$513,406

Source: Office of Regulatory Analysis, OSHA

Table 14

Multiple or Secondary Energy Sources Secured Per Year by Establishment Size

Industry Code	Industry Name	Size Class	Authorized Employees	Occurrences Per Employee	Instances Per Year
NAICS 336611	Shipyards	1,000 & Up	5,499	7	38,490
		500-999	439	7	3,072
		200-499	611	7	4,279
		100-199	360	7	2,517
		20-99	109	7	761
	Contractor/Off-Site	20-99	163	27	2,846
		0-19	170	27	8,612
NAICS 11411	Commercial Fishing	1,000 & Up	417	7	2,919
		500-999	83	7	584
		200-499	25	7	175
		100-199	67	7	467
		20-99	56	7	389
		0-19	116	7	814
NAICS 311712	Fish Processing Vessels	1,000 & Up	831	7	5,818
		500-999	83	7	582
		200-499	187	7	1,312
		100-199	139	7	973
		20-99	170	7	1,191
		0-19	47	7	326
NAICS 488330	Tug & Towing Services	1,000 & Up	45	7	318
		500-999	27	7	187
		200-499	8	7	57
		100-199	13	7	91
		20-99	88	7	618
		0-19	468	7	3,278
NAICS 483	Passenger Vessels	20-99	20	7	139
		0-19	101	7	705
		Total	10,222		81,517

Source: Office of Regulatory Analysis

The final rule requires a lockout/tags-plus coordinator to complete a lockout/tags-plus log that contains the location and type of machinery, equipment, or system to be serviced, the name of the authorized employee who is applying the lockout/tags-plus system, the date the system is applied, the name of the authorized employee removing the lock or tags-plus system, and the date the system is removed. The Agency estimated that it would take 5 minutes of the lockout/tags-plus coordinator's time (at the authorized employee's wage rate) to complete the lockout/tags-plus log per lockout/tags-plus application. The number of lockout/tags-plus activities per year is based on the estimates presented above. Table 15 outlines the total costs related to creating the lockout/tags-plus log which OSHA estimates to be $264,763.

Table 15
Costs of Creating the Lockout/Tags-plus Log by Establishment Size

Industry Code	Industry Name	Size Class	Establishments	Systems Secured Per Year	Unit Cost	Total Cost
NAICS 336611	Shipyards	1,000 & Up	40	26,000	$1.98	$51,402
		500-999	25	3,072	$1.98	$6,073
		200-499	32	24,467	$1.98	$48,372
		100-199	51	36,386	$1.98	$71,934
		20-99	31	1,379	$1.98	$2,727
	Contractor/Off-Site	20-99	85	2,576	$1.98	$5,094
		1-19	371	6,355	$1.98	$12,564
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	7	2,919	$1.36	$3,965
		500-999	3	584	$1.36	$793
		200-499	1	178	$1.36	$241
		100-199	8	487	$1.36	$662
		20-99	25	452	$1.36	$614
		1-19	1,076	3,504	$1.36	$4,759
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	5,818	$2.65	$15,407
		500-999	6	582	$2.65	$1,541
		200-499	11	1,339	$2.65	$3,546
		100-199	17	1,015	$2.65	$2,688
		20-99	46	1,307	$2.65	$3,460
		1-19	98	570	$2.65	$1,510
NAICS 488330	Tug & Towing Services	1,000 & Up	45	318	$3.87	$1,230
		500-999	27	187	$3.87	$725
		200-499	8	77	$3.87	$298
		100-199	13	123	$3.87	$477
		20-99	88	839	$3.87	$3,249
		1-19	468	4,449	$3.87	$17,226
NAICS 483	Passenger Vessels	20-99	20	188	$3.68	$692
		1-19	101	956	$3.68	$3,516
		TOTAL	2,725			$264,763

Source: Office of Regulatory Analysis, OSHA

Lockout/Tags-Plus Material and Hardware § 1915.89(n)

OSHA anticipates that clips, tags, ties, and any other necessary equipment will be procured and maintained by a supervisor ($32.98 per hour for shipyards, $44.13 per hour for water transportation, $33.53 per hour for fish-processing vessels, $20.37 per hour for commercial fishing). The Agency estimates that an initial procurement of this equipment will occur per establishment, and that it will take longer initially due to time needed for employers to research the unique characteristics of the devices outlined in the rule. The Agency concluded that less time is needed to reorder these items. These costs are outlined in Table 16. For example, the initial cost for a large shipyard is $263.84 ($32.98 times 8 hours). When this cost is annualized, the unit cost is $37.57. The Agency estimates that employers would spend some time annually to reorder protective materials and hardware. For large establishments (having more than 1,000 employees), OSHA estimates that, annually, establishments will spend 4 hours each of a supervisor's time to reorder materials and hardware. The estimated times required for selection, purchase, and distribution of lockout and tags-plus equipment in different sized establishments are:

- Large—8 hours initially, and 4 hours annually thereafter;
- Medium—5 hours initially, and 2 hours annually thereafter; and
- Small—3 hours initially, and 1 hour annually thereafter.

The cost of the materials themselves are accounted for as part of the unit cost of performing a lockout or tags-plus application and are not considered in this section.

Off-Site Establishments

OSHA estimates that off-site establishments will incur much smaller costs of procuring equipment than shipyards. In particular, OSHA estimates that it will take 20 minutes for a supervisor initially to select the lock and chain, and five minutes annually to reorder these items. Based on the estimated wage rate for a supervisor, off-site establishments will incur unit costs of $1.55 (initially), and unit costs of $2.64 thereafter. The Agency estimated these costs as if employers are not currently performing this function, thus assigning a baseline of zero. Final costs may be lower if employers already are ordering and storing this equipment.

OSHA estimated the total costs associated with procuring lockout/tags-plus hardware and materials to be $135,503.

Table 16

Lockout/Tags-plus Materials and Hardware by Establishment Size

Industry Code	Industry Name	Size Class	Affected ablishments	Unit Cost	1st Year Costs	Recurring Costs	Total Annualized Costs
NAICS 336611	Shipyards	1,000 & Up	40	$37.57	$1,503	$5,277	$6,779
		500-999	25	$37.57	$939	$3,298	$4,237
		200-499	32	$37.57	$1,202	$4,221	$5,424
		100-199	51	$23.48	$1,197	$3,364	$4,561
		20-99	31	$14.09	$434	$1,017	$1,451
	Contractor/Off-Site	20-99	85	$1.55	$132	$225	$357
		1-19	371	$1.55	$575	$979	$1,554
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	7	$23.20	$162	$570	$733
		500-999	3	$23.20	$70	$244	$314
		200-499	1	$23.20	$23	$81	$105
		100-199	8	$14.50	$116	$326	$442
		20-99	25	$8.70	$218	$509	$727
		1-19	1,076	$8.70	$9,363	$21,921	$31,284
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	$38.19	$844	$2,964	$3,808
		500-999	6	$38.19	$235	$826	$1,061
		200-499	11	$38.19	$415	$1,458	$1,873
		100-199	17	$23.87	$398	$1,118	$1,516
		20-99	46	$14.32	$664	$1,555	$2,219
		1-19	98	$14.32	$1,401	$3,280	$4,681
NAICS 488330	Tug & Towing Services	1,000 & Up	45	$50.26	$2,280	$8,008	$10,289
		500-999	27	$50.26	$1,344	$4,719	$6,063
		200-499	8	$50.26	$407	$1,430	$1,837
		100-199	13	$31.41	$407	$1,144	$1,551
		20-99	88	$18.85	$1,665	$3,897	$5,561
		1-19	468	$18.85	$8,826	$20,664	$29,491
NAICS 483	Passenger Vessels	20-99	20	$18.85	$373	$874	$1,247
		1-19	101	$18.85	$1,897	$4,441	$6,338
		Total	2,725		$37,091	$98,412	$135,503

Source: Office of Regulatory Analysis

Incident Investigations § 1915.89(p)

The final rule requires employers to investigate each incident that resulted in, or could reasonably have resulted in, energization or startup, or the release of hazardous energy. The employee conducting the investigation is required to complete a written report of the findings from the investigation that includes the date and time of the incident, and when the incident investigation began; the location, description, and factors that contributed to the event; a copy of any lockout/tags-plus log that was current at the time of the incident; and any corrective actions that need to be taken as a result of the incident. OSHA estimates that incident investigations will be required in one percent of all lockout/tags-plus events, which are estimated based on figures presented in the Cost of Compliance section above. It is estimated that the incident investigation and written report will take five workdays (40 hours) of authorized employee time to complete. These costs, which are estimated to be $1,056,202, are presented in Table 17.

Table 17
Incident Investigations Costs

Industry Code	Industry Name	Size Class	Authorized Employees	Total Systems Secured	Total Reportable Incidents	Authorized Employee Wage	Total Cost
NAICS 336611	Shipyards	1,000 & Up	5,499	26,000	260	$23.72	$246,730
		500-999	439	16,250	163	$23.72	$154,206
		200-499	611	20,800	208	$23.72	$197,384
		100-199	360	34,229	342	$23.72	$324,816
		20-99	109	727	7	$23.72	$6,898
	Contractor/Off-Site	20-99	163	1,597	16	$23.72	$15,155
		1-19	170	5,334	53	$23.72	$50,615
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	417	18	0.2	$16.30	$114
		500-999	83	8	0.1	$16.30	$49
		200-499	25	3	0.03	$16.30	$16
		100-199	67	20	0.2	$16.30	$130
		20-99	56	63	1	$16.30	$407
		1-19	116	2,690	27	$16.30	$17,536
NAICS 311712	Fish Processing Vessels	1,000 & Up	831	55	1	$31.78	$702
		500-999	83	15	0.2	$31.78	$196
		200-499	187	27	0.3	$31.78	$345
		100-199	139	42	0.4	$31.78	$530
		20-99	170	116	1	$31.78	$1,474
		1-19	47	245	2	$31.78	$3,109
NAICS 488330	Tug & Towing Services	1,000 & Up	425	113	1	$46.46	$2,108
		500-999	338	67	1	$46.46	$1,242
		200-499	128	20	0.2	$46.46	$376
		100-199	106	32	0.3	$46.46	$602
		20-99	242	221	2	$46.46	$4,103
		1-19	122	1,171	12	$46.46	$21,759
NAICS 483	Passenger Vessels	20-99	50	50	0.5	$46.46	$920
		1-19	31	252	3	$46.46	$4,677
		Total		110,162	1,102		$1,056,202

Source: Office of Regulatory Analysis, OSHA

Program Audits § 1915.89(q)(1)

The rule requires employers to conduct an audit of the lockout/tags-plus program and procedures at least annually to ensure that the procedures and the requirements of this standard are being followed, and to correct any deficiencies. OSHA estimates that the audit itself will take 30 minutes each of a supervisor's and authorized employee's time. An additional 20 minutes of supervisor time is needed to prepare the certification record. Also, each inspection will consist of follow-up training of an estimated five authorized employees and five affected employees for 15 minutes each performed by the supervisor. OSHA presented these estimates in the PEA and did not receive any comments in the record indicating that the estimated time requirements for program audits (referred to as periodic inspections in the proposal) were understated.

For off-site establishments and shipyard contractors, OSHA believes that the costs of program audits will be minimal, as most of these activities will be incorporated into routine supervision. However, because of the paperwork involved, OSHA estimates that twenty additional minutes of supervisor time will be required annually for each establishment. Table 18 presents the total annual cost of $254,191 relating to program audits.

Table 18
Program Audits Costs

Industry Code	Industry Name	Size Class	Affected Estab.	Inspections/Yr	Unit Cost	Total Cost
NAICS 336611	Shipyards	1,000 & Up	40	40	$101.52	$4,061
		500-999	25	25	$101.52	$2,538
		200-499	32	32	$101.52	$3,249
		100-199	51	51	$101.52	$5,178
		20-99	31	31	$101.52	$3,129
	Contractor/Off-Site	20-99	85	85	$10.88	$927
		1-19	371	371	$10.88	$4,038
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	7	7	$70.90	$496
		500-999	3	3	$70.90	$213
		200-499	1	1	$70.90	$71
		100-199	8	8	$70.90	$567
		20-99	25	25	$70.90	$1,772
		1-19	1,076	1,076	$70.90	$76,283
NAICS 311712	Fish Processing Vessels	1,000 & Up	22	22	$114.44	$2,529
		500-999	6	6	$114.44	$705
		200-499	11	11	$114.44	$1,244
		100-199	17	17	$114.44	$1,907
		20-99	46	46	$114.44	$5,307
		1-19	98	98	$114.44	$11,195
NAICS 488330	Tug & Towing Services	1,000 & Up	45	45	$167.19	$7,586
		500-999	27	27	$167.19	$4,470
		200-499	8	8	$167.19	$1,355
		100-199	13	13	$167.19	$2,167
		20-99	88	88	$167.19	$14,766
		1-19	468	468	$167.19	$78,298
NAICS 483	Passenger Vessels	20-99	20	20	$167.19	$3,310
		1-19	101	101	$167.19	$16,828
		Total	2,725			$254,191
Source: Office of Regulatory Analysis, OSHA						

Information and Training § 1915.89(o)

OSHA estimates that employers will incur training costs under the rule. The rule requires that employers train authorized employees, affected employees, and employees who will serve as the lockout/tags-plus coordinator.

Training Authorized Employees

Under the rule, the number of authorized employees who must be trained (Table 19) is estimated as those who engage in lockout/tags-plus applications. The unit-cost estimate for training authorized employees consists of one hour of preparation time plus two hours of delivery time for a supervisor, and two hours per employee to attend the training, except for very small employers who OSHA estimates will only require one hour of authorized employee time to complete the training. This time estimate also includes the time needed to develop the training record, estimated at three minutes of administrative time per employee. The Agency estimates that each training class will have 10 employees. The cost of training is then annualized. Using a turnover rate of 32.5 percent for the shipyard industry and fish-processing vessels, and 43 percent for water transportation and commercial fishing, 3 shipyard and fish-processing vessel employees and 4 water-transportation and commercial fishing employees must be trained each year for every class of 10 that was initially trained. Thus, the cost for retraining these employees annually is the total cost of the class divided by 10, then multiplied by the number of employees being trained (3 or 4). Two hours of supervisory time cost is added to get the recurring unit cost. An estimate of the number of off-site authorized employees who need training also is included. OSHA estimates the total cost to train authorized employees to be $147,275.

Table 19

Annualized Information and Training Costs by Establishment - Authorized Employees

Industry Code	Industry Name	Size Class	Authorized Employees	Training Sessions	Annualized Unit Cost	1st Year Cost	Recurring Cost	Total Annualized Costs
NAICS 336611	Shipyards	1,000 & Up	5,499	550	$81.77	$44,960	$20,267	$65,227
		500-999	439	44	$81.77	$3,588	$1,617	$5,206
		200-499	611	61	$81.77	$4,998	$2,253	$7,251
		100-199	360	36	$81.77	$2,940	$1,325	$4,265
		20-99	109	11	$81.77	$889	$401	$1,290
	Contractor/Off-Site	20-99	163	16	$81.77	$1,335	$602	$1,936
		1-19	170	17	$43.29	$737	$627	$1,365
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	417	42	$55.23	$2,303	$1,315	$3,619
		500-999	83	8	$55.23	$461	$263	$724
		200-499	25	3	$55.23	$138	$79	$217
		100-199	67	7	$55.23	$369	$210	$579
		20-99	56	6	$55.23	$307	$175	$483
		1-19	116	12	$55.23	$642	$285	$927
NAICS 311712	Fish Processing Vessels	1,000 & Up	831	83	$104.96	$8,723	$3,528	$12,251
		500-999	83	8	$104.96	$872	$353	$1,225
		200-499	187	19	$104.96	$1,967	$795	$2,762
		100-199	139	14	$104.96	$1,459	$590	$2,049
		20-99	170	17	$104.96	$1,785	$722	$2,507
		1-19	47	5	$104.96	$488	$150	$638
NAICS 488330	Tug & Towing Services	1,000 & Up	425	43	$151.32	$6,434	$3,312	$9,746
		500-999	338	34	$151.32	$5,113	$2,633	$7,746
		200-499	128	13	$151.32	$1,943	$1,000	$2,943
		100-199	106	11	$151.32	$1,603	$825	$2,428
		20-99	242	24	$151.32	$3,662	$1,885	$5,548
		1-19	122	12	$151.32	$1,848	$707	$2,555
NAICS 483	Passenger Vessels	20-99	50	5	$151.32	$751	$386	$1,137
		1-19	31	3	$151.32	$472	$181	$653
		Total	11,014			$100,787	$46,488	$147,275

Source: Office of Regulatory Analysis, OSHA

Training Affected Employees

The number of affected employees in Table 20 represents a proportion of total employees that are impacted by lockout/tags-plus. In the PEA, this number was estimated to be twice the number of authorized employees. The Agency received no comment suggesting this number was incorrect. OSHA estimates that training consists of thirty minutes of preparation time plus one hour of delivery time for a supervisor, and one hour per affected employee to attend the training; and that each training class will have 10 employees. The cost is then annualized and estimated on a per-employee basis. An additional three minutes of secretarial time per employee is included to prepare and maintain the training record. Using a turnover rate of 32.5 percent for the shipyard industry and fish-processing vessels, and 43 percent for water transportation and commercial fishing, three or four employees must be re-trained each year for every class of ten that was initially trained. Thus, the cost for re-training these employees is the total cost per class divided by 10, then multiplied by the number of employees being trained (3 or 4). The supervisory time cost is added to get the recurring unit cost. An estimate of the number of off-site affected employees working in shipyards that need training is also included. The total cost associated with training affected employees is $117,756.

Table 20

Annualized Information and Training Costs by Establishment - Affected Employees

Industry Code	Industry Name	Size Class	Affected Employees	Training Sessions	Annualized Unit Cost	1st Year Cost	Recurring Cost	Total Annualized Cost
NAICS 336611	Shipyards	1,000 & Up	14,057	1,406	$34.94	$49,119	$7,878	$56,997
		500-999	2,146	215	$34.94	$7,497	$1,203	$8,700
		200-499	1,374	137	$34.94	$4,802	$770	$5,573
		100-199	1,375	138	$34.94	$4,806	$771	$5,577
		20-99	660	66	$34.94	$2,308	$370	$2,678
	Contractor/Off-Site	20-99	463	46	$34.94	$1,617	$259	$1,876
		1-19	438	44	$34.94	$1,530	$245	$1,775
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	834	83	$27.67	$2,308	$420	$2,728
		500-999	167	17	$27.67	$462	$84	$546
		200-499	50	5	$27.67	$138	$25	$164
		100-199	133	13	$27.67	$369	$67	$437
		20-99	111	11	$27.67	$308	$56	$364
		1-19	233	23	$27.67	$644	$117	$761
NAICS 311712	Fish Processing Vessels	1,000 & Up	1,662	166	$33.06	$5,495	$924	$6,419
		500-999	166	17	$33.06	$550	$92	$642
		200-499	375	37	$33.06	$1,239	$208	$1,447
		100-199	278	28	$33.06	$919	$154	$1,074
		20-99	340	34	$33.06	$1,125	$189	$1,314
		1-19	93	9	$33.06	$308	$52	$359
NAICS 488330	Tug & Towing Services	1,000 & Up	850	85	$53.13	$4,518	$885	$5,402
		500-999	676	68	$53.13	$3,591	$703	$4,294
		200-499	257	26	$53.13	$1,364	$267	$1,632
		100-199	212	21	$53.13	$1,125	$220	$1,346
		20-99	484	48	$53.13	$2,572	$504	$3,075
		1-19	244	24	$53.13	$1,298	$254	$1,552
NAICS 483	Passenger Vessels	20-99	99	10	$53.13	$527	$103	$630
		1-19	62	6	$53.13	$331	$65	$396
		Total	27,841			$100,870	$16,887	$117,756

Source: Office of Regulatory Analysis, OSHA

Training Lockout/Tags-Plus Coordinators

The number of lockout/tags-plus coordinators who will need to be trained as a result of this final rule, and the costs that will be incurred due to that training, are presented in Table 21. OSHA estimates that half of those employees trained as authorized employees will also be trained as lockout/tags-plus coordinators. The Agency estimates that it will take two hours of supervisor time to prepare the training, four hours to deliver the training, and four hours of authorized employee time to receive the training. It is estimated that 10 employees will attend each session. The cost is then annualized and estimated on a per-employee basis. An additional three minutes of secretarial time per trained employee is included to prepare and maintain the training record. Using a turnover rate of 32.5 percent for the shipyard industry and fish-processing vessels, and 43 percent for water transportation and commercial fishing, three or four employees must be re-trained each year for every class of ten that was initially trained. Thus, the cost for re-training these employees is the total cost per class divided by 10, then multiplied by the number of employees being trained (3 or 4). The supervisory time cost is added to get the recurring unit cost. OSHA estimates the total cost to train the lockout/tags-plus coordinator to be $148,294.

Table 21

Annualized Information and Training Costs by Establishment - Lockout/Tags-plus Coordinator

Industry Code	Industry Name	Size Class	Lockout/Tag Coordinator	Training Sessions	Annualized Unit Cost	1st Year Cost	Recurring Cost	Total Annualized Costs
NAICS 336611	Shipyards	1,000 & Up	2749	275	$163.41	$44,926	$20,267	$65,193
		500-999	219	22	$163.41	$3,585	$1,617	$5,203
		200-499	306	31	$163.41	$4,994	$2,253	$7,247
		100-199	180	18	$163.41	$2,937	$1,325	$4,262
		20-99	54	5	$163.41	$888	$401	$1,289
	Contractor/Off-Site	20-99	82	8	$163.41	$1,334	$602	$1,935
		1-19	85	9	$163.41	$1,391	$627	$2,018
NAICS 11411	Commercial Fishing Vessels	1,000 & Up	209	21	$110.34	$2,301	$1,315	$3,616
		500-999	42	4	$110.34	$460	$263	$723
		200-499	13	1	$110.34	$138	$79	$217
		100-199	33	3	$110.34	$368	$210	$579
		20-99	28	3	$110.34	$307	$175	$482
		1-19	58	6	$110.34	$641	$367	$1,008
NAICS 311712	Fish Processing Vessels	1,000 & Up	416	42	$209.78	$8,717	$3,528	$12,245
		500-999	42	4	$209.78	$872	$353	$1,225
		200-499	94	9	$209.78	$1,965	$795	$2,761
		100-199	70	7	$209.78	$1,458	$590	$2,048
		20-99	85	9	$209.78	$1,784	$722	$2,506
		1-19	23	2	$209.78	$488	$198	$686
NAICS 488330	Tug & Towing Services	1,000 & Up	213	21	$302.47	$6,430	$3,312	$9,742
		500-999	169	17	$302.47	$5,110	$2,633	$7,743
		200-499	64	6	$302.47	$1,942	$1,000	$2,942
		100-199	53	5	$302.47	$1,602	$825	$2,427
		20-99	121	12	$302.47	$3,660	$1,885	$5,546
		1-19	61	6	$302.47	$1,847	$951	$2,798
NAICS 483	Passenger Vessels	20-99	25	2	$302.47	$750	$386	$1,137
		1-19	16	2	$302.47	$472	$243	$715
		Total	5507	551		$101,369	$46,924	$148,294

Source: Office of Regulatory Analysis, OSHA

Section 1915.93 Motor-Vehicle Safety Equipment, Operation, and Maintenance

The motor-vehicle safety provisions apply to vehicles used to transport employees, materials, or property at worksites engaged in shipyard employment. OSHA estimates that employers in the shipyard industry will incur costs in complying with the requirement to reinstall safety equipment that has been removed from motor vehicles. This provision only applies to employer-provided vehicles. OSHA believes that shipyards are generally in compliance with the requirement that new motor vehicles must be equipped with seat belts, and the Agency did not receive any comments indicating that this is not the case. The final rule requires that safety equipment not be removed from motor vehicles; however, if safety equipment is removed, it must be re-installed. OSHA estimates that it will take an hour of transportation maintenance and repair technician time, at $21.61 per hour (including benefits), to replace vehicle safety equipment. This is a one-time cost. In the PEA, the Agency used an estimate of 5 percent of the number of employees (per size class) to determine the number of instances per size class when a maintenance and repair technician would need to reinstall previously removed safety equipment. OSHA did not receive any comment indicating that the estimate of the cost of reinstalling safety equipment was misstated. Table 22 presents estimates of these costs which total $13,557.

Table 22

Reinstalling Safety Equipment Costs by Establishment

Industry Code	Industry Name	Size Class	Employees	Occurrences	Instances	Unit Cost	Total Cost	Annualized Cost
NAICS 336611	Shipyards	1,000 & Up	65,921	0.05	3,296	$21.61	$71,230	$10,142
		500-999	5,261	0.05	263	$21.61	$5,685	$809
		200-499	7,328	0.05	366	$21.61	$7,918	$1,127
		100-199	4,310	0.05	216	$21.61	$4,657	$663
		20-99	1,303	0.05	65	$21.61	$1,408	$201
	Contractor/Off-Site	20-99	1,957	0.05	98	$21.61	$2,115	$301
		0-19	2,041	0.05	102	$21.61	$2,205	$314
		Total	88,121		4,406		$95,219	$13,557

Source: Office of Regulatory Analysis, OSHA

Section 1915.94 Servicing Multi-Piece and Single-Piece Rim Wheels

The provisions for servicing multi-piece and single-piece rim wheels are identical to those in the general industry standard (29 CFR 1910.177). The rule applies to servicing multi-piece and single-piece rim wheels used on large motor vehicles such as trucks, tractors, trailers, buses, and off-road vehicles. It does not apply to servicing rim wheels used on automobiles or on pickup trucks and vans equipped with automobile tires or truck tires designated "LT." OSHA assumed that no servicing of rim wheels takes place on commercial vessels.

OSHA believes affected employers already are using the servicing practices that § 1910.77 requires, or could adopt them with no real change in cost; therefore, the only new cost the provision would impose is employee training. OSHA estimates that training time is limited to startup training for existing employees and, thereafter, retraining as needed if an evaluation indicates than an employee is not retaining proficiency, as well as initial training for new employees who perform this servicing.

The Agency believes that only large shipyards perform this type of rim-wheel maintenance, and that other establishments engaged in shipyard employment contract out this task. OSHA estimates that each transportation maintenance and repair technician will receive a 30-minute training class (½ hour of employee time at $21.61 per hour = $10.80). The supervisor who teaches the class is estimated to spend 15 minutes preparing for the class (¼ hour of supervisor time at $32.98 per hour = $8.24), and 30 minutes delivering the training (½ hour of supervisor time at $32.98 per hour = $16.49). OSHA presented these cost estimates in the PEA, and solicited comment regarding these estimates for servicing rim wheels. The Agency did not receive any comments indicating that the estimates of costs were understated, or suggesting improvements to the cost estimates for this provision. The costs for training employees in servicing multi-piece and single-piece rim wheels which the Agency estimates to total $330 are presented in Table 23.

Table 23

Single & Multi-piece Rim Wheels Training Costs by Establishment

Industry Code	Industry Name	Size Class	Affected Establishments	Sessions/ Establishment	Total Sessions	Unit Cost	Total Cost	Annualized Cost
NAICS 336611	Shipyards	1,000 & Up	40	1	40	$35.54	$1,422	$202
		500-999	25	1	25	$35.54	$889	$127
		Total					$2,310	$330

Source: Office of Regulatory Analysis, OSHA

Estimated Total Industry Compliance Costs

Estimated costs of the final rule are both directly and indirectly functions of type, size, and number of affected establishments. In addition, they are a function of the number of first aid providers who require CPR training, the number of authorized and affected employees for lockout/tags-plus, the number of motor vehicles requiring re-installation of motor-vehicle safety equipment, and the amount of rim-wheel servicing performed. Table 24 shows the estimated cost of the final rule by provision. The Agency estimates that compliance with the rule will cost $4,185,342 (total annualized) annually for the affected establishments and industries combined. The lockout/tags-plus provisions account for the largest portion (about 75 percent) of these costs.

Table 24		
Total Annualized Compliance Costs by Provision		
		Total
Requirement		Annualized Costs
Sanitation		
	Handwashing Facilities	$748,709
Medical Services and First Aid		
	First Aid & CPR Training	$418,349
Lockout/Tags-plus		
	Energy Control Program	$367,007
	Securing Energy Sources	$513,406
	Lockout/Tags-plus Log	$264,763
	Lockout/Tags-plus Materials and Hardware	$135,503
	Incident Investigation	$1,056,202
	Program Audits	$254,191
	Information and Training	$413,325
	SUBTOTAL	$3,004,397
Vehicle Safety		
	Reinstalling Safety Equipment	$13,557
	Rim Wheel Training	$330
	SUBTOTAL	$13,887
TOTAL		$4,185,342
Source: Office of Regulatory Analysis, OSHA		

Table 25 outlines the estimated total annualized compliance costs per establishment. Larger establishments have greater annualized compliance costs. The economic impacts of these costs are presented in section F of this FEA.

Table 25

Estimated Total Annualized Compliance Costs Per Establishment

Industry Code	Industry Name	Size Class	Establishments	Total Annualized Costs	Average Cost Per Establishment
NAICS 336611	Shipyards	1,000& Up	40	$1,406,895	$35,172
		500-999	25	$286,561	$11,462
		250-500	32	$435,109	$13,597
		100-249	51	$590,158	$11,572
		20-99	31	$50,856	$1,650
	Contractor/Off-Site	20-99	85	$63,489	$745
		1-19	371	$150,509	$406
NAICS 11411	Commercial Fishing	1,000 & Up	7	$31,200	$4,457
		500-999	3	$7,292	$2,431
		200-499	1	$2,438	$2,438
		100-199	8	$8,366	$1,046
		20-99	25	$11,837	$473
		1-19	1076	$224,299	$208
NAICS 311712	Fish Processing	1,000 & Up	22	$121,565	$5,500
		500-999	6	$16,440	$2,669
		200-499	11	$37,182	$3,421
		100-199	17	$30,589	$1,835
		20-99	46	$43,743	$943
		1-19	98	$37,324	$382
NAICS 488330	Tug & Towing Services	1,000 & Up	45	$103,093	$2,272
		500-999	27	$67,641	$2,530
		200-499	8	$25,900	$3,197
		100-199	13	$24,368	$1,880
		20-99	88	$86,531	$980
		1-19	468	$249,210	$532
NAICS 483	Passenger Vessels	20-99	20	$19,091	$964
		0-19	101	$53,654	$533
		TOTAL	2725	$4,185,341	$1,536

Source: Office of Regulatory Analysis

Net Benefits

In accordance with EO 12866 and OMB policy, and for informational purposes, the Agency compared the estimated costs of compliance to the monetized benefits of the final rule. The Agency estimates monetized death benefits of $10.4 million and monetized injury benefits of $23.4 million annually (see the Benefits section of this FEA), for total monetized benefits of $33.8 million. When the total annualized compliance costs are compared to these estimates (total monetized benefits), the Agency concludes that the net benefits of the final rule will total about $29.6 million.

F. Economic Impacts, Feasibility, and Regulatory Flexibility Screening Analysis

OSHA determined that the costs of complying with the final rule will not impose significant economic impacts on employers in the affected industries; therefore, OSHA concludes that the rule is economically feasible. The rule imposes modest costs, and the increased safety and reduction in injuries and fatalities associated with the final rule will reduce employers' direct and indirect costs. This analysis of economic impacts is based on the industry data presented in the Industrial Profile section, and the cost estimates presented in the Costs of Compliance section of this FEA.

Economic Impacts

To determine whether the rule's projected costs of compliance would raise issues of economic feasibility for affected employers and would alter the competitive structure of the affected industries, OSHA compared quantitative estimates of the compliance costs (section D of this FEA) with industry revenues and profits. After accounting for current industry practice with regard to general working conditions in shipyard employment and the costs of compliance under the final rule, OSHA estimated that the annualized incremental (new) compliance costs of the rule will be $4,185,342.

Compliance with the rule will not involve large up-front investments. The major costs of the final rule involve the

control of hazardous energy. As mentioned earlier, many establishments engaged in shipyard employment already have developed and implemented written programs for the control of hazardous energy, including most large and very large establishments. For many of these establishments, their energy-control programs cover servicing operations both at landside facilities and aboard vessels. Other establishments have, at a minimum, energy-control programs for servicing operations performed landside. Most costs related to the lockout/tags-plus requirements in the final rule, including written programs and procedures, hazard prevention, and training, are proportional to the number of workers and employers and revenues earned. The same is true for the costs related to implementing the first aid, including CPR, training and handwashing requirements in the final rule.

Economic Feasibility

To assess the standard's potential economic impacts, OSHA compared the anticipated costs of achieving compliance against revenues and profits of the affected entities. OSHA compared baseline financial data with total annualized costs of compliance by computing compliance costs as a percentage of revenues and as a percentage of pre-tax profits. This impact assessment is presented in Table 26 for the shipbuilding, ship-repair and shipbreaking sectors combined (and collectively referred to as "shipyards"), and for commercial fishing, fish processing on board vessels, tug and towing boats, and passenger vessels combined (collectively referred to as "commercial vessels"). This screening analysis is used to determine whether the compliance costs associated with the final rule would lead to significant impacts on affected establishments. The actual impact on profits and revenues in a given industry will depend on the price elasticity of demand for the services sold by establishments in that industry.

Table 26

Economic Impacts of the Standard

	Size Class	Per Establishment Compliance Cost	Compliance Cost as a % of Revenues	Compliance Cost as a % of Profits
Shipyards	1-19	$280	0.03%	0.63%
	1-200	$1,589	0.02%	0.41%
	1-1,000	$2,802	0.03%	0.58%
	All	$1,536	0.02%	0.33%
Commercial Vessels	1-19	$288	0.03%	0.97%
	1-200	$403	0.02%	0.53%
	1-1,000	$480	0.02%	0.48%
	All	$603	0.01%	0.39%

Source: Office of Regulatory Analysis

Price elasticity refers to the relationship between the price charged for a service and the demand for that service. The more elastic the relationship, the less able an establishment is to pass the costs of compliance through to its customers in the form of a price increase, and the more it will have to absorb the costs of compliance from its profits. When demand is inelastic, establishments can recover all the costs of compliance simply by raising the prices they charge for that service. Under this scenario, profits are untouched.

However, when demand is elastic, establishments cannot recover all the costs simply by passing the cost increase to customers in the form of a price increase. Instead, they must absorb some of the increase from their profits. In general, "[w]hen an industry is subjected to a higher cost, it does not simply swallow it; it raises its price and reduces its output, and in this way shifts a part of the cost to its consumers and a part to its suppliers" (*American Dental Ass'n* v. *Martin,* 984 F.2d 823, 829 (7th Cir. 1993)).

If demand is completely inelastic (*i.e.,* price elasticity is 0), then the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product or service, with no decline in demand or in profits. Such a situation would most likely occur when there are few, if any, substitutes for the product or service offered by the affected sector, or if the products or services of the affected sector account only for a small portion of the income of its consumers. By contrast, if the demand is perfectly elastic (the price elasticity is infinitely large), then no increase in price is possible, and before-tax profits would be reduced by an amount equal to the compliance costs (minus any savings resulting from improved worker safety and health and reduced worker compensation insurance costs). Under this scenario, if the costs of compliance represent a large percentage of the sector's profits, some establishments might be forced to close. However, this scenario is highly unlikely to occur. It can only arise when there are other goods and services that are, in the eye of the consumer, perfect substitutes for the goods and services the affected establishments produce or provide.

A more likely or common scenario would be a price elasticity of 1. In this situation, if the costs of compliance amount to 1 percent of revenues, then production would decline by 1 percent and prices would rise by 1 percent. In this situation, the sector would remain in business and have the same revenues as before the rule became effective. In many instances, depending on the supply curve, the sector also would have approximately the same profits as before, but would produce 1 percent less of its services. Consumers would

effectively absorb the costs through a combination of increased prices and reduced consumption, which the court in *American Dental Ass'n,* 984 F.2d at 829, indicated is the more typical case.

In the case of this final rule, if costs are completely passed on to consumers, prices would increase by 0.01 to 0.03 percent, a consequence unlikely to have an effect on the viability of the affected industries. Alternatively, with no price increase, profits would decrease 0.33 percent for shipyards and 0.38 percent for commercial-vessel industries, a decrease that would have no effect on the economic viability of these industries. Therefore, OSHA concludes that this rule is economically feasible.

One commenter noted the precarious financial situation of the fishing and fish-processing industry, stating:

> A large part of Shipyard Employment in the Pacific Northwest hinges closely on to the success or failure of the fishing and fish processing industry. Because the fishing industry in our area is cyclical, one "bad" year or even a single "loss" season of fishing may in turn result in two or three abominable years for the rest of Shipyard Employment.
>
> The "minimal potential impact on both prices and profits" as stated in your report may not be applicable to the Shipyard Employment in the Pacific Northwest because both prices and profits do not remain constant in our region. In fact, they do vary greatly from year to year, and from season to season, and sometimes day to day.
>
> Hence, the conclusion made by OSHA "that the proposed regulation is economically feasible" definitely may not be appropriate or applicable to our region (Ex. 121.1).

OSHA understands the situation of the industries affected by this rule, and recognizes that profits are not consistent and are affected by a sometimes volatile marketplace. That said, the overall economic impacts of the final rule on profits in these industries are negligible, even in the case of an occasional poor season. The Agency also was unable to identify a regional variation in the impacts of the final rule, and believes that it will be not be more burdensome on affected establishments in the Pacific Northwest than on establishments in other parts of the country.

Regulatory Flexibility Screening Analysis

The RFA requires Federal agencies to determine whether their regulatory actions will have a significant impact on a substantial number of small entities. Pursuant to the RFA, OSHA assessed the small-business impact of the final rule. On the basis of a regulatory flexibility screening assessment and the underlying data, summarized above, OSHA certifies that the rule will not have a significant impact on a substantial number of small entities.

The RFA procedures require that OSHA examine costs as a percentage of revenues and profits. OSHA guidelines consider an impact potentially significant if any size class in any industry has compliance costs greater than 1 percent of revenues or costs greater than 5 percent of profits.

In the analysis of impacts, OSHA estimates the costs of compliance by dividing the per-establishment compliance cost by the per-establishment revenues, reported by the U.S. Census Bureau. In this case, the compliance costs as a percentage of revenues are estimated at 0.02 percent of revenues for all establishment size group in shipyards, and 0.01 percent of revenues for all establishment size groups in commercial-vessel industries (Table 27). Thus, when examined in the context of total revenues for the affected sectors, OSHA judges that the impact of the compliance costs on prices will not be significant. Even when examined by individual NAICS industry and size class, the costs of compliance as a percent of revenues does not rise to a level that is close to significant for any industry or size class.

OSHA also estimated the compliance costs as a percentage of pre-tax profits. Profits were estimated using total receipts and net income data published in the *Corporation Source Book of Statistics of Income* (IRS, 2006). As presented in Table 27, the average decline in profits for shipyards under this worst-case scenario would range from 0.33 percent (all employment size classifications) to 0.63 percent (1–19 employment size classifications). The worst-case scenario for commercial vessel industries would range from 0.38 percent (all employment-size classifications) to 0.96 percent (1–19 employment-size classification). Such declines would not have an effect on the competitive structure of any of the affected industries. Even when examined by individual NAICS industry and size class, the costs of compliance as a percent of profits does not rise to a level that is close to significant for any industry or size class. Although the Agency only presents economic impacts for the 1–19, 1–200, 1–1,000 employment-size classifications, as well as all firm categories combined, OSHA also estimated compliance costs for the following size classes: 100–199, 200–499, 500–1,000, and 1,000 and up (see the Costs of Compliance section of this FEA).

Table 27

Small Firm Impacts

	Size Class	Per Firm Compliance Cost	Compliance Cost as a % of Revenues	Compliance Cost as a % of Profits
Shipyards	1-19	$286	0.03%	0.63%
	1-200	$1,625	0.02%	0.41%
	1-1,000	$2,298	0.03%	0.46%
	All	$1,636	0.02%	0.33%
Commercial Vessels	1-19	$292	0.03%	0.96%
	1-200	$409	0.02%	0.53%
	1-1,000	$489	0.02%	0.48%
	All	$619	0.01%	0.38%

Source: Office of Regulatory Analysis

OSHA believes that, prior to the generation of the cost savings projected to accrue from implementation of the final rule, most affected establishments will respond to the increase in direct costs by increasing prices somewhat, and absorbing the remaining costs from profits. Commercial-fishing vessel establishments may absorb a greater amount of the cost increase from their profits because the market price they can command for their product likely cannot be influenced by the employers. However, the worst-case scenario reduction is still a very small percentage of profits, and the Agency does not believe that this will impose an undue burden on the industry. OSHA believes that most affected employers will experience little economic impact after the final rule is implemented. OSHA estimates that cost savings will soon offset any price and profit impacts.

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V. Environmental Impact

OSHA has reviewed the final rule on general working conditions in shipyard employment in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500 *et seq.*), and OSHA's DOL NEPA procedures (29 CFR Part 11). Based on this review, OSHA has determined that this final rule will have no significant effect on air, water, or soil quality; plant or animal life; use of land; or other aspects of the environment.

VI. Federalism

OSHA has reviewed this final rule in accordance with the Executive Order 13132 on Federalism (64 FR 43255, August 10, 1999). This E.O. requires that Federal agencies, to the extent possible, refrain from limiting State or local policymaking discretion, consult with State and local officials prior to taking any actions that would restrict State or local policymaking discretion, and take such actions only when clear constitutional and statutory authority exists for the action, and where there is a problem of national significance. The E.O. allows Federal agencies to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. Any such preemption is to be limited to the extent possible.

In Section 18 of the OSH Act (29 U.S.C. 667) Congress expressly provides that States may adopt, with Federal OSHA approval, a plan for the development and enforcement of occupational safety and health standards. States that obtain Federal approval for such plans are referred to as "State-Plan States" (29 U.S.C. 667). Occupational safety and health standards developed by such State-Plan States, among other things, must be at least as effective in providing safe and healthful employment and places of employment as Federal OSHA standards. Subject to these requirements, State-Plan States are free to develop and enforce under State law their own requirements for occupational safety and health standards.

This final rule complies with E.O. 13132. In States that do not have OSHA-approved State Plans, this rule limits State policy options in the same manner as all OSHA standards. In States with OSHA-approved State Plans, this action does not significantly limit State policy options.

VII. Unfunded Mandates Reform Act

OSHA reviewed this final rule in accordance with the UMRA (2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093, October 28, 1993). As discussed above in section IV of this preamble ("Final Economic and Regulatory Flexibility Analysis"), the final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, and OSHA estimates that compliance with the rule will require expenditures by affected private employers of considerably less than $100 million per year. Therefore, this rule is not a "significant regulatory action" within the meaning of the

UMRA (2 U.S.C. 1532) and is not subject to review of the budgetary effects of the final standard on the private sector (2 U.S.C. 1532(a)). OSHA standards do not apply to State, local, or tribal governments except in States that have voluntarily elected to adopt a State Plan approved by the Agency. Consequently, this final rule does not meet the definition of a "Federal intergovernmental mandate" (see sec. 421(5) of UMRA, 2 U.S.C. 658(5))). In sum, this action does not mandate that State, local, and tribal governments adopt new, unfunded regulatory obligations.

VIII. Office of Management and Budget Review Under the Paperwork Reduction Act of 1995

The final General Working Conditions in Shipyard Employment Standard contains collection of information requirements (paperwork) that are subject to review by the Office of Management and Budget (OMB). In accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)), the proposed regulation solicited public comments on the *General Working Conditions in Shipyard Employment (29 CFR 1915, subpart F)* Information Collection Request (ICR) (paperwork burden hour and cost analysis) for the proposal. The Department also submitted this ICR to OMB for review in accordance with 44 U.S.C. 3507(d) on December 20, 2007. On February 15, 2008, OMB informed the Department of Labor to use OMB Control Number 1218–0259 in future paperwork submissions involving this rulemaking. OMB also commented, "This OMB action is not an approval to conduct or sponsor an information collection under the Paperwork Reduction At of 1995." OMB also stated that "OMB will review the proposed collection again in parallel with the final regulation prior to approval."

OSHA received no public comments on the *General Working Conditions in Shipyard Employment (29 CFR 1915, subpart F)* ICR. A number of comments, described earlier in this preamble, contained information relevant to the burden hour and costs analysis that OSHA considered when it developed the revised ICR associated with this final rule.

The Department of Labor submitted the final ICR to OMB for approval. A copy of the ICR is available at *http://www.reginfo.gov*. OSHA will publish a separate notice in the **Federal Register** that will announce the results of that review. The Department of Labor notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA–95, and displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

The following paragraphs identify the collection of information requirements contained in the final rule.

Section 1915.83 Utilities

Paragraph (a)(1) requires employers to obtain a written or oral determination from a responsible vessel's representative, a contractor, or any other person who is qualified by training, knowledge, or experience to make such a determination, that the working pressure of the vessel's steam piping system is safe. Similarly paragraph (c)(3) requires employers to obtain a written or oral determination from a responsible vessel's representative, a contractor, or any other person who is qualified by training, knowledge, or experience to make such determination, that each circuit to be energized is in a safe condition. These collection of information requirements were not included in the proposal's ICR.

Section 1915.87 Medical Services and First Aid

Paragraph (f)(3) requires employers to store basket stretchers, or the equivalent, as well as related equipment, in a clearly marked location in a manner that prevents damage and protects them from environmental conditions. This requirement remains unchanged from the proposal's ICR.

Section 1915.88 Sanitation

Paragraph (e)(3) requires the employer to inform each employee engaged in the application of paints or coatings, or in other operations where hazardous or toxic substances can be ingested or absorbed, about the need for removing surface contaminants from their skins surface by thoroughly washing their hands and face at the end of the workshift and prior to eating, drinking, or smoking. OSHA maintains the proposal's determination that this requirement is a longstanding usual and customary practice on shipyard employment. OSHA adopted this requirement in 1972 pursuant to section 6(a) of the OSH Act, which allowed the Agency in the first two years after enactment of the Act to adopt as OSHA standards existing Federal and national consensus standards (37 FR 22458 (10/19/1972)). OSHA adopted this provision from safety standards promulgated under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Section 1915.89 Control of Hazardous Energy (Lockout/Tags-Plus)

The proposal's ICR estimated burden hours and costs for "lockout/tagout" programs. The final ICR calculates burden hours and costs for "lockout/tags-plus" programs.

Developing Lockout/Tags-Plus Procedures

The proposal's ICR referenced developing procedures for the control of hazardous energy during the servicing of machinery, equipment, and systems as part of developing a lockout/tagout program. The final ICR provides additional details regarding the content of these procedures. Paragraph (b) requires the employer to establish and implement a written program and procedures for lockout and tags-plus systems to control hazardous energy during the servicing of any machinery, equipment, or system in shipyard employment. The program must cover: (1) Procedures for lockout/tags-plus systems while servicing machinery, equipment, or systems in accordance with paragraph (c); (2) procedures for protecting employees involved in servicing any machinery, equipment, or system in accordance with paragraphs (d) through (m); (3) specifications for locks and tags-plus hardware in accordance with paragraph (n); (4) employee information and training in accordance with paragraph (o); incident investigations in accordance with paragraph (p); and (6) program audits in accordance with paragraph (q).

Lockout/Tags-Plus Log

This collection of information requirement was not contained in the proposal's ICR. Paragraph (c)(7)(iv) requires that the employer ensure that the lockout/tags-plus coordinator maintains and administers a continuous log of each lockout and tags-plus system.

Lockout/Tags-Plus Written Procedures

Paragraph (d)(1) requires the employer to establish and implement written procedures to prevent energization or startup, or the release of hazardous energy, while authorized employees are servicing any machinery, equipment, or system.

Notification of Employees

Paragraph (e)(1)(ii) requires employers to notify each affected employee that the machinery, equipment, or system will

be shutdown and deenergized before applying a lockout/tags-plus system and beginning servicing. In addition, paragraph (i)(1)(i) requires the authorized employee to notify all other authorized and affected employees that the lockout/tags-plus system will be removed before any lockout/tags-plus system is removed and the machinery, equipment, or system restored to use.

Communication With Outside Personnel (Contractors, Ship Crew, etc.)

Paragraph (l)(2) requires the host employer to establish and implement procedures for the lockout/tags-plus program to protect workers from hazardous energy in multi-employer worksites. The host employer is responsible for informing each contract employer about the content of the host employer's lockout/tags-plus program and procedures, and instructing each contract employer to follow the host employer's lockout/tags-plus program and procedures. Also, the host employer must ensure that the lockout/tags-plus coordinator knows about all servicing operations and communicates this information with each contract employer who performs servicing or works in an area where servicing is being conducted.

Paragraph (l)(3) requires the contract employer, when working in a multi-employer worksite, to follow the host employer's lockout/tags-plus program and procedures, and to ensure that the host employer knows about the lockout-tags plus hazards associated with the contract employer's work, and what the contract employer is doing to address them. The contract employer also must inform the host employer of any previously unidentified lockout/tags-plus hazards that the contract employer identifies at the multi-employer worksite.

Lockout Tags-Plus Materials and Hardware

Paragraphs (n)(3)(iv) and (v) require that each lock and tag indicate the identity of the authorized employee applying it; and that each tag warns against hazardous conditions that could arise if the machinery, equipment, or system is energized, and that it include a legend such as one of the following: "Do Not Start," "Do Not Open," "Do Not Energize," or "Do Not Operate." The proposal's ICR stated that the identity of the employee applying the device is exempt from the definition of "information" under 5 CFR 1320.3(h). Further, since the regulation provides specific language to the employer for public disclosure on the tag, this is not a collection of information under 5 CFR 1320.3(c)(2). Therefore, the ICR did not have burden hour or costs associated with this information collection requirement. However, since the tag must also warn against hazardous conditions if the machine, equipment, or system is energized, OSHA has taken the burden for employers to tag a system, and the cost for employers to purchase a tag, in the final ICR.

Information and Training

Paragraph (o)(7) requires the employer to maintain records that employee training has been accomplished and is current. The training records must contain at least the employee's name, date of training, and subject of training.

Incident Investigations

The proposal's ICR did not contain collection of information requirements for incident investigations.

Paragraph (p)(2) requires the employer to promptly initiate an incident investigation and notify each authorized and affected employee who was, or could reasonably have been, affected by the incident.

Paragraph (p)(4) requires the employer to prepare a written report of the incident investigation. The written report must include: (1) The date and time of the incident; (2) the date and time the incident investigation began; (3) the location of the incident; (4) a description of the incident; (5) the factors that contributed to the incident; (6) a copy of any lockout/tags-plus log that was current at the time of the incident; and (7) any corrective actions that need to be taken as a result of the incident.

Paragraph (p)(6) requires the employer to complete the incident investigation and written report, and implement corrective actions, within 30 days following the incident.

Paragraph (p)(7) requires the employer to prepare a written abatement plan if it is infeasible to implement all of the corrective actions within 30 days. The abatement plan must contain an explanation of the circumstances causing the delay, a proposed timetable for abatement, and a summary of the steps the employer is taking in the interim to protect employees from hazardous energy while servicing machinery, equipment, or systems.

Auditing Energy-Control Procedures

The following collection of information requirements were not included in the proposed ICR. However, these collection of information requirements are similar to those contained in the proposal's Inspection and Certification Control procedures, which are not included in the final ICR.

Paragraph (q)(1) requires the employer to conduct, an audit, at least annually, of the lockout/tags-plus programs and procedures that are currently in use.

Paragraph (q)(4) requires, within 15 days of the completion of an audit, the employer to prepare and deliver a written audit report that includes at least: (1) The date of the audit; (2) the names of the individual(s) who performed the audit; (3) the identity of the procedure, and the machinery, equipment, or system, being audited; (4) the findings of the program audit and recommended actions to correct deviations or deficiencies identified during the audit; (5) incident investigation reports compiled since the previous audit; and (6) corrective actions the employer has taken in response to the audit. Conducting an audit of the energy-control procedures will ensure that the procedures in place are working properly and help to identify any deviations or inadequacies with the current procedures.

Section 1915.92 Retention of DOT Markings, Placards and Labels; § 1915.93 Motor Vehicle Safety Equipment, Operation and Maintenance; and § 1915.94 Servicing Multi-piece and Single Piece Rim Wheels

OSHA maintained that the Agency would incur no additional burden hours or costs for the collections of information requirements contained in the above mention of sections.

The final rule imposes program change increase of 99,645 initial new burden hours to 2,725 shipyard-employment establishments after the effective date of the final standard. Table 28 summarizes the burden hours and costs (Capital Costs and Maintenance) associated with each collection of information requirement contained in the final rule.

TABLE 28—GENERAL WORKING CONDITIONS IN SHIPYARD EMPLOYMENT (29 CFR 1915, SUBPART F) INFORMATION COLLECTION REQUEST (ICR)

[Summary of Burden Hours and Costs]

Collection of information	Initial burden hours	Recurring burden hours	Cost (tags and ties)	Number of initial responses
Marking Location of Stretchers (§ 1915.87(f)(3))	3	3	0	18
Developing Lockout/tags-plus Procedures (§ 1915.89 (b), (l)(1), and (l)(3))	18,988	7,846	$3,065	2,725
Lockout/tag-plus Log (§ 1915.89 (c)(7)(iv))	10,090	10,090	0	126,127
Notification of the Application and Removal of the Lockout or Tags-plus System for the Electrical Devices (§ 1915.89 (e)(1), (l)(2), (n)(3)(iv), and (i)(1)(i))	6,368	6,368	0	124,149
Notification of the Application and Removal of the Lockout or Tags-plus System for the Air and Hydraulic Power Sources (§ 1915.89 (e)(1), (l)(2), and (i)(1)(i))	14,464	14,464	0	14,464
Preparing Written Reports of the Incident Investigation (§ 1915.89 (p)(4))	44,097	44,097	0	1,102
Auditing of Energy Control Procedures (§ 1915.89(q)(4))	3,625	3,625	0	2,725
Employee Training and Training Certification (§ 1915.89(o)(7))	2,007	667	0	38,853
Disclosure of Records to OSHA (§ 1915.89 (r)(2))	3	3	0	38
Total	99,645	87,163	$3,065	310,181

IX. State Plan Requirements

When Federal OSHA promulgates a new rule or more stringent amendment to an existing rule, the 27 States and U.S. territories with their own OSHA-approved occupational safety and health plans (State-Plan States) must revise their standards to reflect the new rule or amendment, or show OSHA why there is no need for action (for example, because an existing State standard covering this area is already "at least as effective" as the new Federal standard or amendment) (29 CFR 1953.5(a)). The State rule must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government) sectors, and must be promulgated within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new rule or amendment that does not impose additional or more stringent requirements than an existing rule, States are not required to revise their standards, although OSHA may encourage them to do so.

Since this final rule will impose additional or more stringent requirements, those States that cover maritime issues and/or have public employees working in the industries the final rule covers will be required to revise their standards appropriately within six months of the promulgation date of this final rule unless they demonstrate that such amendments are not necessary because their existing standards are at least as effective in protecting workers as this final rule. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States that cover private-sector maritime activities.

Currently, only four States with their own State Plans (California, Minnesota, Vermont and Washington) cover private-sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in all the other State-Plan States: Alaska, Arizona, Connecticut (plan covers only State and local government employees), Hawaii, Illinois (plan covers only State and local government employees), Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Jersey (plan covers only State and local government employees), New Mexico, New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Virgin Islands (plan covers only territorial government employees), Virginia, and Wyoming.

X. Effective Dates

As discussed in Section I of this preamble ("Background"), OSHA is revising and updating the standards on general working conditions in shipyard employment to reflect advances in industry practices and technology, consolidating certain safety and health requirements into a single provision, and providing protection from hazards not previously addressed, including the control of hazardous energy. Due to comments received and testimony heard, OSHA significantly revised several provisions in the proposal, including the requirements for the control of hazardous energy.

The rulemaking record supports the need for the revisions and additions to subpart F to protect the safety and health of workers engaged in shipyard employment. OSHA currently requires, and shipyard employers implemented, many of the provisions in this subpart (for example, housekeeping and sanitation requirements). However, OSHA is aware that some employers (for example, small shipyards, fishing vessels) may need additional time to implement all of the requirements in the final rule for the control of hazardous energy. For example, they may need additional time to develop and implement or revise their lockout/tags-plus programs and procedures and complete all required initial training. Therefore, all sections of the final rule except for § 1915.89 will become effective and enforceable 90 days from the publication of this final rule. To ensure that employers have ample time to modify their lockout/tags-plus programs and practices, OSHA is allowing 180 days from the date of publication of this final rule for the lockout/tags-plus section to become effective and enforceable.

XI. List of Subjects

29 CFR Part 1910

Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements, and Vessels.

29 CFR Part 1915

Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and Recordkeeping requirements, Vessels, and Incorporation by reference.

XII. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational

Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. The Agency is issuing this final rule under Sections 4, 6(b), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order 5–2007 (72 FR 31160, June 5, 2007); and 29 CFR 1911.

Signed at Washington, DC, on April 14, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

XIII. Amendments to Standards

For the reasons set forth in the preamble, OSHA amends 29 CFR parts 1910 and 1915 as follows:

PART 1910—[AMENDED]

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

Subpart J—[Amended]

■ 1. The authority citation for subpart J of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355) as applicable.

Section 1910.145, also issued under 29 CFR 1911.2.

■ 2. In § 1910.145, paragraphs (a)(1) and (f)(1)(ii) are revised to read as follows:

§ 1910.145 Specifications for accident prevention signs and tags.

(a) *Scope.* (1) These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) that indicate and, insofar as possible, define specific hazards that could harm workers or the public, or both, or to property damage. These specifications are intended to cover all safety signs except those designed for streets, highways, and railroads. These specifications do not apply to plant bulletin boards or to safety posters.

* * * * *

(f) * * *

(1) * * *

(ii) This paragraph (f) does not apply to construction or agriculture.

* * * * *

■ 3. In § 1910.147, paragraphs (a)(1) is revised to read as follows:

§ 1910.147 The control of hazardous energy (lockout/tagout).

(a) *Scope, application, and purpose*—(1) *Scope.*

(i) This standard covers the servicing and maintenance of machines and equipment in which the energization or start up of the machines or equipment, or release of stored energy, could harm employees. This standard establishes minimum performance requirements for the control of such hazardous energy.

(ii) This standard does not cover the following:

(A) Construction and agriculture employment;

(B) Employment covered by parts 1915, 1917, and 1918 of this title;

(C) Installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution, including related equipment for communication or metering;

(D) Exposure to electrical hazards from work on, near, or with conductors or equipment in electric-utilization installations, which is covered by subpart S of this part; and

(E) Oil and gas well drilling and servicing.

* * * * *

Subpart N—[Amended]

■ 4. The authority citation for subpart N of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355) as applicable.

Section 1910.177, also issued under 29 CFR part 1911.

§ 1910.77 [Amended]

■ 5. In § 1910.177, paragraph (a)(2) is revised to read as follows:

(a) * * *

(2) This section does not apply to employers and places of employment regulated under the Longshoring Standards, 29 CFR part 1918; Construction Safety Standards, 29 CFR part 1926; or Agriculture Standards, 29 CFR part 1928.

* * * * *

PART 1915—[AMENDED]

■ 6. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355) as applicable; 29 CFR part 1911.

■ 7. In § 1915.5, add paragraph (d)(1)(xii) and (d)(1)(xiii) to read as follows:

§ 1915.5 Incorporation by reference.

* * * * *

(d) * * *

(1) * * *

(xii) ANSI/IESNA RP–7–01, Recommended Practice for Lighting Industrial Facilities, ANSI approved July 26, 2001, IBR approved for § 1915.82(a)(3).

(xiii) ANSI/ISEA Z308.1–2009, Revision of ANSI Z308.1–2003, Minimum Requirements for Workplace First Aid Kits and Supplies, ANSI approved May 8, 2009, IBR approved for § 1915.87 Appendix A.

* * * * *

Subpart F—[Amended]

■ 8. Subpart F of 29 CFR part 1915 is revised to read as follows:

Subpart F—General Working Conditions

Sec.

1915.80 Scope, application, definitions and effective dates.
1915.81 Housekeeping.
1915.82 Lighting.
1915.83 Utilities.
1915.84 Working alone.
1915.85 Vessel radar and communication systems.
1915.86 Lifeboats.
1915.87 Medical services and first aid.
1915.88 Sanitation.
1915.89 Control of hazardous energy (lockout/tagout).
1915.90 Safety color code for marking physical hazards.
1915.91 Accident prevention signs and tags.
1915.92 Retention of DOT markings, placards, and labels.
1915.93 Motor vehicle safety equipment, operation, and maintenance.
1915.94 Servicing of multi-piece and single-piece rim wheels.

Subpart F—General Working Conditions

§ 1915.80 Scope, application, definitions, and effective dates.

(a) The provisions of this subpart apply to general working conditions in shipyard employment, including work on vessels, on vessel sections, and at landside operations, regardless of geographic location.

(b) *Definitions applicable to this subpart.*

(1) *Additional safety measure.* A component of the tags-plus system that provides an impediment (in addition to the energy-isolating device) to the release of energy or the energization or startup of the machinery, equipment, or system being serviced. Examples of additional safety measures include, but are not limited to, removing an isolating circuit element; blocking a controlling switch; blocking, blanking, or bleeding lines; removing a valve handle or wiring it in place; opening an extra disconnecting device.

(2) *Affected employee.* An employee who normally operates or uses the machinery, equipment, or system that is going to be serviced under lockout/tags-plus or who is working in the area where servicing is being performed under lockout/tags-plus. An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

(3) *Authorized employee.* (i) An employee who performs one or more of the following lockout/tags-plus responsibilities:

(A) Executes the lockout/tags-plus procedures;

(B) Installs a lock or tags-plus system on machinery, equipment, or systems; or

(C) Services any machine, equipment, or system under lockout/tags-plus application.

(ii) An affected employee becomes an authorized employee when the employer assigns the employee to service any machine, equipment, or system under a lockout/tags-plus application.

(4) *Capable of being locked out.* An energy-isolating device is capable of being locked out if it has a locking mechanism built into it, or it has a hasp or other means of attachment to which, or through which, a lock can be affixed. Other energy-isolating devices are capable of being locked out if lockout can be achieved without the need to dismantle, rebuild, or replace the energy-isolating device or permanently alter its energy-control capability.

(5) *Contract employer.* An employer, such as a painting, joinery, carpentry, or scaffolding subcontractor, that performs shipyard-related services or work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide services that are not directly related to shipyard employment, such as mail delivery, office supply, and food vending services.

(6) *Dummy load.* A device used in place of an antenna to aid in the testing of a radio transmitter that converts transmitted energy into heat to minimize energy radiating outward or reflecting back to its source during testing.

(7) *Energy-isolating device.* A mechanical device that, when utilized or activated, physically prevents the release or transmission of energy. Energy-isolating devices include, but are not limited to, manually operated electrical circuit breakers; disconnect switches; line valves; blocks; and any similar device used to block or isolate energy. Control-circuit devices (for example, push buttons, selector switches) are not considered energy-isolating devices.

(8) *Hazardous energy.* Any energy source, including mechanical (for example, power transmission apparatus, counterbalances, springs, pressure, gravity), pneumatic, hydraulic, electrical, chemical, and thermal (for example, high or low temperature) energies, that could cause injury to employees.

(9) *Hazardous substances.* A substance that may cause injury, illness, or disease, or otherwise harm an employee by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful.

(10) *Health care professional.* A physician or any other healthcare professional whose legally permitted scope of practice allows the provider to independently provide, or be delegated the responsibility to provide, some or all of the advice or consultation this subpart requires.

(11) *Host employer.* An employer that is in charge of coordinating shipyard-related work, or that hires other employers to perform shipyard-related work or to provide shipyard-related services, at a multi-employer worksite.

(12) *Isolated location.* An area in which employees are working alone or with little assistance from others due to the type, time, or location of their work. Such locations include remote locations or other work areas where employees are not in close proximity to others.

(13) *Lock.* A device that utilizes a positive means, either a key or combination lock, to hold an energy-isolating device in a "safe" position that prevents the release of energy and the startup or energization of the machinery, equipment, or system to be serviced.

(14) *Lockout.* The placement of a lock on an energy-isolating device in accordance with an established procedure, thereby ensuring that the energy-isolating device and the equipment being controlled cannot be operated until the lock is removed.

(15) *Lockout/tags-plus coordinator.* An employee whom the employer designates to coordinate and oversee all lockout and tags-plus applications on vessels or vessel sections and at landside work areas when employees are performing multiple servicing operations on the same machinery, equipment, or systems at the same time, and when employees are servicing multiple machinery, equipment, or systems on the same vessel or vessel section at the same time. The lockout/tags-plus coordinator also maintains the lockout/tags-plus log.

(16) *Lockout/tags-plus materials and hardware.* Locks, chains, wedges, blanks, key blocks, adapter pins, self-locking fasteners, or other hardware used for isolating, blocking, or securing machinery, equipment, or systems to prevent the release of energy or the startup or energization of machinery, equipment, or systems to be serviced.

(17) *Motor vehicle.* Any motor-driven vehicle operated by an employee that is used to transport employees, material, or property. For the purposes of this subpart, motor vehicles include passenger cars, light trucks, vans, motorcycles, all-terrain vehicles, small utility trucks, powered industrial trucks, and other similar vehicles. Motor vehicles do not include boats, or vehicles operated exclusively on a rail or rails.

(18) *Motor vehicle safety equipment.* Systems and devices integral to or installed on a motor vehicle for the purpose of effecting the safe operation of the vehicle, and consisting of such systems or devices as safety belts, airbags, headlights, tail lights, emergency/hazard lights, windshield wipers, defogging or defrosting devices, brakes, horns, mirrors, windshields and other windows, and locks.

(19) *Navy ship's force.* The crew of a vessel that is owned or operated by the U.S. Navy, other than a time- or voyage-chartered vessel, that is under the control of a Commanding Officer or Master.

(20) *Normal production operations.* The use of machinery or equipment, including, but not limited to, punch presses, bending presses, shears, lathes, keel press rollers, and automated burning machines, to perform a shipyard-employment production process.

(21) *Portable toilet.* A non-sewered portable facility for collecting and containing urine and feces. A portable toilet may be either flushable or non-

flushable. For purposes of this section, portable toilets do not include privies.

(22) *Potable water.* Water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141).

(23) *Readily accessible/available.* Capable of being reached quickly enough to ensure, for example, that emergency medical services and first aid intervention are appropriate or that employees can reach sanitation facilities in time to meet their health and personal needs.

(24) *Sanitation facilities.* Facilities, including supplies, maintained for employee personal and health needs such as potable drinking water, toilet facilities, hand-washing and -drying facilities, showers (including quick-drenching or flushing) and changing rooms, eating and drinking areas, first aid stations, and on-site medical-service areas. Sanitation supplies include soap, waterless cleaning agents, single-use drinking cups, drinking water containers, toilet paper, and towels.

(25) *Serviceable condition.* The state or ability of supplies or goods, or of a tool, machine, vehicle, or other device, to be used or to operate in the manner prescribed by the manufacturer.

(26) *Servicing.* Workplace activities that involve the construction, installation, adjustment, inspection, modification, testing, or repair of machinery, equipment, or systems. Servicing also includes maintaining machines, equipment, or systems when performing these activities would expose the employee to harm from the start-up or energization of the system being serviced, or the release of hazardous energy.

(27) *Sewered toilet.* A fixture maintained for the purpose of urination and defecation that is connected to a sanitary sewer, septic tank, holding tank (bilge), or on-site sewage-disposal treatment facility, and that is flushed with water.

(28) *Shield.* To install a covering, protective layer, or other effective measure on or around steam hoses or temporary steam-piping systems, including metal fittings and couplings, to protect employees from contacting hot surfaces or elements.

(29) *Short bight.* A loop created in a line or rope that is used to tie back or fasten objects such as hoses, wiring, and fittings.

(30) *Tag.* A prominent warning device that includes a means of attachment that can be securely fastened to an energy-isolating device in accordance with an established procedure to indicate that the energy-isolating device and the equipment being controlled must not be operated until the tag is removed by an authorized employee.

(31) *Tags-plus system.* A system to control hazardous energy that consists of an energy-isolating device with a tag affixed to it, and at least one additional safety measure.

(32) *Verification of isolation.* The means necessary to detect the presence of hazardous energy, which may involve the use of a test instrument (for example, a voltmeter), and, for other than electric shock protection, a visual inspection, or a deliberate attempt to start-up the machinery, equipment, or system.

(33) *Vermin.* Insects, birds, and other animals, such as rodents and feral cats, that may create safety and health hazards for employees.

(34) *Vessel section.* A subassembly, module, or other component of a vessel being built or repaired.

(35) *Walkway.* Any surface, whether vertical, slanted, or horizontal, on which employees walk, including areas that employees pass through, to perform their job tasks. Walkways include, but are not limited to, access ways, designated walkways, aisles, exits, gangways, ladders, ramps, stairs, steps, passageways, and scaffolding. If an area is, or could be, used to gain access to other locations, it is to be considered a walkway.

(36) *Work area.* A specific area, such as a machine shop, engineering space, or fabrication area, where one or more employees are performing job tasks.

(37) *Working surface.* Any surface where work is occurring, or areas where tools, materials, and equipment are being staged for performing work.

(38) *Worksite.* A general work location where one or more employees are performing work, such as a shipyard, pier, barge, vessel, or vessel section.

(c) *Effective dates.* This final rule becomes effective and enforceable on August 1, 2011, except for the provisions in § 1915.89, which become effective and enforceable on October 31, 2011.

§ 1915.81 Housekeeping.

(a) *General requirements.*

(1) The employer shall establish and maintain good housekeeping practices to eliminate hazards to employees to the extent practicable.

(2) The employer shall eliminate slippery conditions, such as snow and ice, on walkways and working surfaces as necessary. If it is not practicable for the employer to remove slippery conditions, the employer either shall:

(i) Restrict employees to designated walkways and working surfaces where the employer has eliminated slippery conditions; or

(ii) Provide slip-resistant footwear in accordance with 29 CFR part 1915, subpart I.

(3) The employer shall store materials in a manner that does not create a hazard for employees.

(4) The employer shall maintain easy and open access to each fire-alarm box, fire-call station, fire-fighting equipment, and each exit, including ladders, staircases, scaffolds, and gangways.

(5) The employer shall dispose of flammable and combustible substances, such as paint thinners, solvents, rags, scrap, and waste, or store them in covered fire-resistant containers at the end of each workshift or when the job is completed, whichever occurs first.

(b) *Walkways.*

(1) In addition to the requirements in paragraph (a), the employer also shall ensure that each walkway:

(i) Provides adequate passage;

(ii) Is clear of debris, including solid and liquid wastes, that may create a hazard for employees;

(iii) Is clear of tools, materials, equipment, and other objects that may create a hazard for employees; and

(iv) Is clear of hoses and electrical service cords. The employer shall:

(A) Place each hose and cord above walkways in a location that will prevent injury to employees and damage to the hoses and cords;

(B) Place each hose and cord underneath walkways;

(C) Place each hose and cord on walkways, provided the hoses and cords are covered by crossovers or other means that will prevent injury to employees and damage to the hoses and cords; or

(D) Protect each hose and cord by other suitable means.

(2) While a walkway or part of a walkway is being used as a working surface, the employer shall cordon off that portion to prevent it from being used as a walkway.

(c) *Working surfaces.* In addition to the requirements in paragraph (a), the employer also shall ensure that each working surface:

(1) Is cleared of tools, materials, and equipment that are not necessary to perform the job in progress;

(2) Is cleared of debris, including solid and liquid wastes, at the end of each workshift or job, whichever occurs first;

(3) Is maintained, so far as practicable, in a dry condition. When a wet process

is used, the employer shall maintain drainage and provide false floors, platforms, mats, or other dry standing places. When the employer demonstrates that this procedure is not practicable, the employer shall provide each employee working in the wet process with protective footgear, in accordance with 29 CFR part 1915, subpart I.

§ 1915.82 Lighting.

(a) *General Requirements.* (1) The employer shall ensure that each work area and walkway is adequately lighted whenever an employee is present.

(2) For landside areas, the employer shall provide illumination that meets the levels set forth in Table F–1 to § 1915.82.

TABLE F–1 TO § 1915.82—MINIMUM LIGHTING INTENSITIES IN FOOT-CANDLES

Lumens (foot-candles)	Area or operation
3	General areas on vessels and vessel sections such as accessways, exits, gangways, stairs, and walkways.
5	General landside areas such as corridors, exits, stairs, and walkways.
5	All assigned work areas on any vessel or vessel section.
5	Landside tunnels, shafts, vaults, pumping stations, and underground work areas.
10	Landside work areas such as machine shops, electrical equipment rooms, carpenter shops, lofts, tool rooms, warehouses, and outdoor work areas.
10	Changing rooms, showers, sewered toilets, and eating, drinking, and break areas.
30	First aid stations, infirmaries, and offices.

Note to table F–1 to § 1915.82: The required illumination levels in this table do not apply to emergency or portable lights.

(3) For vessels and vessel sections, the employer shall provide illumination that meets the levels set forth in the table to paragraph (a)(2) or meet ANSI/IESNA RP–7–01 (incorporated by reference, see 1915.5).

(4) When adequate illumination is not obtainable by permanent lighting sources, temporary lighting may be used as supplementation.

(5) The employer shall ensure that neither matches nor open-flame devices are used for lighting.

(b) *Temporary lights.* The employer shall ensure that temporary lights meet the following requirements:

(1) Lights with bulbs that are not completely recessed are equipped with guards to prevent accidental contact with the bulb;

(2) Lights are equipped with electric cords designed with sufficient capacity to safely carry the electric load;

(3) Connections and insulation on electric cords are maintained in a safe condition;

(4) Lights and lighting stringers are not suspended solely by their electric cords unless they are designed by the manufacturer to be suspended in this way;

(5) Lighting stringers do not overload branch circuits;

(6) Branch circuits are equipped with over-current protection with a capacity that does not exceed the rated current-carrying capacity of the cord used;

(7) Splices have insulation with a capacity that exceeds that of the original insulation of the cord; and

(8) Exposed, non-current-carrying metal parts of lights are grounded. The employer shall ensure that grounding is provided either through a third wire in the cord containing the circuit conductors or through a separate wire that is grounded at the source of the current. Grounding shall be done in accordance with the requirements of 29 CFR 1910, subpart S.

(c) *Portable lights.* (1) In any dark area that does not have permanent or temporary lights, where lights are not working, or where lights are not readily accessible, the employer shall provide portable or emergency lights and ensure that employees do not enter those areas without such lights.

(2) Where the only means of illumination on a vessel or vessel section are from lighting sources that are not part of the vessel or vessel section, the employer shall provide portable or emergency lights for the safe movement of each employee. If natural sunlight provides sufficient illumination, portable or emergency lights are not required.

(d) *Explosion-proof, self-contained lights.* The employer shall provide and ensure that each employee uses only explosion-proof, self-contained temporary and portable lights, approved for hazardous conditions by a nationally recognized testing laboratory (NRTL), in any area that the atmosphere is determined to contain a concentration of flammable vapors that are at or above 10 percent of the lower explosive limit (LEL) as specified in 29 CFR part 1915, subparts B and C.

§ 1915.83 Utilities.

(a) *Steam supply system.* (1) The employer shall ensure that the vessel's steam piping system, including hoses, is designed to safely handle the working pressure prior to supplying steam from an outside source. The employer shall obtain a written or oral determination from a responsible vessel's representative, a contractor, or any other person who is qualified by training, knowledge, or experience to make such determination that the working pressure of the vessel's steam piping system is safe.

(2) The employer shall ensure that each outside steam supply connected to a vessel's steam piping system meets the following requirements:

(i) A pressure gauge and a relief valve are installed at the point where the temporary steam hose joins the vessel's steam piping system;

(ii) Each relief valve is set to relieve excess steam at, and is capable of relieving steam at, a pressure that does not exceed the safe working pressure of the system in its present condition;

(iii) There are no means of inadvertently disconnecting any relief valve from the system that it protects;

(iv) Each pressure gauge and relief valve is legible and located so it is visible and readily accessible; and

(v) Each relief valve is positioned so it is not likely to cause injury if steam is released.

(b) *Steam hoses.* The employer shall ensure that each steam hose meets the following requirements:

(1) The steam hose and its fittings are used in accordance with manufacturer's specifications;

(2) Each steam hose is hung tightly with short bights that prevent chafing and to reduce tension on the hose and its fittings;

(3) Each steam hose is protected from damage; and

(4) Each steam hose or temporary steam piping, including metal fittings and couplings, that pass through a walking or working area is shielded to protect employees from contact.

(c) *Electric shore power.* When a vessel is supplied with electric shore

power, the employer shall take the following precautions prior to energizing any of the vessel's circuits:

(1) Ensure that the vessel is grounded;

(2) Equip each circuit to be energized with over-current protection that does not exceed the rated current-carrying capacity of the conductors; and

(3) Ensure that each circuit to be energized is in a safe condition. The employer must obtain a determination of the safe condition, either orally or in writing, from a responsible vessel's representative, a contractor, or any other person who is qualified by training, knowledge, or experience to make such determination.

(d) *Heat lamps.* The employer shall ensure that each heat lamp, including the face, is equipped with surround-type guards to prevent contact with the lamp and bulb.

§ 1915.84 Working alone.

(a) Except as provided in § 1915.51(c)(3) of this part, whenever an employee is working alone, such as in a confined space or isolated location, the employer shall account for each employee:

(1) Throughout each workshift at regular intervals appropriate to the job assignment to ensure the employee's safety and health; and

(2) At the end of the job assignment or at the end of the workshift, whichever occurs first.

(b) The employer shall account for each employee by sight or verbal communication.

§ 1915.85 Vessel radar and communication systems.

(a) The employer shall service each vessel's radar and communication systems in accordance with 29 CFR 1915.89, Control of Hazardous Energy.

(b) The employer shall secure each vessel's radar and communication system so it is incapable of energizing or emitting radiation before any employee begins work:

(1) On or in the vicinity of the system;

(2) On or in the vicinity of a system equipped with a dummy load; or

(3) Aloft, such as on a mast or king post.

(c) When a vessel's radar or communication system is operated, serviced, repaired, or tested, the employer shall ensure that:

(1) There is no other work in progress aloft; and

(2) No employee is closer to the system's antenna or transmitter than the manufacturer's specified safe minimum distance for the type, model, and power of the equipment.

(d) The employer shall ensure that no employee enters an area designated as hazardous by manufacturers' specifications while a radar or communication system is capable of emitting radiation.

(e) The requirements of this section do not apply when a radar or communication system is incapable of emitting radiation at levels that could injure workers in the vicinity of the system, or if the radar or communication system is incapable of energizing in a manner than could injure workers working on or in the vicinity of the system.

§ 1915.86 Lifeboats.

(a) Before any employee works in or on a stowed or suspended lifeboat, the employer shall secure the lifeboat independently from the releasing gear to prevent it from falling or capsizing.

(b) The employer shall not permit any employee to be in a lifeboat while it is being hoisted or lowered, except when the employer demonstrates that it is necessary to conduct operational tests or drills over water, or in the event of an emergency.

(c) The employer shall not permit any employee to work on the outboard side of a lifeboat that is stowed on chocks unless the lifeboat is secured by gripes or another device that prevents it from swinging.

§ 1915.87 Medical services and first aid.

(a) *General requirement.* The employer shall ensure that emergency medical services and first aid are readily accessible.

(b) *Advice and consultation.* The employer shall ensure that healthcare professionals are readily available for advice and consultation on matters of workplace health.

(c) *First aid providers.* (1) The employer shall ensure that there is an adequate number of employees trained as first aid providers at each worksite during each workshift unless:

(i) There is an on-site clinic or infirmary with first aid providers during each workshift; or

(ii) The employer can demonstrate that outside first aid providers (i.e., emergency medical services) can reach the worksite within five (5) minutes of a report of injury or illness. The employer must take appropriate steps to ascertain that emergency medical assistance will be readily available promptly if an injury or illness occurs.

(2) The employer shall ensure that a first aid provider is able to reach an injured/ill employee within five (5) minutes of a report of a serious injury, illness, or accident such as one involving cardiac arrest, acute breathing problems, uncontrolled bleeding, suffocation, electrocution, or amputation.

(3) The employer shall use the following factors in determining the number and location of employees who must have first aid training: size and location of each worksite; the number of employees at each worksite; the hazards present at each worksite; and the distance of each worksite from hospitals, clinics, and rescue squads.

(4) The employer shall ensure that first aid providers are trained to render first aid, including cardiopulmonary resuscitation (CPR).

(5) The employer shall ensure that each first aid provider maintains current first aid and CPR certifications, such as issued by the Red Cross, American Heart Association, or other equivalent organization.

(d) *First aid supplies.* (1) The employer shall provide and maintain adequate first aid supplies that are readily accessible to each worksite. An employer's on-site infirmary or clinic containing first aid supplies that are readily accessible to each worksite complies with this requirement.

(2) The employer shall ensure that the placement, content, and amount of first aid supplies are adequate for the size and location of each worksite, the number of employees at each worksite, the hazards present at each worksite, and the distance of each worksite from hospitals, clinics, and rescue squads.

(3) The employer shall ensure that first aid supplies are placed in a weatherproof container.

(4) The employer shall maintain first aid supplies in a dry, sterile, and serviceable condition.

(5) The employer shall replenish first aid supplies as necessary to ensure that there is an adequate supply when needed.

(6) The employer shall inspect first aid supplies at sufficient intervals to ensure that they are adequate and in a serviceable condition.

(e) *Quick-drenching and flushing facilities.* Where the potential exists for an employee to be splashed with a substance that may result in an acute or serious injury, the employer shall provide facilities for quick-drenching or flushing the eyes and body. The employer shall ensure that such a facility is located for immediate emergency use within close proximity to operations where such substances are being used.

(f) *Basket stretchers.* (1) The employer shall provide an adequate number of basket stretchers, or the equivalent, readily accessible to where work is being performed on a vessel or vessel section. The employer is not required to

provide basket stretchers or the equivalent where emergency response services have basket stretchers or the equivalent that meet the requirements of this paragraph.

(2) The employer shall ensure each basket stretcher, or the equivalent, is equipped with:

(i) Permanent lifting bridles that enable the basket stretcher, or the equivalent, to be attached to hoisting gear capable of lifting at least 5,000 pounds (2,270 kg);

(ii) Restraints that are capable of securely holding the injured/ill employee while the basket stretcher, or the equivalent, is lifted or moved; and

(iii) A blanket or other suitable covering for the injured/ill employee.

(3) The employer shall store basket stretchers, or the equivalent, and related equipment (i.e., restraints, blankets) in a clearly marked location in a manner that prevents damage and protects the equipment from environmental conditions.

(4) The employer shall inspect stretchers, or the equivalent, and related equipment at intervals that ensure the equipment remains in a safe and serviceable condition, but at least once a year.

Appendix A to § 1915.87—First Aid Kits and Automated External Defibrillators (Non-Mandatory)

1. First aid supplies are required to be adequate and readily accessible under paragraphs § 1915.87(a) and (d). An example of the minimal contents of a generic first aid kit for workplace settings is described in ANSI/ISEA Z308.1–2009, "Minimum Requirements for Workplace First Aid Kits and Supplies" (incorporated by reference as specified in § 1915.5). The contents of the kit listed in this ANSI standard should be adequate for small worksites. When larger operations or multiple operations are being conducted at the same worksite, employers should determine the need for additional first aid kits, additional types of first aid equipment and supplies, and additional quantities and types of supplies and equipment in the first aid kits.

2. In a similar fashion, employers that have unique or changing first aid needs at their worksite may need to enhance their first aid kits. The employer can use the OSHA 300 Log, OSHA 301 Incident Report form, or other reports to identify these unique problems. Consultation from the local fire or rescue department, appropriate healthcare professional or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their worksite, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically, and augment first aid kits appropriately.

3. If it is reasonably anticipated that employees will be exposed to blood or other potentially infectious materials while using first aid supplies, employers must provide appropriate personal protective equipment (PPE) in compliance with the provisions of the Occupational Exposure to Bloodborne Pathogens standard, § 1910.1030(d)(3). This standard lists appropriate PPE for this type of exposure, such as gloves, gowns, face shields, masks, and eye protection.

4. Employers who provide automated external defibrillators (AEDs) at their workplaces should designate who will use AEDs and train those employees so they know how to correctly use the AEDs. Although a growing number of AEDs are now designed to be used by any person, even without training, training reinforces proper use and promotes the usefulness of AEDs as part of an effective cardiopulmonary resuscitation plan. For AEDs to be effective, employers should:

a. Ensure that AEDs are located so they can be utilized within three to five minutes of a report of an accident or injury;

b. Ensure that employees use AEDs in accordance with manufacturers' specifications; and

c. Inspect, test, and maintain AEDs in accordance with manufacturers' specifications.

§ 1915.88 Sanitation.

(a) *General requirements.* (1) The employer shall provide adequate and readily accessible sanitation facilities.

(2) The employer shall establish and implement a schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary, and serviceable condition.

(b) *Potable water.* (1) The employer shall provide potable water for all employee health and personal needs and ensure that only potable water is used for these purposes.

(2) The employer shall provide potable drinking water in amounts that are adequate to meet the health and personal needs of each employee.

(3) The employer shall dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. The employer shall prohibit the use of shared drinking cups, dippers, and water bottles.

(c) *Non-potable water.* (1) The employer may use non-potable water for other purposes such as firefighting and cleaning outdoor premises so long as it does not contain chemicals, fecal matter, coliform, or other substances at levels that may create a hazard for employees.

(2) The employer shall clearly mark non-potable water supplies and outlets as "not safe for health or personal use."

(d) *Toilets.* (1) *General requirements.* The employer shall ensure that sewered and portable toilets:

(i) Provide privacy at all times. When a toilet facility contains more than one toilet, each toilet shall occupy a separate compartment with a door and walls or partitions that are sufficiently high to ensure privacy; and

(ii) Are separate for each sex, except as provided in (d)(1)(ii)(B) of this section;

(A) The number of toilets provided for each sex shall be based on the maximum number of employees of that sex present at the worksite at any one time during a workshift. A single-occupancy toilet room shall be counted as one toilet regardless of the number of toilets it contains; and

(B) The employer does not have to provide separate toilet facilities for each sex when they will not be occupied by more than one employee at a time, can be locked from the inside, and contain at least one toilet.

(iii) The employer shall establish and implement a schedule to ensure that each sewered and portable toilet is maintained in a clean, sanitary, and serviceable condition.

(2) *Minimum number of toilets.* (i) The employer shall provide at least the following number of toilets for each sex. Portable toilets that meet the requirements of paragraph (d)(3) of this section may be included in the minimum number of toilets.

TABLE F–2 TO § 1915.88

Number of employees of each sex	Minimum number of toilets per sex
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
Over 150	1 additional toilet for each additional 40 employees.

Note to Table F–2 of § 1915.88: When toilets will only be used by men, urinals may be provided instead of toilets, except that the number of toilets in such cases shall not be reduced to less than two-thirds of the minimum specified.

(3) *Portable toilets.* (i) The employer shall provide portable toilets, pursuant to paragraph (d)(2)(i) and Table to paragraph (d)(2) of this section, only when the employer demonstrates that it is not feasible to provide sewered toilets, or when there is a temporary increase in the number of employees for a short duration of time.

(ii) The employer shall ensure that each portable toilet is vented and equipped, as necessary, with lighting.

(4) *Exception for normally unattended worksites and mobile work crews.* The requirement to provide toilets does not apply to normally unattended worksites

and mobile work crews, provided that the employer ensures that employees have immediately available transportation to readily accessible sanitation facilities that are maintained in a clean, sanitary, and serviceable condition and meet the other requirements of this section.

(e) *Handwashing facilities.* (1) The employer shall provide handwashing facilities at or adjacent to each toilet facility.

(2) The employer shall ensure that each handwashing facility:

(i) Is equipped with either hot and cold or lukewarm running water and soap, or with waterless skin-cleansing agents that are capable of disinfecting the skin or neutralizing the contaminants to which the employee may be exposed; and

(ii) If the facility uses soap and water, it is supplied with clean, single-use hand towels stored in a sanitary container and a sanitary means for disposing of them, clean individual sections of continuous cloth toweling, or a hand-drying air blower.

(3) The employer shall inform each employee engaged in the application of paints or coatings or in other operations in which hazardous or toxic substances can be ingested or absorbed about the need for removing surface contaminants from their skins surface by thoroughly washing their hands and face at the end of the workshift and prior to eating, drinking, or smoking.

(f) *Showers.* (1) When showers are required by an OSHA standard, the employer shall provide one shower for each 10, or fraction of 10, employees of each sex who are required to shower during the same workshift.

(2) The employer shall ensure that each shower is equipped with soap, hot and cold water, and clean towels for each employee who uses the shower.

(g) *Changing rooms.* When an employer provides protective clothing to prevent employee exposure to hazardous or toxic substances, the employer shall provide the following:

(1) Changing rooms that provide privacy for each sex; and

(2) Storage facilities for street clothes, as well as separate storage facilities for protective clothing.

(h) *Eating, drinking, and break areas.* The employer shall ensure that food, beverages, and tobacco products are not consumed or stored in any area where employees may be exposed to hazardous or toxic substances.

(i) *Waste disposal.* (1) The employer shall provide waste receptacles that meet the following requirements:

(i) Each receptacle is constructed of materials that are corrosion resistant, leak-proof, and easily cleaned or disposable;

(ii) Each receptacle is equipped with a solid tight-fitting cover, unless it can be kept in clean, sanitary, and serviceable condition without the use of a cover;

(iii) Receptacles are provided in numbers, sizes, and locations that encourage their use; and

(iv) Each receptacle is emptied as often as necessary to prevent it from overfilling and in a manner that does not create a hazard for employees. Waste receptacles for food shall be emptied at least every day, unless unused.

(2) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage that could endanger their safety and health.

(3) The employer shall ensure that employees working beneath or on the outboard side of a vessel are not contaminated by drainage or waste from overboard discharges.

(j) *Vermin control.* (1) To the extent reasonably practicable, the employer shall clean and maintain the workplace in a manner that prevents vermin infestation.

(2) Where vermin are detected, the employer shall implement and maintain an effective vermin-control program.

§ 1915.89 Control of hazardous energy (lockout/tags-plus).

(a) *Scope, application, and effective dates* . (1) *Scope.* This section covers the servicing of machinery, equipment, and systems when the energization or startup of machinery, equipment, or systems, or the release of hazardous energy, could endanger an employee.

(2) *Application.* (i) This section applies to the servicing of any machinery, equipment, or system that employees use in the course of shipyard employment work and that is conducted:

(A) In any landside facility that performs shipyard employment work; and

(B) On any vessel or vessel section.

(ii) This section applies to such servicing conducted on a vessel by any employee including, but not limited to, the ship's officers and crew unless such application is preempted by the regulations of another federal agency.

(3) When other standards in 29 CFR part 1915 and applicable standards in 29 CFR part 1910 require the use of a lock or tag, the employer shall use and supplement them with the procedural and training requirements specified in this section.

(4) *Exceptions.* This section does not apply to:

(i) Work on cord-and-plug-connected machinery, equipment, or system, provided the employer ensures that the machinery, equipment, or system is unplugged and the plug is under the exclusive control of the employee performing the servicing;

(ii) Minor servicing activities performed during normal production operations, including minor tool changes and adjustments, that are routine, repetitive, and integral to the use of the machinery, equipment, or system, provided the employer ensures that the work is performed using measures that provide effective protection from energization, startup, or the release of hazardous energy.

(b) *Lockout/tags-plus program.* The employer shall establish and implement a written program and procedures for lockout and tags-plus systems to control hazardous energy during the servicing of any machinery, equipment, or system in shipyard employment. The program shall cover:

(1) Procedures for lockout/tags-plus systems while servicing machinery, equipment, or systems in accordance with paragraph (c) of this section;

(2) Procedures for protecting employees involved in servicing any machinery, equipment, or system in accordance with paragraphs (d) through (m) of this section;

(3) Specifications for locks and tags-plus hardware in accordance with paragraph (n) of this section;

(4) Employee information and training in accordance with paragraph (o) of this section;

(5) Incident investigations in accordance with paragraph (p) of this section; and

(6) Program audits in accordance with paragraph (q) of this section.

(c) *General requirements.* (1) The employer shall ensure that, before any authorized employee performs servicing when energization or startup, or the release of hazardous energy, may occur, all energy sources are identified and isolated, and the machinery, equipment, or system is rendered inoperative.

(2) If an energy-isolating device is capable of being locked, the employer shall ensure the use of a lock to prevent energization or startup, or the release of hazardous energy, before any servicing is started, unless the employer can demonstrate that the utilization of a tags-plus system will provide full employee protection as set forth in paragraph (c)(6) of this section.

(3) If an energy-isolating device is not capable of being locked, the employer shall ensure the use of a tags-plus system to prevent energization or

startup, or the release of hazardous energy, before any servicing is started.

(4) Each tags-plus system shall consist of:

(i) At least one energy-isolating device with a tag affixed to it; and

(ii) At least one additional safety measure that, along with the energy-isolating device and tag required in (c)(4)(i) of this section, will provide the equivalent safety available from the use of a lock.

Note to paragraph (c)(4) of this section: When the Navy ship's force maintains control of the machinery, equipment, or systems on a vessel and has implemented such additional measures it determines are necessary, the provisions of paragraph (c)(4)(ii) of this section shall not apply, provided that the employer complies with the verification procedures in paragraph (g) of this section.

(5) After October 31, 2011, the employer shall ensure that each energy-isolating device for any machinery, equipment, or system is designed to accept a lock whenever the machinery, equipment, or system is extensively repaired, renovated, modified, or replaced, or whenever new machinery, equipment, or systems are installed. This requirement does not apply when a shipyard employer:

(i) Does not own the machinery, equipment, or system; or

(ii) Builds or services a vessel or vessel section according to customer specifications.

(6) *Full employee protection.* (i) When a tag is used on an energy-isolating device that is capable of being locked out, the tag shall be attached at the same location that the lock would have been attached, and;

(ii) The employer shall demonstrate that the use of a tags-plus system will provide a level of safety equivalent to that obtained by using a lock. In demonstrating that an equivalent level of safety is achieved, the employer shall:

(A) Demonstrate full compliance with all tags-plus-related provisions of this standard; and

(B) Implement such additional safety measures as are necessary to provide the equivalent safety available from the use of a lock.

Note to paragraph (c)(6) of this section: When the Navy ship's force maintains control of the machinery, equipment, or systems on a vessel and has implemented such additional measures it determines are necessary, the provisions of paragraph (c)(6)(ii)(B) of this section do not apply, provided that the employer complies with the verification procedures in paragraph (g) of this section.

(7) *Lockout/tags-plus coordination.* (i) The employer shall establish and implement lockout/tags-plus coordination when:

(A) Employees on vessels and in vessel sections are servicing multiple machinery, equipment, or systems at the same time; or

(B) Employees on vessels, in vessel sections, and at landside facilities are performing multiple servicing operations on the same machinery, equipment, or system at the same time.

(ii) The coordination process shall include a lockout/tags-plus coordinator and a lockout/tags-plus log. Each log shall be specific to each vessel, vessel section, and landside work area.

(iii) The employer shall designate a lockout/tags-plus coordinator who is responsible for overseeing and approving:

(A) The application of each lockout and tags-plus system;

(B) The verification of hazardous-energy isolation before the servicing of any machinery, equipment, or system begins; and

(C) The removal of each lockout and tags-plus system.

(iv) The employer shall ensure that the lockout/tags-plus coordinator maintains and administers a continuous log of each lockout and tags-plus system. The log shall contain:

(A) Location of machinery, equipment, or system to be serviced;

(B) Type of machinery, equipment, or system to be serviced;

(C) Name of the authorized employee applying the lockout/tags-plus system;

(D) Date that the lockout/tags-plus system is applied;

(E) Name of authorized employee removing the lock or tags-plus system; and

(F) Date that lockout/tags-plus system is removed.

Note to paragraph (c)(7) of this section: When the Navy ship's force serves as the lockout/tags-plus coordinator and maintains control of the lockout/tags-plus log, the employer will be in compliance with the requirements in paragraph (c)(7) of this section when coordination between the ship's force and the employer occurs to ensure that applicable lockout/tags-plus procedures are followed and documented.

(d) *Lockout/tags-plus written procedures.* (1) The employer shall establish and implement written procedures to prevent energization or startup, or the release of hazardous energy, during the servicing of any machinery, equipment, or system. Each procedure shall include:

(i) A clear and specific outline of the scope and purpose of the lockout/tags-plus procedure;

(ii) The means the employer will use to enforce compliance with the lockout/tags-plus program and procedures; and

(iii) The steps that must be followed for:

(A) Preparing for shutting down and isolating of the machinery, equipment, or system to be serviced, in accordance with paragraph (e) of this section;

(B) Applying the lockout/tags-plus system, in accordance with paragraph (f) of this section;

(C) Verifying isolation, in accordance with paragraph (g) of this section;

(D) Testing the machinery, equipment, or system, in accordance with paragraph (h) of this section;

(E) Removing lockout/tags-plus systems, in accordance with paragraph (i) of this section;

(F) Starting up the machinery, equipment, or system that is being serviced, in accordance with paragraph (j) of this section;

(G) Applying lockout/tags-plus systems in group servicing operations, in accordance with paragraph (k) of this section;

(H) Addressing multi-employer worksites involved in servicing any machinery, equipment, or system, in accordance with paragraph (l) of this section; and

(I) Addressing shift or personnel changes during servicing operations, in accordance with paragraph (m) of this section.

Note to paragraph (d)(1) of this section: The employer need only develop a single procedure for a group of similar machines, equipment, or systems if the machines, equipment, or systems have the same type and magnitude of energy and the same or similar types of controls, and if a single procedure can satisfactorily address the hazards and the steps to be taken to control these hazards.

(2) The employer's lockout procedures do not have to be in writing for servicing machinery, equipment, or systems, provided that all of the following conditions are met:

(i) There is no potential for hazardous energy to be released (or to reaccumulate) after shutting down, or restoring energy to, the machinery, equipment, or system;

(ii) The machinery, equipment, or system has a single energy source that can be readily identified and isolated;

(iii) The isolation and lock out of that energy source will result in complete de-energization and deactivation of the machinery, equipment, or system, and there is no potential for reaccumulation of energy;

(iv) The energy source is isolated and secured from the machinery, equipment, or system during servicing;

(v) Only one lock is necessary for isolating the energy source;

(vi) The lock is under the exclusive control of the authorized employee performing the servicing;

(vii) The servicing does not create a hazard for any other employee; and

(viii) The employer, in utilizing this exception, has not had any accidents or incidents involving the activation or reenergization of this type of machinery, equipment, or system during servicing.

(e) *Procedures for shutdown and isolation.* (1) Before an authorized employee shuts down any machinery, equipment, or system, the employer shall:

(i) Ensure that the authorized employee has knowledge of:

(A) The source, type, and magnitude of the hazards associated with energization or startup of the machine, equipment, or system;

(B) The hazards associated with the release of hazardous energy; and

(C) The means to control these hazards; and

(ii) Notify each affected employee that the machinery, equipment, or system will be shut down and deenergized prior to servicing, and that a lockout/tags-plus system will be implemented.

(2) The employer shall ensure that the machinery, equipment, or system is shut down according to the written procedures the employer established.

(3) The employer shall use an orderly shutdown to prevent exposing any employee to risks associated with hazardous energy.

(4) The employer shall ensure that the authorized employee relieves, disconnects, restrains, or otherwise renders safe all potentially hazardous energy that is connected to the machinery, equipment, or system.

Note to paragraph (e) of this section: When the Navy ship's force shuts down any machinery, equipment, or system, and relieves, disconnects, restrains, or otherwise renders safe all potentially hazardous energy that is connected to the machinery, equipment, or system, the employer will be in compliance with the requirements in paragraph (e) of this section when the employer's authorized employee verifies that the machinery, equipment, or system being serviced has been properly shut down, isolated, and deenergized.

(f) *Procedures for applying lockout/tags-plus systems.* (1) The employer shall ensure that only an authorized employee applies a lockout/tags-plus system.

(2) When using lockout systems, the employer shall ensure that the authorized employee affixes each lock in a manner that will hold the energy-isolating device in a safe or off position.

(3) When using tags-plus systems, the employer shall ensure that the authorized employee affixes a tag directly to the energy-isolating device that clearly indicates that the removal of the device from a safe or off position is prohibited.

(4) When the tag cannot be affixed directly to the energy-isolating device the employer shall ensure that the authorized employee locates it as close as safely possible to the device, in a safe and immediately obvious position.

(5) The employer shall ensure that each energy-isolating device that controls energy to the machinery, equipment, or system is effective in isolating the machinery, equipment, or system from all potentially hazardous energy source(s).

Note to paragraph (f) of this section: When the Navy ship's force applies the lockout/tags-plus systems or devices, the employer will be in compliance with the requirements in paragraph (f) of this section when the employer's authorized employee verifies the application of the lockout/tags-plus systems or devices.

(g) *Procedures for verification of deenergization and isolation.* (1) Before servicing machinery, equipment, or a system that has a lockout/tags-plus system, the employer shall ensure that the authorized employee, or the primary authorized employee in a group lockout/tags-plus application, verifies that the machinery, equipment, or system is deenergized and all energy sources isolated.

(2) The employer shall ensure that the authorized employee, or the primary authorized employee in a group lockout/tags-plus application, continues verifying deenergization and isolation while servicing the machinery, equipment, or system.

(3) Each authorized employee in a group lockout/tags-plus application who will be servicing the machinery, equipment, or system must be given the option to verify that the machinery, equipment, or system is deenergized and all energy sources isolated, even when verification is performed by the primary authorized employee.

(h) *Procedures for testing.* In each situation in which a lockout/tags-plus system must be removed temporarily and the machinery, equipment, or system restarted to test it or to position a component, the employer shall ensure that the authorized employee does the following in sequence:

(1) Clears tools and materials from the work area;

(2) Removes nonessential employees from the work area;

(3) Removes each lockout/tags-plus system in accordance with paragraph (i) of this section;

(4) Restarts the machinery, equipment, or system and then proceeds with testing or positioning; and

(5) After completing testing or positioning, deenergizes and shuts down the machinery, equipment, or system and reapplies all lockout/tags-plus systems in accordance with paragraphs (e)–(g) of this section to continue servicing.

Note to paragraph (h) of this section: When the Navy ship's force serves as the lockout/tags-plus coordinator, performs the testing, and maintains control of the lockout/tags-plus systems or devices during testing, the employer is in compliance with paragraph (h) when the employer's authorized employee acknowledges to the lockout/tags-plus coordinator that the employer's personnel and tools are clear and the machinery, equipment, or system being serviced is ready for testing, and upon completion of the testing, verifies the reapplication of the lockout/tags-plus systems.

(i) *Procedures for removal of lockout and tags-plus systems.* (1) Before removing any lockout/tags-plus system and restoring the machinery, equipment, or system to use, the employer shall ensure that the authorized employee does the following:

(i) Notifies all other authorized and affected employees that the lockout/tags-plus system will be removed;

(ii) Ensures that all employees in the work area have been safely positioned or removed; and

(iii) Inspects the work area to ensure that nonessential items have been removed and machinery, equipment, or system components are operationally intact.

(2) The employer shall ensure that each lock or tags-plus system is removed by the authorized employee who applied it.

(3) When the authorized employee who applied the lockout/tags-plus system is not available to remove it, the employer may direct removal by another authorized employee, provided the employer developed and incorporated into the lockout/tags-plus program the specific procedures and training that address such removal, and demonstrates that the specific procedures used provide a level of employee safety that is at least as effective in protecting employees as removal of the system by the authorized employee who applied it. After meeting these requirements, the employer shall do the following in sequence:

(i) Verify that the authorized employee who applied the lockout/tags-plus system is not in the facility;

(ii) Make all reasonable efforts to contact the authorized employee to

inform him/her that the lockout/tags-plus system has been removed; and

(iii) Ensure that the authorized employee who applied the lock or tags-plus system has knowledge of the removal before resuming work on the affected machinery, equipment, or system.

Note to paragraph (i) of this section: When the Navy ship's force serves as lockout/tags-plus coordinator and removes the lockout/tags-plus systems or devices, the employer is in compliance with the requirements in paragraph (i) of this section when the employer's authorized employee informs the lockout/tags-plus coordinator that the procedures in paragraph (i)(1) of this section have been performed.

(j) *Procedures for startup.* (1) Before an authorized employee turns on any machinery, equipment, or system after servicing is completed, the employer shall ensure that the authorized employee has knowledge of the source, type, and magnitude of the hazards associated with energization or startup, and the means to control these hazards.

(2) The employer shall execute an orderly startup to prevent or minimize any additional or increased hazard(s) to employees. The employer shall perform the following tasks before starting up the machinery, equipment, or system:

(i) Clear tools and materials from the work area;

(ii) Remove any non-essential employees from the work area; and

(iii) Start up the machinery, equipment, or system according to the detailed procedures the employer established for that machinery, equipment, or system.

Note to paragraph (j) of this section: When the Navy ship's force serves as lockout/tags-plus coordinator and maintains control of the lockout/tags-plus systems or devices during startup, and the employer is prohibited from starting up the machinery, equipment, or system, the employer is in compliance with the requirements in paragraph (j) of this section when the employer's authorized employee informs the lockout/tags-plus coordinator the procedures in paragraphs (j)(2)(i) and (j)(2)(ii) of this section have been performed.

(k) *Procedures for group lockout/tags-plus.* When more than one authorized employee services the same machinery, equipment, or system at the same time, the following procedures shall be implemented:

(1) *Primary authorized employee.* The employer shall:

(i) Assign responsibility to one primary authorized employee for each group of authorized employees performing servicing on the same machinery, equipment, or system;

(ii) Ensure that the primary authorized employee determines the safe exposure status of each authorized employee in the group with regard to the lockout/tags-plus system;

(iii) Ensure that the primary authorized employee obtains approval from the lockout/tags-plus coordinator to apply and remove the lockout/tags-plus system; and

(iv) Ensure that the primary authorized employee coordinates the servicing operation with the coordinator when required by paragraph (c)(7)(i) of this section.

(2) *Authorized employees.* The employer shall either:

(i) Have each authorized employee apply a personal lockout/tags-plus system; or

(ii) Use a procedure that the employer can demonstrate affords each authorized employee a level of protection equivalent to the protection provided by having each authorized employee apply a personal lockout/tags-plus system. Such procedures shall incorporate a means for each authorized employee to have personal control of, and accountability for, his or her protection such as, but not limited to, having each authorized employee:

(A) Sign a group tag (or a group tag equivalent), attach a personal identification device to a group lockout device, or performs a comparable action before servicing is started; and

(B) Sign off the group tag (or the group tag equivalent), remove the personal identification device, or perform a comparable action when servicing is finished.

Note to paragraph (k)(2) of this section: When the Navy ship's force maintains control of the machinery, equipment, or systems on a vessel and prohibits the employer from applying or removing the lockout/tags-plus system or starting up the machinery, equipment, or systems being serviced, the employer is in compliance with the requirements in paragraphs (k)(1)(iii) and (k)(2), provided that the employer ensures that the primary authorized employee takes the following steps in the following order: (1) Before servicing begins and after deenergization, (a) verifies the safe exposure status of each authorized employee, and (b) signs a group tag (or a group tag equivalent) or performs a comparable action; and (2) after servicing is complete and before reenergization, (a) verifies the safe exposure status of each authorized employee, and (b) signs off the group tag (or the group tag equivalent) or performs a comparable action.

(l) *Procedures for multi-employer worksites.* (1) The host employer shall establish and implement procedures to protect employees from hazardous energy in multi-employer worksites. The procedures shall specify the responsibilities for host and contract employers.

(2) *Host employer responsibilities.* The host employer shall carry out the following responsibilities in multi-employer worksites:

(i) Inform each contract employer about the content of the host employer's lockout/tags-plus program and procedures;

(ii) Instruct each contract employer to follow the host employer's lockout/tags-plus program and procedures; and

(iii) Ensure that the lockout/tags-plus coordinator knows about all servicing operations and communicates with each contract employer who performs servicing or works in an area where servicing is being conducted.

(3) *Contract employer responsibilities.* Each contract employer shall perform the following duties when working in a multi-employer worksite:

(i) Follow the host employer's lockout/tags-plus program and procedures;

(ii) Ensure that the host employer knows about the lockout/tags-plus hazards associated with the contract employer's work and what the contract employer is doing to address these hazards; and

(iii) Inform the host employer of any previously unidentified lockout/tags-plus hazards that the contract employer identifies at the multi-employer worksite.

Note 1 to paragraph (l) of this section: The host employer may include provisions in its contract with the contract employer for the contract employer to have more control over the lockout/tags-plus program if such provisions will provide an equivalent level of protection for the host employer's and contract employer's employees as that provided by paragraph (l) of this section.

Note 2 to paragraph (l) of this section: When the U.S Navy contracts directly with a contract employer and the Navy ship's force maintains control of the lockout/tags-plus systems or devices, that contract employer shall consider the Navy to be the host employer for the purposes of § 1915.89(l)(3).

(m) *Procedures for shift or personnel changes.* (1) The employer shall establish and implement specific procedures for shift or personnel changes to ensure the continuity of lockout/tags-plus protection.

(2) The employer shall establish and implement provisions for the orderly transfer of lockout/tags-plus systems between authorized employees when they are starting and ending their workshifts, or when personnel changes occur during a workshift, to prevent energization or startup of the machinery, equipment, or system being serviced or the release of hazardous energy.

(n) *Lockout/tags-plus materials and hardware.* (1) The employer shall provide locks and tags-plus system hardware used for isolating, securing, or blocking machinery, equipment, or systems from all hazardous-energy sources.

(2) The employer shall ensure that each lock and tag is uniquely identified for the purpose of controlling hazardous energy and is not used for any other purpose.

(3) The employer shall ensure that each lock and tag meets the following requirements:

(i) *Durable.* (A) Each lock and tag is capable of withstanding the existing environmental conditions for the maximum period of time that servicing is expected to last;

(B) Each tag is made so that weather conditions, wet or damp conditions, corrosive substances, or other conditions in the work area where the tag is used or stored will not cause it to deteriorate or become illegible;

(ii) *Standardized.* (A) Each lock and tag is standardized in at least one of the following areas: color, shape, or size; and

(B) Each tag is standardized in print and format;

(iii) *Substantial.* (A) Each lock is sturdy enough to prevent removal without the use of extra force or unusual techniques, such as bolt cutters or other metal-cutting tools;

(B) Each tag and tag attachment is sturdy enough to prevent inadvertent or accidental removal;

(C) Each tag attachment has the general design and basic safety characteristics of a one-piece, all-environment-tolerant nylon tie;

(D) Each tag attachment is non-reusable, attachable by hand, self-locking, and non-releasable, and has a minimum unlocking strength of 50 pounds;

(iv) *Identifiable.* Each lock and tag indicates the identity of the authorized employee applying it; and

(v) Each tag warns of hazardous conditions that could arise if the machinery, equipment, or system is energized and includes a legend such as one of the following: "*Do Not Start,*" "*Do Not Open,*" "*Do Not Close,*" "*Do Not Energize,*" or "*Do Not Operate.*"

(o) *Information and training.* (1) *Initial training.* The employer shall train each employee in the applicable requirements of this section no later than October 31, 2011.

(2) *General training content.* The employer shall train each employee who is, or may be, in an area where lockout/tags-plus systems are being used so they know:

(i) The purpose and function of the employer's lockout/tags-plus program and procedures;

(ii) The unique identity of the locks and tags to be used in the lockout/tags-plus system, as well as the standardized color, shape or size of these devices;

(iii) The basic components of the tags-plus system: an energy-isolating device with a tag affixed to it and an additional safety measure;

(iv) The prohibition against tampering with or removing any lockout/tags-plus system; and

(v) The prohibition against restarting or reenergizing any machinery, equipment, or system being serviced under a lockout/tags-plus system.

(3) *Additional training requirements for affected employees.* In addition to training affected employees in the requirements in paragraph (o)(2) of this section, the employer also shall train each affected employee so he/she knows:

(i) The use of the employer's lockout/tags-plus program and procedures;

(ii) That affected employees are not to apply or remove any lockout/tags-plus system; and

(iii) That affected employees are not to bypass, ignore, or otherwise defeat any lockout/tags-plus system.

(4) *Additional training requirements for authorized employees.* In addition to training authorized employees in the requirements in paragraphs (o)(2) and (o)(3) of this section, the employer also shall train each authorized employee so he/she knows:

(i) The steps necessary for the safe application, use, and removal of lockout/tags-plus systems to prevent energization or startup or the release of hazardous energy during servicing of machinery, equipment, or systems;

(ii) The type of energy sources and the magnitude of the energy available at the worksite;

(iii) The means and methods necessary for effective isolation and control of hazardous energy;

(iv) The means for determining the safe exposure status of other employees in a group when the authorized employee is working as a group's primary authorized employee.

(v) The requirement for tags to be written so they are legible and understandable to all employees;

(vi) The requirement that tags and their means of attachment be made of materials that will withstand the environmental conditions encountered in the workplace;

(vii) The requirement that tags be securely attached to energy-isolating devices so they cannot be accidentally removed while servicing machinery, equipment, or systems;

(viii) That tags are warning devices, and alone do not provide physical barriers against energization or startup, or the release of hazardous energy, provided by locks, and energy-isolating devices; and

(ix) That tags must be used in conjunction with an energy-isolating device to prevent energization or startup or the release of hazardous energy.

(5) *Additional training for lockout/tags-plus coordinator.* In addition to training lockout/tags-plus coordinators in the requirements in paragraphs (o)(2), (o)(3), and (o)(4) of this section, the employer shall train each lockout/tags-plus coordinator so he/she knows:

(i) How to identify and isolate any machinery, equipment, or system that is being serviced; and

(ii) How to accurately document lockout/tags-plus systems and maintain the lockout/tags-plus log.

(6) *Employee retraining.*

(i) The employer shall retrain each employee, as applicable, whenever:

(A) There is a change in his/her job assignment that presents new hazards or requires a greater degree of knowledge about the employer's lockout/tags-plus program or procedures;

(B) There is a change in machinery, equipment, or systems to be serviced that presents a new energy-control hazard;

(C) There is a change in the employer's lockout/tags-plus program or procedures; or

(D) It is necessary to maintain the employee's proficiency.

(ii) The employer also shall retrain each employee, as applicable, whenever an incident investigation or program audit indicates that there are:

(A) Deviations from, or deficiencies in, the employer's lockout/tags-plus program or procedures; or

(B) Inadequacies in an employee's knowledge or use of the lockout/tags-plus program or procedures.

(iii) The employer shall ensure that retraining establishes the required employee knowledge and proficiency in the employer's lockout/tags-plus program and procedures and in any new or revised energy-control procedures.

(7) Upon completion of employee training, the employer shall keep a record that the employee accomplished the training, and that this training is current. The training record shall contain at least the employee's name, date of training, and the subject of the training.

(p) *Incident investigation.* (1) The employer shall investigate each incident that resulted in, or could reasonably have resulted in, energization or startup, or the release of hazardous energy,

while servicing machinery, equipment, or systems.

(2) Promptly but not later than 24 hours following the incident, the employer shall initiate an incident investigation and notify each employee who was, or could reasonably have been, affected by the incident.

(3) The employer shall ensure that the incident investigation is conducted by at least one employee who has the knowledge of, and experience in, the employer's lockout/tags-plus program and procedures, and in investigating and analyzing incidents involving the release of hazardous energy. The employer may also use additional individuals to participate in investigating the incident.

(4) The employer shall ensure that the individual(s) conducting the investigation prepare(s) a written report of the investigation that includes:

(i) The date and time of the incident;

(ii) The date and time the incident investigation began;

(iii) Location of the incident;

(iv) A description of the incident;

(v) The factors that contributed to the incident;

(vi) A copy of any lockout/tags-plus log that was current at the time of the incident; and

(vii) Any corrective actions that need to be taken as a result of the incident.

(5) The employer shall review the written incident report with each employee whose job tasks are relevant to the incident investigation findings, including contract employees when applicable.

(6) The employer shall ensure that the incident investigation and written report are completed, and all corrective actions implemented, within 30 days following the incident.

(7) If the employer demonstrates that it is infeasible to implement all of the corrective actions within 30 days, the employer shall prepare a written abatement plan that contains an explanation of the circumstances causing the delay, a proposed timetable for the abatement, and a summary of the steps the employer is taking in the interim to protect employees from hazardous energy while servicing machinery, equipment, or systems.

(q) *Program audits.* (1) The employer shall conduct an audit of the lockout/tags-plus program and procedures currently in use at least annually to ensure that the procedures and the requirements of this section are being followed and to correct any deficiencies.

(2) The employer shall ensure that the audit is performed by:

(i) An authorized employee other than the one(s) currently using the energy-control procedure being reviewed; or

(ii) Individuals other than an authorized employee who are knowledgeable about the employer's lockout/tags-plus program and procedures and the machinery, equipment, or systems being audited.

(3) The employer shall ensure that the audit includes:

(i) A review of the written lockout/tags-plus program and procedures;

(ii) A review of the current lockout/tags-plus log;

(iii) Verification of the accuracy of the lockout/tags-plus log;

(iv) A review of incident reports since the last audit;

(v) A review conducted between the auditor and authorized employees regarding the authorized employees' responsibilities under the lockout systems being audited; and

(vi) A review conducted between the auditor and affected and authorized employees regarding their responsibilities under the tags-plus systems being audited.

(4) The employer shall ensure that, within 15 days after completion of the audit, the individual(s) who conducted the audit prepare and deliver to the employer a written audit report that includes at least:

(i) The date of the audit;

(ii) The identity of the individual(s) who performed the audit;

(iii) The identity of the procedure and machinery, equipment, or system that were audited;

(iv) The findings of the program audit and recommendations for correcting deviations or deficiencies identified during the audit;

(v) Any incident investigation reports since the previous audit; and

(vi) Descriptions of corrective actions the employer has taken in response to the findings and recommendations of any incident investigation reports prepared since the previous audit.

(5) The employer shall promptly communicate the findings and recommendations in the written audit report to each employee having a job task that may be affected by such findings and recommendations.

(6) The employer shall correct the deviations or inadequacies in the lockout/tags-plus program within 15 days after receiving the written audit report.

(r) *Recordkeeping.* (1) Table to paragraph (r)(1) of this section specifies what records the employer must retain and how long the employer must retain them:

TABLE TO PARAGRAPH (R)(1) OF THIS SECTION—RETENTION OF RECORDS REQUIRED BY § 1915.89

The employer must keep the following records . . .	For at least . . .
(i) Current lockout/tags-plus program and procedures	Until replaced by updated program and procedures.
(ii) Training records	Until replaced by updated records for each type of training.
(iii) Incident investigation reports	Until the next program audit is completed.
(iv) Program audit report	12 months after being replaced by the next audit report.

(2) The employer shall make all records required by this section available to employees, their representatives, and the Assistant Secretary in accordance with the procedures and time periods specified in 29 CFR 1910.1020(e)(1) and (e)(3).

(s) *Appendices.* Non-mandatory Appendix A to this section is a guideline to assist employers and employees in complying with the requirements of this section, and to provide them with other useful information. The information in Appendix A does not add to, or in any way revise, the requirements of this section.

Appendix A to § 1915.89 (Non-Mandatory)—Typical Minimal Lockout/Tags-Plus Procedures

General

Lockout/Tags-Plus Procedure

Lockout/Tags-Plus Procedure for

[Name of company for single procedure or identification of machinery, equipment, or system if multiple procedures used.]

Purpose

This procedure establishes the minimum requirements for the lockout/tags-plus application of energy-isolating devices on vessels and vessel sections, and for landside facilities whenever servicing is done on machinery, equipment, or systems in shipyards. This procedure shall be used to

ensure that all potentially hazardous-energy sources have been isolated and the machinery, equipment, or system to be serviced has been rendered inoperative through the use of lockout or tags-plus procedures before employees perform any servicing when the energization or start-up of the machinery, equipment, or system, or the release of hazardous energy could cause injury.

Compliance With This Program

All employees are required to comply with the restrictions and limitations imposed on them during the use of lockout or tags-plus applications. Authorized employees are required to perform each lockout or tags-plus application in accordance with this procedure. No employee, upon observing that machinery, equipment, or systems are secured using lockout or tags-plus applications, shall attempt to start, open, close, energize, or operate that machinery, equipment, or system.

Type of compliance enforcement to be taken for violation of the above.

Procedures for Lockout/Tags-Plus Systems

(1) Notify each affected employee that servicing is required on the machinery, equipment, or system, and that it must be isolated and rendered inoperative using a lockout or tags-plus system.

Method of notifying all affected employees.

(2) The authorized employee shall refer to shipyard employer's procedures to identify the type and magnitude of the energy source(s) that the machinery, equipment, or system uses, shall understand the hazards of the energy, and shall know the methods to control the energy source(s).

Type(s) and magnitude(s) of energy, its hazards and the methods to control the energy.

(3) If the machinery, equipment, or system is operating, shut it down in accordance with the written procedures (depress the stop button, open switch, close valve, etc.) established by the employer.

Type(s) and location(s) of machinery, equipment, or system operating controls.

(4) Secure each energy-isolating device(s) through the use of a lockout or tags-plus system (for instance, disconnecting, blanking, and affixing tags) so that the energy source is isolated and the machinery, equipment, or system is rendered inoperative.

Type(s) and location(s) of energy-isolating devices.

(5) *Lockout System.* Affix a lock to each energy-isolating device(s) with assigned individual lock(s) that will hold the energy-isolating device(s) in a safe or off position. Potentially hazardous energy (such as that found in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must be controlled by methods such as grounding, repositioning, blocking, bleeding down, etc.

(6) *Tags-Plus System.* Affix a tag to each energy-isolating device and provide at least one additional safety measure that clearly indicates that removal of the device from the safe or off position is prohibited. Potentially hazardous energy (such as that found in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems and air, gas, steam, or water pressure, etc.) must be controlled by methods such as grounding, repositioning, blocking, bleeding down, etc.

Type(s) of hazardous energy—methods used to control them.

(7) Ensure that the machinery, equipment, or system is relieved, disconnected, restrained, or rendered safe from the release of all potentially hazardous energy by checking that no personnel are exposed, and then verifying the isolation of energy to the machine, equipment, or system by operating the push button or other normal operating control(s), or by testing to make certain it will not operate.

CAUTION: Return operating control(s) to the safe or off position after verifying the isolation of the machinery, equipment, or system.

Method of verifying the isolation of the machinery, equipment, or system.

(8) The machinery, equipment, or system is now secured by a lockout or tags-plus system, and servicing by the authorized person may be performed.

Procedures for Removal of Lockout/Tags-Plus Systems

When servicing is complete and the machinery, equipment, or system is ready to return to normal operating condition, the following steps shall be taken:

(1) Notify each authorized and affected employee(s) that the lockout/tags-plus system will be removed and the machinery, equipment, or system reenergized.

(2) Inspect the work area to ensure that all employees have been safely positioned or removed.

(3) Inspect the machinery, equipment, or system and the immediate area around the machinery, equipment, or system to ensure that nonessential items have been removed and that the machinery, equipment or system components are operationally intact.

(4) Reconnect the necessary components, remove the lockout/tags-plus material and hardware, and reenergize the machinery, equipment, or system through the established detailed procedures determined by the employer.

(5) Notify all affected employees that servicing is complete and the machinery, equipment, or system is ready for testing or use.

§ 1915.90 Safety color code for marking physical hazards.

The requirements applicable to shipyard employment under this section are identical to the requirements set forth at 29 CFR 1910.144 of this chapter.

§ 1915.91 Accident prevention signs and tags.

The requirements applicable to shipyard employment under this section are identical to the requirements set forth at 29 CFR 1910.145 of this chapter.

§ 1915.92 Retention of DOT markings, placards, and labels.

(a) Any employer who receives a package of hazardous material that is required to be marked, labeled, or placarded in accordance with the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 through 180) shall retain those markings, labels, and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the U.S. Department of Transportation Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle, or transport vehicle until the hazardous materials are sufficiently removed to prevent any potential hazards.

(c) The employer shall maintain markings, placards, and labels in a manner that ensures that they are readily visible.

(d) For non-bulk packages that will not be reshipped, the requirements of this section are met if a label or other acceptable marking is affixed in accordance with 29 CFR 1910.1200, Hazard Communication.

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as specified in the U.S. Department of Transportation Hazardous Materials Regulations.

§ 1915.93 Motor vehicle safety equipment, operation and maintenance.

(a) *Application.* (1) This section applies to any motor vehicle used to transport employees, materials, or property at worksites engaged in shipyard employment. This section does not apply to motor vehicle operation on public streets and highways.

(2) The requirements of this section apply to employer-provided motor vehicles. The requirements of paragraphs (b)(2), (b)(4), and (c)(2) of this section also apply to employee-provided motor vehicles.

(3) Only the requirements of paragraphs (b)(1) through (b)(3) apply to powered industrial trucks, as defined in § 1910.178. The maintenance,

inspection, operation, and training requirements in 29 CFR 1910.178 continue to apply to powered industrial trucks used for shipyard employment.

(b) *Motor vehicle safety equipment.* (1) The employer shall ensure that each motor vehicle acquired or initially used after August 1, 2011 is equipped with a safety belt for each employee operating or riding in the motor vehicle. This requirement does not apply to any motor vehicle that was not equipped with safety belts at the time of manufacture.

(2) The employer shall ensure that each employee uses a safety belt, securely and tightly fastened, at all times while operating or riding in a motor vehicle.

(3) The employer shall ensure that vehicle safety equipment is not removed from any employer-provided vehicle. The employer shall replace safety equipment that is removed.

(4) The employer shall ensure that each motor vehicle used to transport an employee has firmly secured seats for each employee being transported and that all employees being transported are using such seats.

(c) *Motor vehicle maintenance and operation.* (1) The employer shall ensure that each motor vehicle is maintained in a serviceable and safe operating condition, and removed from service if it is not in such condition.

(2) The employer shall ensure that, before a motor vehicle is operated, any tools and materials being transported are secured if their movements may create a hazard for employees.

(3) The employer shall implement measures to ensure that motor vehicle operators are able to see, and avoid harming, pedestrians and bicyclists at shipyards. Measures that employers may implement to comply with this requirement include:

(i) Establishing dedicated travel lanes for motor vehicles, bicyclists, and pedestrians;

(ii) Installing crosswalks and traffic control devices such as stop signs, mirrors at blind spots, or physical barriers to separate travel lanes;

(iii) Establishing appropriate speed limits for all motor vehicles;

(iv) Establishing "no drive" times to allow for safe movement of pedestrians;

(v) Providing reflective vests or other gear so pedestrians and bicyclists are clearly visible to motor vehicle operators;

(vi) Ensuring that bicycles have reflectors, lights, or other equipment to maximize visibility of the bicyclist; or

(vii) Other measures that the employer can demonstrate are as effective in protecting pedestrians and bicyclists as those measures specified in paragraphs (c)(3)(i) through (c)(3)(vi) of this section.

§ 1915.94 Servicing multi-piece and single-piece rim wheels.

The requirements applicable to shipyard employment under this section are identical to the requirements set forth at 29 CFR 1910.177 of this chapter.

Subpart J—[Amended]

■ 9. In § 1915.162, paragraph (a)(1) is revised as follows:

§ 1915.162 Ship's boilers.

(a) * * *

(1) The isolation and shutoff valves connecting the dead boiler with the live system or systems shall be secured, blanked, and then locked or tagged, in accordance with § 1915.89, indicating that employees are working on the boiler. This lock or tag shall not be removed nor the valves unblanked until it is determined that this may be done without creating a hazard to the employees working on the boiler, or until the work on the boiler is completed, in accordance with § 1915.89. When valves are welded instead of bolted, at least two isolation and shutoff valves connecting the dead boiler with the live system or systems shall be secured, and then locked or tagged, in accordance with § 1915.89.

* * * * *

■ 10. In § 1915.163, paragraph (a)(1) is revised to read as follows:

§ 1915.163 Ship's piping systems.

(a) * * *

(1) The isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, blanked, and then locked or tagged, in accordance with § 1915.89, indicating that employees are working on the systems. The lock or tag shall not be removed or the valves unblanked until it is determined that this may be done without creating a hazard to the employees working on the system, or until the work on the system is completed, in accordance with § 1915.89. When valves are welded instead of bolted, at least two isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, and then locked or tagged, in accordance with § 1915.89.

* * * * *

■ 11. In § 1915.164, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 1915.164 Ship's propulsion machinery.

(a) * * *

(2) If the jacking gear is steam driven, the employer shall ensure that the stop valves to the jacking gear are secured, and then locked or tagged, in accordance with § 1915.89.

(3) If the jacking gear is electrically driven, the circuit controlling the jacking gear shall be de-energized by tripping the circuit breaker, opening the switch, or removing the fuse, whichever is appropriate, and then locked or tagged in accordance with § 1915.89.

* * * * *

■ 12. In § 1915.181, paragraph (c) is revised to read as follows:

§ 1915.181 Electric circuits and distribution boards.

* * * * *

(c) De-energizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever method is appropriate. The circuit breaker, switch, or fuse location shall then be locked out or tagged in accordance with § 1915.89.

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Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 321, 332, and 381
Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Product; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 321, 332, and 381

[Docket No. FSIS–2008–0039]

RIN 0583–AD37

Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to establish a new voluntary cooperative program under which State-inspected establishments with 25 or fewer employees will be eligible to ship meat and poultry products in interstate commerce. In participating States, State-inspected establishments selected to take part in this program will be required to comply with all Federal standards under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These establishments will receive inspection services from State inspection personnel that have been trained in the enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by designated State personnel will bear an official Federal mark of inspection and will be permitted to be distributed in interstate commerce. FSIS will provide oversight and enforcement of the program.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, Room 350–E, Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–2709, Fax (202) 720–2025.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) ("the Acts") require that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, and accurately labeled. The Acts require Federal inspection and provide for Federal regulation of meat and poultry products prepared for distribution in commerce for use as human food.

Cooperative State inspection programs. Section 661 of the FMIA and 454 of the PPIA authorize FSIS to cooperate with State agencies in developing and administering their own meat or poultry products inspection programs for the inspection and regulation of products that are produced and sold solely within the State (21 U.S.C. 661 & 454). These cooperative State inspection programs are required to operate in a manner and with authorities "at least equal to," but not necessarily identical to, the provisions set out in the FMIA and PPIA (21 U.S.C. 661 (a)(1) & 454 (a)(1)). The "at least equal to" standard is a concept that requires that State MPI Programs operate in a manner that is at least as effective as those standards adopted for the Federal inspection program. The Acts provide for FSIS to contribute up to 50 percent of the cost of the cooperative State inspection programs, as long as the State programs are effectively enforcing requirements that are "at least equal to" the Federal program (21 U.S.C. 661 (a)(3) & 454 (a)(3)).

Section 11015 of Title XI of The Food, Conservation, and Energy Act of 2008 ("the 2008 Farm Bill"), enacted on June 18, 2008, amended the Acts to establish a new cooperative inspection program under which certain State-inspected establishments will be eligible to ship meat and poultry products in interstate commerce (Pub. L. 110–246, 112 Stat. 1651; 21 U.S.C. 683 and 472). The amendments to the Acts provide that the Secretary of Agriculture (FSIS by delegation), "in coordination with the appropriate State agency of the State in which the establishment is located," may select State-inspected establishments with 25 or fewer employees to ship meat and poultry products in interstate commerce (21 U.S.C. 683 (b) and 472(b)). Inspection services for these establishments must be provided by State inspection personnel that have "undergone all necessary inspection training and certification to assist the Secretary with the administration and enforcement of [the Acts]" (21 U.S.C. 683(a)(2) and 472(a)(2)). Meat and poultry products inspected and passed by the State inspection personnel would bear a "Federal mark, stamp, tag, or label of inspection" and would be permitted to be shipped in interstate commerce (21 U.S.C. 683(b)(1) and 472(b)(1)).

The law provides for the Secretary to "designate an employee of the Federal government" to "provide oversight and enforcement" of the program (21 U.S.C. 683(d)(1) and 472 (d)(1)). If the Federal employee finds that an establishment selected for the program is in violation of the Acts, he or she is required to "deselect the selected establishment or suspend inspection at the selected establishment" (21 U.S.C. 683(d)(3)(c) and 472(d)(3)(c)). The law requires that any selected establishment that FSIS "determines to be in violation of any requirement of the Act, be transitioned to be a Federal establishment" (21 U.S.C. 683(h) and 472(g)).

The law provides that FSIS is to reimburse a State for costs related to the inspection of establishments in the State selected for the program "in an amount of not less than 60 percent of eligible State costs" (21 U.S.C. 683(c) and 472(c)). The law also states that FSIS "may provide grants to appropriate State agencies to assist the appropriate State agencies in helping establishments covered by this Act to transition to selected establishments" (21 U.S.C. 683(g) and 472(f)). The law is to take effect "on the date on which the Secretary, after providing a period of public comment (including through the conduct of public meetings or hearings), promulgates final regulations to carry out [section 11015]" (21 U.S.C. 683 (j)(1) and 472((i)(1)).

Proposed rule. On September 16, 2009, FSIS published proposed regulations to implement the new cooperative interstate shipment program ("*Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products,*" 74 FR 47648).

FSIS held two public meetings by teleconference on October 27, 2009, and November 4, 2009, to solicit comments on the proposed regulations (74 FR 54493). The comment period for the proposed rule was scheduled to close on November 16, 2009, but, in response to comments, was extended to December 16, 2009.

In developing this final rule, FSIS considered all comments submitted in response to the September 2009 proposed rule, as well as those provided at the two teleconferences held in October and November 2009. Based on its analysis of the issues, and on information provided by the comments, FSIS made certain changes to the proposed regulations. Those changes are summarized below and are discussed in detail in the Agency's responses to comments.

For a more detailed discussion of section 11015 of the 2008 Farm Bill and FSIS's proposed implementing regulations, refer to the September 16, 2009, proposed rule.

II. Summary of Amendments to the Proposed Rule To Implement the Cooperative Interstate Shipment Program

In this rulemaking, FSIS is finalizing, with some changes, the provisions in the September 2009 proposed rule. Specifically, the Agency is amending the proposal to:

- Revise the standards for determining an establishment's average number of employees for purposes of the cooperative interstate shipment program to exclude employees whose duties do not involve handling the meat or poultry products produced by the establishment (9 CFR 332.3(b)(1) and (2) and 9 CFR 318.513(b)(1) and (2));
- Revise the standards for determining the average number of employees for purposes of the cooperative interstate shipment program to include uncompensated volunteers who are involved in handling the meat or poultry products produced by the establishment (9 CFR 332.3(b)(6) and 381.515(b)(6));
- Allow States that have existing cooperative agreements for a State MPI program to submit a request to enter into an agreement with FSIS for a cooperative interstate shipment program before the States have identified establishments to recommend for the cooperative interstate shipment program (9 CFR 332.4(b)(1) and 381.514(b)(1));
- Identify factors that will be considered to determine the frequency with which the FSIS selected establishment coordinator (SEC) will visit selected establishments under his or her jurisdiction (9 CFR 332.7(a) and 381.517(a));
- Give establishments that were deselected from the cooperative interstate shipment program because they are located in a State whose agreement for the program was terminated the option to either revert back to operating under the cooperative State MPI program or obtain a Federal grant of inspection (9 CFR 332.11(a) and 381.521(a));
- Allow establishments that were deselected from the cooperative interstate shipment and successfully transitioned to become Federal establishments to revert back to the State MPI program after successfully operating as a Federal establishment for a year (9 CFR 332.11(b) and 381.521(b));
- Allow establishments selected to participate in the cooperative interstate shipment program to operate under both the State MPI program for the State where the establishment is located and the new cooperative interstate shipment program. State-inspected establishments that operate under both programs must maintain an appropriate separation of time or space between operations (9 CFR 332.13 and 381.523);
- Allow selected establishments that are in full compliance with the requirements of the cooperative interstate shipment program to voluntarily end their participation in the program and revert back to the State MPI program (9 CFR 332.14 and 381.514);
- Codify the definition of "eligible State costs" to include those costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected establishments in the State (9 CFR 321.3(b) and 381.187(b)).

III. Comments and Responses

FSIS received approximately 90 separate comment letters in response to the September 2009 proposed regulations and approximately 5000 identical comment letters submitted by a consumer advocacy organization on behalf of private citizens. Comments submitted by consumer advocacy organizations, private citizens, State farm bureaus, trade associations representing meat processors, and a labor union representing food and commercial workers expressed general support for the proposed regulations. Comments submitted by an association of State meat and food inspection directors, an association of State Departments of Agriculture, several State Departments of Agriculture and other State agencies, farm and agriculture advocacy organizations, Congress members providing comments on behalf of the State of Wisconsin, and private citizens expressed support for the concept of a cooperative interstate shipment program but objected to several provisions in FSIS's proposed implementing regulations. Other comments submitted by FSIS inspection personnel, small federally-inspected establishments, and one consumer advocacy organization opposed any program that would permit State-inspected meat and poultry products in interstate commerce.

Following is a discussion of these comments and FSIS's responses.

A. Development of the proposed rule

Comment: Several comments criticized FSIS for not consulting with State officials during the development of the proposed regulations. The comments stated that several States and organizations of State officials had offered to form an advisory committee to assist FSIS in developing the proposed regulations to implement the cooperative interstate shipment program. As noted by the comments, FSIS determined that such a request was not practical due to the regulatory constraints and the statutory time-line for implementing this program. The comments encouraged FSIS to work closely with State inspection officials to develop final regulations to make the program as workable as possible. One comment said that creating an environment where state regulators and federal regulators work together consistently will provide the stability the program needs to be successful for all involved.

Some comments suggested that FSIS use this rulemaking as an opportunity to encourage more State involvement in addressing the nation's food safety problem. The comments encouraged FSIS to accord considerable weight to comments submitted by States with exemplary food safety inspection histories and State-inspected establishments that likewise have exemplary histories when the Agency finalizes the proposed rule.

Response: FSIS appreciates the States' willingness to participate in the development and implementation of the new cooperative interstate shipment program. In developing this final rule, FSIS carefully considered the comments and suggestions submitted by the States and, as a result, the Agency made certain revisions to the proposed regulations. FSIS will work closely with the States as the Agency moves forward to implement the cooperative interstate shipment program established in this final rule.

Comment: A few comments stated that the teleconference format for the two public meetings that were held in October and November of 2009 was not an appropriate way to generate comments on the proposed cooperative interstate shipment program. One comment noted that there were few comments presented during the teleconferences, which the commenter believed may be related to the format of the public meeting. One comment said that both teleconferences occurred on the same dates and times when FSIS was offering webinars for small and very small plant operators, which presented a conflict for those interested in participating in both meetings. Another comment complained that, although the commenter had registered for the teleconference and has a confirmation passcode to participate, the commenter was not allowed to speak during the meeting.

Response: FSIS chose the teleconference format for the public meetings to provide individuals with

easier access to the meeting, particularly those who may lack the resources or time to attend a meeting in person. FSIS will consider the comments submitted on this issue to determine how it can improve its use of the teleconference format to conduct public meetings in the future.

B. General Support for and General Opposition to the Proposed Rule

1. Support for the Proposed Regulations

Comment: Comments submitted by consumer advocacy organizations, private citizens, State farm bureaus, trade associations representing meat processors, and a labor union representing food and commercial workers expressed general support for FSIS's proposed regulations to implement the cooperative interstate shipment program. Some of these comments said that the language in Section 11015 of the 2008 Farm Bill reflects an agreement reached through negotiations between various national consumer organizations, the National Association of State Departments of Agriculture, the National Farmers Union, the American Federation of Government Employees, and the United Food and Commercial Workers Union. According to these comments, the language in section 11015 was carefully crafted to meet the desire of some State-inspected meat plants to enlarge their area of sales while assuring that all meat and poultry sold across state lines meet federal inspection standards. The comments commended FSIS for writing proposed regulations that closely adhere to both the intent and specific language of the legislation.

One comment noted that the program established in the proposed regulations builds on existing State inspection programs and includes important enhancements that can lead to stronger State inspection programs. The comment approved of the fact that, like the statute, the proposed regulations would not permit "regulatory forum shopping."

Response: FSIS agrees that the proposed regulations are consistent with both the intent and language of the enabling legislation. The Agency also agrees that the program established in the proposed regulations will complement the existing State inspection programs.

2. Support Interstate Shipment but not the Program Proposed by FSIS

Comment: Comments submitted by an organization of State Agriculture Departments, an organization of State meat inspection program Directors, several State Departments of Agriculture, State agencies, farm and agriculture advocacy organizations, and private citizens expressed support for the concept of a cooperative interstate shipment program but had concerns about FSIS's proposed regulations to implement the program. Many of these comments stated that, instead of allowing for the interstate shipment of state inspected products, FSIS's proposed regulations essentially set up another Federal inspection system under more stringent and inflexible provisions than the current Federal system. According to the comments, FSIS's proposed program fails to remove unnecessary barriers for small establishments to sell their specialty products across State lines. The comments asserted that the proposed regulations will create a regulatory system that is too burdensome for either establishments or State inspection programs, which likely means that few will take advantage of the program.

To support these assertions, the comments noted that, when FSIS issued the proposed rule, the Agency estimated that approximately 60% (16 of 27) of the States with existing State MPI programs and approximately 200–600 establishments were interested in participating in the new cooperative interstate shipment program. The comments stated that after FSIS issued the proposed rule, an internal poll conducted by an organization of State official indicates that only 2 of these 27 States, each with only a handful of establishments, now find the cooperative interstate shipment proposed by FSIS to be even potentially viable. According to the comments, without a drastic revision of the proposed regulations and active FSIS participation in cooperation with the State partners, the program is unlikely to succeed.

Response: After careful consideration of all comments submitted in response to the 2009 proposed rule, FSIS modified the proposed regulations to provide some added flexibility for establishments selected to participate in the cooperative interstate shipment program. For example, under this final rule, selected establishments that are in full compliance with the program will be permitted to voluntarily end their participation in the program. This final rule will also permit selected establishments to operate under both the cooperative interstate shipment program and the State's MPI program if they maintain an appropriate separation of time or space between operations. The Agency believes that these modifications, which are discussed in more detail in the Agency's response to comments, will provide additional incentive for some establishments to participate in the program.

3. Oppose any Program That Would Allow Interstate Shipment of State-Inspected Product

Comment: Comments submitted by FSIS inspection personnel, small federally-inspected meat and poultry processing establishments, and a consumer advocacy organization objected to any program that would permit state-inspected meat and poultry products to be shipped in interstate commerce. According to many of these comments, meat and poultry products produced in State-inspected establishments do not undergo the same level of inspection as products produced in Federal-inspected facilities, and many State MPI programs are not truly "at least equal to" the Federal inspection program. A few comments referenced a 2006 Office of Inspector General Audit Report of State-inspected meat and poultry programs that the comments said found that some State-inspected facilities had failed to operate in a sanitary manner and that FSIS had not provided consistent oversight of existing State MPI programs.

Response: As required by law, the cooperative interstate shipment program established under this final rule will operate under the same standards imposed under the Federal inspection program. Thus, meat and poultry products produced in State-inspected establishments selected for the cooperative interstate shipment program will undergo the same level of inspection as products produced in federally-inspected facilities.

With respect to the comment that many State MPI programs are not truly "equal to" the Federal inspection program, each year the FSIS OPEER Federal State Audit Branch reviews the State cooperative MPI programs and their requirements to verify that each State program "at least equal to" the Federal program. These comprehensive reviews consist of an annual review of the State MPI program's self assessment submission and an on-site review to verify the State's self-assessment submission. The onsite reviews are scheduled at a minimum, once every three years.

Based on the self assessment documents received during FY 2009, FSIS determined that all of the 27 State MPI programs provided adequate documentation to support that they have implemented and can maintain MPI programs "at least equal to" the Federal program. FSIS determined that

all of the 11 State MPI programs reviewed on-site were enforcing requirements "at least equal to" those imposed under the Federal Acts.

In its 2006 audit of the FSIS's cooperative State MPI programs, the OIG provided recommendations to strengthen FSIS's review of these programs. FSIS provided management decisions in response to the 2006 OIG audit recommendations, which were accepted by OIG. The Agency has implemented the 2006 management decisions.

Comment: One comment stated that State-inspected establishments should not be allowed to ship products interstate because the States do not have the money or staff to provide the inspection that the Federal government does. Another comment maintained that Federal inspectors undergo more extensive training than State inspection personnel and, therefore, unlike State inspectors, are continuously expanding their knowledge bases.

Response: As discussed in greater detail below, to qualify for the cooperative interstate shipment program, States with cooperative State MPI programs will need to demonstrate that they have staffing sufficient to conduct the same inspection activities in establishments operating under the cooperative interstate shipment program that FSIS conducts in official Federal establishments. The States will also need to demonstrate that the designated State personnel have been properly trained in Federal inspection methodology. FSIS will not enter into an agreement for a cooperative interstate shipment program with States that are unable to meet these conditions.

Comment: One comment submitted by a consumer advocacy organization said that while the commenter does not support State-inspected meat and poultry for either intrastate or interstate commerce, it understands that Congress amended the FMIA and PPIA to establish the cooperative interstate shipment program, and that FSIS is required to develop regulations to implement the law. The comment urged the Agency to put into place a system whereby establishments that participate in the program are held to the identical Federal standards and practices as those establishments under Federal inspection and that the Agency maintain strict oversight of such a program.

Response: The cooperative interstate shipment program established in these final regulations will be a State inspection program under which designated State-personnel enforce Federal food safety standards. As required by law, FSIS will provide oversight and enforcement of the program.

Comment: Several comments submitted by FSIS inspection personnel and small federally-inspected meat and poultry processors maintained that instead of establishing cooperative interstate shipment program, FSIS should require that State-inspected establishments that desire to ship their meat and poultry products in interstate commerce come under Federal inspection.

One comment submitted by a small federally-inspected establishment explained that as a small company, it decided to obtain a Federal grant of inspection as an investment for the future of its business. The comment noted that the establishment did this to allow for interstate sales of its products and that the same option is available today for any company willing to make a similar investment. The comment asserted that to provide for a level playing field, all small companies that want to sell their products across state lines should be required to go through the same process and obtain a Federal grant of inspection.

Response: Section 11015 of the 2008 Farm Bill amended the FMIA and PPIA to establish the cooperative interstate shipment program. The amendments require that FSIS issue final regulations to implement the new program. Once the new program becomes effective, small State-inspected establishments that are interested in selling meat or poultry products across State lines will have the option to operate as a selected establishment under the cooperative interstate shipment program or as an official Federal establishment. An establishment that ships products across States lines must comply with all Federal standards regardless of the inspection program that it chooses to operate under.

Comment: One comment said that the cooperative interstate shipment program is not necessary because the Talmadge/Aiken program serves the same purpose.

Response: The Talmadge-Aiken program and the cooperative interstate shipment program serve different purposes. Under the Talmadge-Aiken program, FSIS enters into a separate agreement with a State agency for the State program to conduct meat, poultry, or egg products inspection or other regulatory activities on behalf of FSIS. Establishments that participate in the Talmadge-Aiken program operate under a Federal grant of inspection. Under the cooperative interstate shipment program, FSIS enters into a separate agreement with a State agency to enforce Federal food safety standards at State-inspected establishments. Establishments that participate in the cooperative interstate shipment program are not Federal establishments operating under a Federal grant of inspection.

Comment: Comments submitted by a few FSIS inspection personnel opposed the proposed cooperative interstate shipment stated because the commenters believe that the program will result in a reduction in the Federal inspection force. The comments stated that under such a program, small federally-inspected establishments will want to drop their Federal grant of inspection and produce products under State-inspection, thereby taking jobs that would otherwise belong to Federal employees and giving them to State employees.

Response: Under the law and implementing regulations, establishments that operate under the Federal inspection program are ineligible to participate in the cooperative interstate shipment program. The new program is limited to certain small and very small State-inspected establishments. Thus, the cooperative interstate shipment program will have little effect on Federal inspection personnel.

Comment: One comment objected to allowing the interstate shipment of state-inspected products because, according to the comment, FSIS will no longer have control or jurisdiction over some meat and poultry products in interstate commerce. The comment noted that a State's jurisdiction is limited to the State's borders. The comment asked what would happen if product produced by a State-inspected establishment is implicated in a food safety issue resulting in a recall.

Response: Under the law, FSIS is responsible for providing oversight and enforcement of the cooperative interstate shipment program. Therefore, if an establishment operating under the cooperative interstate shipment program distributes meat or poultry products that present a food safety hazard or that need to be recalled for other reasons, FSIS will coordinate with the State MPI program to ensure that such product is removed from commerce. FSIS will be responsible for the overall coordination of the recall and for verifying that recalled product that has been shipped interstate has been removed from commerce.

C. Establishment Participation—Conditions for Eligibility and Standards for Determining Average Number of Employees

The proposed rule prescribed conditions that State-inspected

establishments would be required to meet to become eligible to participate in the cooperative interstate shipment program. Consistent with the law, among these proposed conditions were that an establishment be in compliance with all Federal inspection requirements under the FMIA, PPIA, and their implementing regulations, and that the establishment employ, on average, no more than 25 individuals. The proposed rule also included proposed standards for determining the average number of employees, which, for the most part, reflect applicable methods used by the Small Business Administration (SBA) to calculate the number of employees for a small business concern. FSIS received several comments on the proposed conditions for establishment eligibility and the proposed standards for determining the average number of employees.

1. Compliance With Federal Standards

Comment: Some comments agreed that State-inspected establishments should be required to comply with Federal standards to be eligible for the cooperative interstate shipment program. The comments stated that many small and very small establishments have managed to conform to, and operate successfully under, the requirements of the Federal inspection system. Two comments noted that data obtained from FSIS's PBIS in 2007 show that 51 percent (2,878 of 5,603) of all federally-inspected establishments have 10 or fewer employees and 80% have 50 or fewer employees.

The comments also noted that all establishments that prepare or process meat and poultry products have always had the opportunity to ship their products in interstate commerce provided that they apply for and receive a Federal grant of inspection. The comments stated that small and very small establishments now under Federal inspection have invested time and money to comply with all Federal regulations and to operate under Federal standards. The comments asserted that while the new cooperative interstate shipment program is intended to offer establishments operating under their State inspection program an opportunity to broaden their distribution, any establishment that ships meat or poultry products in interstate commerce can and should meet Federal food safety standards.

Other comments stated that requiring that State-inspected establishments comply with Federal food safety standards in order to be eligible for the cooperative interstate shipment program will establish unfair barriers for small plants to participate in the program. The comments urged FSIS to provide small State-inspected establishments with greater flexibility in achieving food safety standards. One comment from a small State-inspected establishment stated that it cannot afford Federal inspection. The comment noted that establishments operating under the State MPI system are required to adhere to very strict food safety standards but, unlike the Federal system, State inspection personnel are also available to help the small and very small establishments with education and training.

Response: The amendments to the Acts in section 11015 of the 2008 Farm Bill require that State-inspected establishments be in compliance with all Federal standards in order to be eligible for the cooperative interstate shipment program. The provisions in the Acts that establish the cooperative interstate shipment program define an "eligible establishment" as an establishment that is in compliance with both "* * * the State inspection program of the State in which the establishment is located" and "[the FMIA or PPIA], including the rules and regulations issued under [the FMIA or PPIA]" (21 U.S.C. 472(a)(3) and 683(a)(3)).

The Senate Conference Committee report on the bill that established the cooperative interstate shipment program also makes clear that establishments selected for the program "* * * must fully follow [the FMIA or PPIA], its regulations, notices, directives and policies just as would be required of a Federal establishment" (S. Rep. No. 220, 110th Cong., 1st Sess. (2007), pp. 211–214). Thus, requiring that State-inspected establishments comply with Federal food safety standards to become eligible to participate in the cooperative interstate shipment program is consistent with both the language and intent of section 11015 of the 2008 Farm Bill.

FSIS's Office of Outreach, Employee Education, and Training (OOEET) will provide technical resources, information, and guidance to small and very-small State establishments that are interested in becoming eligible to participate in the cooperative interstate shipment program.

2. Determining Average Number of Employees

a. *Proposed standard: All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis are to be counted when calculating the total number of employees.*

Comment: Several comments stated that for purposes of the cooperative interstate shipment program, an establishment's average number of employees should be based only on those directly involved in the preparation or processing of meat and poultry products. The comments noted that many small and very small establishments conduct operations other than the processing of meat or poultry products, such as grocery stores, convenience stores, or other retail outlets. According to the comments, employees that do not perform duties related to the meat or poultry processing operations of the business should not be included when calculating the average number of employees.

One comment suggested that FSIS consider basing the "value" associated with the employee on the workers compensation code that the employer designates. The commenter said that it could give FSIS a simple way of determining which workers are associated with the meat processing part of the business and which employees offer other roles for the company, such as administrative workers or retail clerks.

Other comments said that all establishment personnel, including those not involved in the actual production of meat and poultry products, should be counted when calculating the average number of employees. One comment noted that the law specifically states that supervisory and nonsupervisory employees are to be counted when calculating the average number of employees. The comment maintained that this indicates that if Congress had intended to exclude certain employees from the calculation, it would have expressly stated so in the law. The comment urged FSIS to require that temporary and part-time employees, regardless of their position in the establishment, be counted when determining the average number of employees.

Response: Although the law limits participation in the cooperative interstate shipment program to State-inspected establishments that employ, on average, 25 or fewer employees, it does not distinguish between employees involved in an establishment's meat or poultry processing operations from those that are not. Counting all individuals employed by the establishment would ensure that participation in the cooperative interstate shipment program is limited to very small and certain small establishments. Counting only

employees directly involved in the preparation or processing of meat and poultry products would create a more flexible standard that would expand the number of potentially eligible establishments to include those that have a small number of employees that work in meat or poultry processing but a larger number of employees that work in other areas of their business.

The 2008 amendments to the Acts give FSIS the authority to define "average number of employees" for purposes of the cooperative interstate shipment program, but they also make clear that the program is intended for State-inspected establishments that employ a limited number of individuals. Therefore, FSIS is adopting a standard for calculating the average number of employees that provides some flexibility for establishments that conduct operations other than meat or poultry processing, but that also clearly distinguishes those employees that are to be counted for purposes of the interstate shipment program from those that are not.

Therefore, instead of counting all individuals employed by the establishment as proposed, under this final rule, an establishment's average number of employees will be calculated by counting all individuals employed by the establishment, excluding the employees that do not come into contact with the meat or poultry products produced by the establishment. For example, if the owner of a gas station produces beef jerky and sells it at the gas station, the employees that are involved in producing the jerky, as well as those that work as cashiers and sell the product, will be counted. The mechanics that work on the cars, however, will not be. Employees that perform solely administrative functions and that do not handle meat or poultry products will also not be counted.

When an establishment conducts multiple operations, it is sometimes difficult to distinguish employees associated with the meat or poultry operations from those that are not. For example, an individual employed as a cashier at an establishment's deli operations may also slice and package meat or poultry products produced by the establishment. The standard adopted in this final rule clearly distinguishes employees whose duties are associated with the meat or poultry products produced by an establishment from those that are not. It also ensures that the cooperative interstate shipment program will remain limited to certain small and very small establishments, as intended.

b. *Proposed standard: Part-time and temporary employees are to be counted the same as full-time employees.*

Comment: Several comments, most submitted by consumer advocacy organizations and one submitted by a food and commercial workers union, agreed with the proposed standard to count part-time and temporary workers as full-time workers for purposes of qualifying for the cooperative interstate shipment program. The comments noted that most very small establishments have few full-time employees, and many do not operate every day. The comments maintained that counting part-time and temporary employees the same as full time employees is an effective means to assure the cooperative interstate shipment program serves the entities it was intended to serve. According to the comment, failing to count part-time and temporary employees in the average number of employees would permit substantially larger entities to participate in a program that was designed to serve very small local establishments.

Some of these comments noted that during negotiations with the States, consumer advocacy groups reluctantly agreed to the States' request for a program with a 25 employee limit. According to the comment, none of the groups involved in the negotiations ever agreed to anything larger than 25 employees. The comments said that the primary reason that many consumer advocacy organizations had opposed the House interstate shipment bill was because the bill contained a 50 employee limit, which, according to the comment, would have expanded the number of establishments in the new cooperative program far beyond what was intended. One comment stated that, although the program's 25 employee limit is reasonable, the commenter would have preferred a limit of 10 employees, which is similar to the current FSIS definition for very small establishments.

Several other comments, most submitted by State Departments of Agriculture and other State agencies, disagreed with the proposed standard to count part-time and temporary workers as full time employees. The comments stated that such a standard seems excessive and does not provide an accurate depiction of an establishment's actual number of employees.

The comments noted that many small establishments in small towns hire part-time employees who work as little as a few hours a week. According to the comments, to count such employees as full-time would contradict and undercut the rural development intentions of the enabling legislation. One comment stated that in some rural areas, especially those with small and very small establishments, meat processing has a seasonal component that provides part-time seasonal work for rural residents. The comments noted that during each part of the day, an establishment may have only 25 employees on site, even if the total number of part-time and fulltime employees employed overall during the day exceeds 25.

The comments suggested that part-time and temporary workers be counted on the basis of "full-time equivalents" or "FTEs," *i.e.,* based on the ratio of their work-hours to those of a full-time year-round employee. The comments said that part-time and temporary employees should be grouped together and counted based on the number of hours they work each week during the year, with 40 hours per week being considered an FTE. Several comments suggested formulas for calculating the number of employees based on FTEs.

Response: After considering the comments, FSIS has decided to adopt the proposed standard to count temporary and part time employees the same as full-time employees. For purposes of its regulatory programs, FSIS defines small and very small establishments based on SBA criteria. A standard that counts part-time and temporary workers the same as full-time workers reflects the SBA methods for calculating the average number of employees for a small business concern and is thus consistent with FSIS's overall approach for defining small and very small establishments.[1]

As noted by the comments, several very small establishments have few full-time employees, and many do not operate every day. A standard that is based on the SBA criteria that counts part-time and temporary employees the same as full time employees allows these establishments to hire seasonal workers while ensuring that only very small and certain small establishments are eligible to participate in the program.

Comment: Several comments stated that the standards for determining the average number of employees need to allow for more flexibility in counting temporary seasonal workers. The comments noted that small and very small establishments often have fluctuation in their employees during certain parts of the year, such as during

[1] See 13 CFR 121.105 and 121.106 for SBA methods to calculate the number of employees of a business concern where the size standard in number of employees.

holiday and hunting seasons, and that the term "seasonal" will have different meanings in different areas of the country. Some comments noted some establishments hire extra employees to help with seasonal activities that are not related to the processing of amenable species, such as processing game meat or for busy times in their retail shops around holidays.

The comments suggested that seasonal employees be counted based on FTE. As an example, the comments explained that a seasonal employee who works full-time for 3 months would be a 25% FTE and should be counted as one quarter of an employee.

One comment asserted that seasonal employees should not be counted at all when calculating the average number of employees. The comment suggested that the final rule define a seasonal employee as an employee that works for the establishment ninety or fewer days in a calendar year.

Response: When Congress amended the FMIA and PPIA to establish the cooperative interstate shipment program, it intended for FSIS to interpret the term average "…to provide some flexibility to these selected plants that require seasonal employees for certain parts of the year, as long as the increase in employees are [sic] manageable by the establishment and the increase in employees does not undermine food safety standards" (S. Rep. No. 220, 110th Cong., 1st Sess., pp. 211–214 (2007)).

As discussed below, under the proposed rule, selected establishments may temporarily employ more than 25 employees during busy seasons, as long as the average number of employees continues to be 25 and the number of employees does not exceed 35. Thus, a standard that counts temporary seasonal employees the same as full-time employees will allow selected establishments to hire seasonal employees while ensuring that the number of employees remains manageable by the establishment, as Congress intended.

FSIS disagrees with the comment that stated that seasonal employees should not be counted at all. Such an approach would be inconsistent with the language and intent of the statute.

c. *Proposed standard: The total number of employees cannot exceed 35 at any given time, regardless of the average number of employees.*

Comment: Some comments stated that the proposed standard that provides that the total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees, is a reasonable upper limit for selected establishments to remain eligible to participate in the program. One comment stated that such a limit is reasonable if FSIS does not count part-time and temporary employees the same as full time.

Other comments asserted that FSIS should not limit the number of employees working at a selected establishment at any given time if the establishment maintains an average of 25 employees or fewer. The comments stated that while section 11015 of the 2008 Farm Bill requires that the average number of employees not exceed 25, the law does not prohibit a selected establishment from ever, over the course of a year, having more than 35 employees.

The comments stated that in many small establishments there may be "spikes" in employee numbers during busy periods, but the overall average number of employees is under 25. The comments asserted that, as written, the proposed rule excludes such establishments from participating in the interstate shipment program. According to the comments, section 11015 was not intended to exclude these establishments. The comments suggested that FSIS revise the proposed rule to ensure that these establishments remain eligible for the program.

One comment disagreed with the proposed 35 employees limit because, according to the comment, allowing selected establishment to have 35 employees during seasonal shifts represents, at minimum, a 40% increase in establishment personnel. The comment argued that the higher number of employees represents a huge increase in production that could overwhelm a very small establishment's production systems, which could result in contaminated food entering commerce. The comment noted that if an establishment routinely employs 5 people and then increases this number to 10 or 20 during a certain timeframe, it will have a 100% or 400% increase in employees. The comment maintained that this level of increase is not manageable and is not what Congress intended.

The comment suggested that instead of limiting the total number of employees to 35 at any given time, FSIS should cap at 20% the increase in the number of employees that an establishment may use during a seasonal shift. The comment acknowledged that the commenter does not have data to support this number, but stated that it stands to reason that a sudden increase in production could significantly affect the dynamics within an establishment and overwhelm the system. According to the comment, small and very small establishments have HACCP plans for a production process at a certain level that would not necessarily support a significantly higher level of production. The comment pointed out that FSIS did not provide any data to support the proposed 35 employee cap.

One comment stated that FSIS should not allow more than 25 employees in selected establishments at any given time. The comment noted that section 11015 requires that establishments that consistently employ more than 25 employees but fewer than 35 employees transition to Federal establishments within three years of the enactment date. The comment stated that this provision indicates that Congress recognized that establishments that ship product in interstate commerce and that have more than 25 employees should be under Federal inspection.

Response: While the 2008 amendments to the Acts do not specifically prohibit selected establishments from ever having more than 35 employees, the Senate report described above indicates that Congress intended that there be some limits on the number of employees working at a selected establishment at any given time.

As explained in the preamble to the proposed rule, FSIS proposed that the number of employees working in a selected establishment never exceed 35 at any given time because the law allows FSIS to select for the cooperative interstate shipment program establishments that employed more than 25 but fewer than 35 employees as of June 18, 2008, the date the law was enacted (21 U.S.C. 683(b)(3)(B) and 472(b)(3)(B)). To remain in the program, these establishments must employ fewer than 25 employees on average 3 years after the effective date of this final rule. Thus, while Congress did not intend to "* * * routinely allow selected establishments to employ above 25 or more employees," the fact that the law provides for some selected establishments to initially employ up to 35 individuals demonstrates that a temporary increase in the number of employees of up to 35 individuals, as long as the average number of employees remains 25 or fewer, is consistent with the language and intent of the Acts.

As noted above, when Congress established the cooperative interstate shipment program, it intended to provide some flexibility to establishments that require seasonal employees to meet consumer demands for certain parts of the year. The 20%

cap on the increase in the number of employees suggested by one of the comments would greatly restrict the number of temporary workers that a selected establishment would be allowed to hire during busy seasons. For example, an establishment that regularly employs five employees on average would be permitted to hire only one temporary employee during its busy seasons. Many small and very small establishments operate on an intermittent or seasonal basis and are accustomed to adjusting their operations to temporarily increase production without undermining food safety standards. FSIS has concluded that restricting the increase in employees to 20% is unlikely to provide the flexibility that many very small selected establishments will need to meet seasonal demands for their products.

d. *Proposed standards: Volunteers who receive no compensation are not considered employees.*

Comment: One comment disagreed with the proposed standard that provides that volunteers are not considered employees. The comment stated as a food safety measure, uncompensated volunteers who are engaged in meat or poultry product processing should be considered employees for the purpose of the cooperative interstate shipment program.

Response: FSIS agrees with this comment and has revised the standards for counting employees to include as employees, volunteers that perform duties that involve handling the meat or poultry products produced by the establishment.

D. State Participation: "The Same as" Standard for Inspection Services Provided to Selected Establishments

The proposed regulations provide that States interested in establishing an agreement for a cooperative interstate shipment program are required to submit a request for such an agreement to FSIS through the FSIS district office that covers the State. The proposed rule also provided that, in their requests, States are required to include documentation to demonstrate that they are able to provide the necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program. The preamble to the proposed rule explained that to meet this requirement, the statute requires that States demonstrate that the inspection service that they provide to selected establishments in the State will be "the same as," rather than "at least equal to" those provided under the Federal inspection program. FSIS received a significant number of comments on the proposed "same as" standard.

1. Support for "the same as" Standard

Comments submitted by consumer advocacy organizations, meat processor trade associations whose members mainly operate under the Federal inspection system, a union representing food and commercial workers, two pork producer trade associations, and some private citizens expressed support for the proposed "same as" standard.

Comment: The comments that supported the proposed "same as" standard agreed that the language and intent of the enabling statute require that the cooperative interstate shipment program operate under standards that are the "same as" the Federal inspection system and not the "at least equal to" standard that applies to State MPI programs. The comments believed that all meat and poultry products shipped in interstate commerce should be required to comply with uniform Federal food safety standards rather then multiple State standards. The comments stated that it is especially important for State-inspected establishments that participate in the new program to be in compliance with all Federal standards because the meat and poultry products produced by these establishments will bear a Federal mark of inspection.

One comment stated that requiring that selected establishments that voluntarily request the opportunity to participate in a cooperative interstate shipment program operate in a manner that is the "same as" federally-inspected establishments is not only consistent with the provisions and intent of the law, but also ensures that the food safety standards established in the FMIA, PPIA, and their implementing regulations are applied uniformly to all meat and poultry products that are distributed in interstate commerce. The comment encouraged FSIS to retain the proposed "same as" standard to first and foremost ensure the safety of meat and poultry products distributed in interstate commerce, but also to ensure equity in the marketplace. The comment added that this fundamental proposition, that the playing field be level for all companies engaging in interstate commerce, was a critical element in securing passage of the statutory provisions that authorized the cooperative interstate shipment program. The comment asserted that the program must not provide an unfair advantage to small companies that will not, or cannot, make the commitments necessary to comply with Federal food safety requirements.

Two comments stated that requiring that State-inspected products produced under the cooperative interstate shipment program comply with all Federal requirements is essential for maintaining domestic and international markets for U.S. meat and poultry products. Other comments said that consumers expect that products carrying the Federal mark of inspection comply with Federal standards for meat and poultry inspection. The comments stated that establishments that are not held to all aspects of the Federal requirements should not be entitled to apply the Federal mark of inspection on their products.

One comment that supported the "same as" standard noted that although establishments operating under a State MPI inspection program receive inspection services that are "at least equal to" the Federal inspection program, the methodology employed by FSIS is a critical part of the effectiveness of the Federal food safety system. The comment asserted that, as such, it is essential for States that participate in the cooperative interstate shipment program to follow Federal inspection methodology when providing inspection services to selected establishments.

Response: FSIS agrees that the "same as" standard is consistent with the language and intent of the statutes. The issues raised by the comments demonstrate why it is important for the cooperative interstate shipment program to operate under standards that are "the same as" those imposed under the Federal meat and poultry products inspection programs.

2. Opposed to "same as" standard

Several comments submitted by State Departments of Agriculture and other State agencies, as well as organizations representing these entities, objected to the proposed "same as" standard. Some farm and rural community advocacy organizations, cattle producer organizations, a trade association representing small meat processors, and an animal welfare advocacy organization also opposed the proposed standard.

Comment: Several comments that objected to the proposed "same as" standard claimed that such a standard is not authorized by law. These comments asserted that the Acts, as amended by the 2008 Farm Bill, do not contain any language that would require that the inspection services that States provide to selected establishments be "the same

as" or "identical to" the inspection services provided under the Federal program. The comments maintained that such an interpretation is an extrapolation of the language that does not exist in the statute.

The comments noted that under the 2008 Farm Bill amendments, the term "eligible establishment" refers to an establishment that is "in compliance with" the Acts. The comments also noted that these amendments authorize the SEC to "ensure that selected establishments are operating in a manner that is consistent with * * *" the Acts (21 U.S.C. 472(d)(3)(A), 683(d)(3)(A)). The comments argued that these provisions indicate that if Congress had intended to require that the State program be "the same as" or "identical to" to the Federal program, it would have specifically said so in the statute.

The comments also noted that the 2008 Farm Bill did not amend the provisions in the FMIA and PPIA that provide for cooperative State MPI programs that are "at least equal" to the Federal program. According to the comments, the fact that Congress did not amend these provisions demonstrates that State programs that are "at least equal to" the Federal program are in compliance with the Acts.

Response: The language in the FMIA and PPIA, as amended by the 2008 Farm Bill, is clear: Congress provided that the cooperative interstate shipment program would operate under standards that are "the same as" those imposed under the Federal program.

The 2008 amendments to the FMIA and PPIA provide that to be eligible for the cooperative interstate shipment, State-inspected establishments must be in compliance with both the State's MPI program and "* * * the requirements of this chapter, including the rules and regulations issued under this chapter" (21 U.S.C. 472(a)(3) and 683(a)(3)). As used in the statutes, the term "this chapter" refers to the FMIA at 21 U.S.C Chapter 12, and the PPIA at 21 U.S.C. Chapter 10. The 2008 amendments also require that the State personnel designated to provide inspection services under the program undergo "* * * all necessary training and certification to assist * * * in the administration and enforcement of this chapter, including the rules and regulations issued under this chapter" (21 U.S.C. 472(a)(2) and 683(a)(2)). The 2008 amendments allow a meat or poultry product inspected by designated State personnel to bear a Federal mark of inspection and be shipped in interstate commerce if the product "* * * qualifies for the mark * * * under the requirements of this chapter" (21 U.S.C. 472(b)(1)(A) and 683(b)(1)(A)).

The Senate Conference Committee report on the bill that established the cooperative interstate shipment program provides that "* * * establishments selected for the [cooperative interstate shipment] program * * * must fully follow [the FMIA or PPIA], its regulations, notices, directives and policies just as would be required of a Federal establishment" (S. Rep. No. 220, 110th Cong., 1st Sess. (2007), pp. 211–214). The report also provides that "* * * [t]he inspection personnel of the State that will inspect the selected establishment must have undergone all the necessary training to carry out the requirement of [the Acts], [their] regulations, notices directives and policies, just as required of a Federal inspector."

Thus, both the statute and the Committee report make clear that Congress intended for the cooperative interstate shipment program to operate under standards that are "the same as" those imposed under the Federal inspection program.

FSIS agrees with the comments that stated that the 2008 Farm Bill did not amend the provisions in the FMIA and PPIA that provide for cooperative State MPI programs that are "at least equal" to the Federal program. However, FSIS disagrees that this means that State programs that are "at least equal to" the Federal program are in compliance with all requirements of the Acts for purposes of the cooperative interstate shipment program. Under the FMIA and PPIA, establishments operating under an "at least equal to" State MPI program are permitted to produce meat or poultry products solely for distribution within the State where the establishment is located (21 U.S.C. 454(a)(1) and 661(a)(1)). Thus, State programs that are "at least equal to" the Federal program are in compliance with the Acts only if the establishments operating under these programs prepare and ship products solely for use within the State where they are located.

Comment: One comment asked whether the proposed rule requires that a State's entire MPI program must be "identical to" the Federal program for the State to qualify for the cooperative interstate shipment program.

Response: No, a State's entire MPI program does not need to be identical to the Federal program for the State to qualify for the cooperative interstate shipment program. To qualify for the program, a State must demonstrate that the inspection services that it will provide to selected establishments in the State will be "the same as" those provided under the Federal inspection program. States that participate in the cooperative interstate shipment program may continue to operate an "at least equal to" State MPI program for establishments that produce meat and poultry products solely for distribution within the State.

Comment: Several comments stated that the interstate shipment program's legislative history demonstrates that Congress intended for the program to operate under the "at least equal" standard required for the existing cooperative State MPI programs. According to the comments, the conference reports for the House and Senate versions of interstate shipment legislation indicate that Congress adopted the Senate version of the bill because the House version would have required that States implement meat and poultry inspection programs "identical to" the Federal inspection system. The comments maintained that the legislative intent was to provide current State facilities with a viable route to ship State product interstate. The comments said that the requirement for State plants to be "identical to" or "same as" a federal plant radically deviates from this.

Response: The comments are correct in that Congress did adopt the Senate version of the legislation that established the cooperative interstate shipment program. However, FSIS disagrees that the Senate version was adopted to permit State-inspected establishments operating under an "at least equal to" standard to ship meat and poultry products in interstate commerce.

Section 11103 of the House version of the 2008 Farm Bill would have amended the FMIA and PPIA to replace the existing "at least equal to" cooperative State MPI program with a new program that would have authorized FSIS to approve, and enter into cooperative agreement with, only those State MPI programs that adopt standards identical to those imposed under the Federal program (H. Rep. 110–256, 110th Cong., 1st Session, pp. 184–191). Under the House version, all State-inspected establishments would have been required to comply with Federal standards, the State mark of inspection would have been deemed an official mark, and all State-inspected establishments would have been allowed to ship meat or poultry products in interstate commerce.

The Senate bill, which was the version adopted in the 2008 Farm Bill, supplements, but does not replace, the

existing State MPI programs. The Senate version provides an option under which State-inspected establishments that have, on average, 25 or fewer employees, will be permitted to ship their meat or poultry products in interstate commerce. Under the Senate version, State-inspected establishments are required to comply with all Federal standards to be eligible to participate in the cooperative interstate shipment program, and designated State personnel must be trained to enforce Federal food safety standards. Under the Senate version, State-inspected establishments that choose not to participate in the cooperative interstate shipment program may continue to operate under the "at least equal to" State MPI program and ship their products within the States where they are located.

Comment: Some comments claimed that in the past, FSIS itself concluded that it was unrealistic for States to maintain MPI programs that are "the same as" or "identical to" FSIS's program. The comments noted that in 2003, the Agency provided an option for the States to claim that their meat and poultry inspection programs were "same as" or "identical to" FSIS inspection as part of the Agency's annual review in which it verifies that State MPI programs are "equal to" the Federal program. The comments said that in 2006, FSIS reached the conclusion that it was logistically impossible for State programs to maintain a true "same as" or "identical to" status, so the Agency removed this option from the State Self Assessment Manual forms. The comments asserted that if only a few years ago FSIS acknowledged that it is impossible for State MPI programs to be the "same as" Federal programs, proposing such a standard now will effectively prevent States from qualifying for a cooperative interstate shipment program.

Response: FSIS has stated that "at least equal to" does not require that States operate their cooperative MPI programs in a manner that is "the same as" or "identical to" the FSIS program or does not prohibit States from establishing safeguards that the States believe to be more effective than those employed by FSIS. The law does not require that the cooperative State MPI programs operate under standards "identical to" the Federal program.

As noted above, the cooperative interstate shipment program will supplement the existing State MPI programs, not replace them. Thus, while States that participate in the cooperative interstate shipment program will need to provide the same inspection services to selected establishments that FSIS provides to federally-inspected establishments, States may also continue to operate their cooperative State MPI programs in a manner that is "at least equal to" the Federal program.

Comment: Several comments noted that a foreign country must demonstrate that its inspection system is "equivalent" to the U.S. inspection system before FSIS will permit establishments located in the foreign country to import meat and poultry products into the United States. These comments asserted that requiring that States operate their cooperative interstate shipment programs under standards that are the "same as" those required under the Federal program subjects the States to a stricter and less flexible standard than the standard applied to foreign countries. One comment maintained that while the commenter does not support the equivalent standard for foreign facilities, there is no justification for discriminating against domestic establishments under the jurisdiction of State inspection programs by requiring that they meet more rigid standards than those imposed on foreign establishments.

Response: The equivalence standard applied to imported meat and poultry products and the "same as" standard applied to meat and poultry products produced under the cooperative interstate shipment program reflect the relevant provision in the FMIA and PPIA. The FMIA and PPIA require that FSIS treat as equivalent to a U.S. requirement alternative measures proposed by an exporting country if the country provides scientific evidence or other information, in accordance with risk assessment methodologies agreed to by FSIS and the exporting country, to demonstrate that the alternative measure achieves the level of protection that is appropriate for the United States (21 U.S.C. 620(e)(1)(B), 466(d)(2)(A)). These provisions reflect the U.S. Government's obligation under the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) to accept the sanitary measures of an exporting Member country as equivalent if the exporting member demonstrates that its sanitary measures attain the same level of protection (Article 4.1, "Agreement on the Application of Sanitary and Phytosanitary Measures). FSIS evaluates foreign food regulatory systems for equivalence through document reviews, on-site audits, and port-of-entry reinspection of products at the time of importation (9 CFR part 327 and 381 subpart T).

Comment: Several comments asserted that it is unnecessary to require that the inspection services that States provide to selected establishments be the "same as" inspection services provided under the Federal program because most States have incorporated the Federal requirements into their State MPI programs. The comments stated that, according to FSIS's 2008 report on its review of the State MPI programs, these State programs have demonstrated that they can implement the Federal laws and regulations in a manner that is "at least equal to," and thus, "in compliance with" the Federal standards without operating under a program that is "the same as" the Federal inspection program because of the smaller staff size and other administrative aspects of the State programs.

Response: As noted throughout this document, the 2008 amendments to the Acts require that the inspection services that States provide to selected establishments be "the same as" those provided under the Federal inspection program. The Senate report also makes clear that State inspection personnel are "* * * to carry out the Federal requirements of the [the Acts], [their] regulations, notices directives and policies, just as required of a Federal inspector" (S. Rep. No. 110–220, 110th Cong., 1st Sess. (2007), pp 211–214). Thus, FSIS disagrees that State programs that have implemented the Federal laws and regulations in a manner that is "at least equal to" the Federal inspection program are "in compliance with" the Federal standard for purposes of the cooperative interstate shipment program. The law clearly requires that the inspection services that designated State personnel provide to selected establishments in States participating in the cooperative interstate shipment program be "the same as" those provided under the Federal program.

Comment: Several comments claimed that under the "at least equal to" standard, some States have implemented requirements for food safety and consumer protection that are stricter than those provided for under the Federal Acts. According to these comments, many States have processes for the review and evaluation of product labels that do more than FSIS's generic label process to ensure that the labels of meat and poultry products properly inform consumers about the product, its weight and its ingredients. The comments also noted that while FSIS currently does not have the authority to levy civil penalties for violations of the

Federal Acts, many States have the authority to impose civil penalties against violators of State meat and poultry inspection laws. Some comments stated that while FSIS allows the slaughter and sale of up to 20,000 farm raised chickens annually to restaurants and retail markets without benefit of inspection, many State programs do not permit this activity. The comment claimed that requiring States to operate their MPI programs in a manner that is "identical to" the Federal program could force the States to lower their standards.

One comment stated that some states impose humane handling and slaughter requirements that go above and beyond those required by Federal law. Another comment said that some States have stricter cold storage requirements than FSIS.

Response: As discussed above, the cooperative interstate shipment program established in this final rule supplements rather than replaces the existing State MPI programs. States that participate in the cooperative interstate shipment program may continue to operate their "at least equal to" State MPI programs for meat and poultry products produced and sold solely within the State. Thus, this final rule does not affect requirements for labeling, civil fines, poultry inspection, humane handling, or cold storage that States have adopted as part of their cooperative State MPI programs.

Comment: In the preamble to the proposed rule, FSIS explained that to qualify for a cooperative interstate shipment program, States will need to demonstrate that they have the authority under State law to provide the necessary inspection services to selected establishments in the State (74 FR 47652). Some comments noted that if the final regulations require that inspection services provided to selected establishments be the "the same as" those provided under the Federal inspection system, many States will not be able to immediately change their laws to make them identical to the Federal inspection laws.

One comment noted that the ability of States interested in the new program to change their rules and adopt FSIS regulations will depend on the process the State program must follow in order to make those changes. Other comments noted that each State has its own legislative process and some State legislatures do not meet every year. One comment noted that, although the State programs are "equal to" the Federal inspection system, the terminology and precise phrasing in the laws and regulations differ, and that State administrative systems vary.

Response: As discussed above, the cooperative interstate shipment program supplements the existing State MPI programs. Therefore, States are not required to amend all State inspection laws to make them identical to the Federal requirements. States interested in participating in the cooperative interstate shipment program will need to demonstrate that they have the necessary legal authority to enforce Federal food safety standards in selected establishments in the State.

As noted by the comments, State laws and regulations differ, and each State has its own legislative process. Some States may already have the necessary legal authority to participate in the cooperative interstate shipment program, while others may need to make legislative changes to provide for any additional authority that they may need.

Comment: Some comments asserted that the main focus of any program that provides for the interstate shipment of State-inspected products should be on the safety of the products produced in the selected establishments, not on administrative procedures for the inspection program. According to the comments, if States are required to operate their cooperative interstate shipment programs in a manner that is the "same as" the Federal program, the focus of these programs will be on the administrative procedures of the State instead of food safety. The comments stated that regulatory requirements can be met through different means and that it is not practical or effective for a State program to operate under the exact same procedures prescribed in the Federal system.

The comments suggested that an effective alternative would be to allow States to work within the existing "equal to" framework to develop food safety activities focused on problems specific to their establishments. The comments stated that the "at least equal to" standard is well accepted and has been effective in ensuring that State MPI inspection programs are comparable to the Federal program.

Response: As explained above, the law does not provide for the cooperative interstate shipment program to operate within the existing "at least equal to" framework. Under the 2008 amendments to the Acts, meat or poultry produced in selected establishments are permitted to bear a Federal mark of inspection and be shipped in interstate commerce only if designated State personnel find that such product qualify for a Federal mark (21 U.S.C. 683(b)(1)(a) and 472(b)(1)(a)). While products that are inspected and passed under a State's "at least equal" MPI program qualify for a State mark, these products are not eligible for a Federal mark.

Comment: Some comments complained that FSIS's proposed regulations would require that States maintain two separate inspection systems, one that is "identical to" the Federal program and one that is "equal to" the Federal program. The comments said that adding an entirely new State inspection system to comply with the "same as" standard will add an extra layer of cost for the States. According to the comments, many States would need to hire additional laboratory staff to perform different methodology and complete documentation the same as FSIS. The comments also said that States would need funds to train inspectors and purchase Federal computers, and that overall State administrative costs would increase because office staff, accountants, supervisors, and managers would need to manage two systems. One comment urged FSIS to fully consider the impact that the "same as" standard will have on the administrative aspects of the State inspection programs.

Response: In the Preliminary Regulatory Impact Analysis (PRIA) to the proposed interstate shipment rule, FSIS acknowledged that States that choose to participate in the cooperative interstate shipment program may need to make certain modifications to their inspection program to provide inspection services to selected establishments in the State (74 FR 47657). The Agency also acknowledged that the inspection costs under the new program may differ from the costs of the existing State MPI program. As required by law, if Congress provides the necessary funding for the cooperative interstate shipment program, FSIS will reimburse States for costs related to the inspection of selected establishments in the State in an amount not less than 60 percent of eligible State cost. FSIS has updated its analysis of the State costs in the Final Regulatory Impact Analysis (FRIA) for this final rule.

As noted by the comments, the cooperative interstate shipment program established in the proposed rule may require that States maintain two separate inspection programs, one that is "the same as" the Federal program and one that is "equal to" the Federal program. States that enter into cooperative agreements under the Talmadge-Aiken program to provide Federal inspection services to Federal establishments on behalf of FSIS are

also required to maintain two separate inspection systems—one under the cooperative State "at least equal to" MPI program and the other under the cooperative Talmadge-Aiken program. Thus, FSIS does not believe that the cost to administer two separate cooperative inspection programs will prevent States that are interested in participating in the cooperative interstate shipment program from doing so.

3. "Same as" Computer Systems and Forms

In the preamble to the proposed rule, FSIS explained that to qualify for a cooperative interstate shipment program, the Agency expects States to demonstrate that they can provide the necessary equipment for State personnel to provide the same inspection services to selected establishment that FSIS provides to official establishments, including computers and supplies for collecting regulatory product samples (74 FR 47652).

Comment: A number of comments said that this statement could be interpreted to mean that State programs must obtain and use the same computers and computer programs that are used by FSIS personnel. The comments requested that FSIS clarify its expectations with regard to the type of computers and information systems the States will need to have in place to qualify for a cooperative interstate shipment program.

Some of these comments noted that many States currently use State-issued laptops computers and have developed systems that have been determined "equal to" FSIS to track and report inspection activities and other required data. One comment noted that some States have developed their own data-driven systems that mimic the Federal System, but that also allow State program personnel access to State licensing information and to view and conduct other inspection activities in facilities that are not related to meat and poultry. According to the comment, States with their own information systems are able to tailor FSIS inspection activities, which are geared towards use in larger establishments, to be effective in very small establishments.

Response: To qualify for the cooperative interstate shipment program, States will need to have computer programs and information systems that are "the same as" those used by FSIS to administer the Federal inspection program. Assuming that Congress provides the necessary funding, FSIS will allow States that do not have the necessary information systems to purchase from the Agency federally-procured computers and the necessary computer programs. FSIS will reimburse the States for 60% of their eligible costs to obtain the necessary computers and software. FSIS does not intend to reimburse more than 60% of the States' costs unless Congress directs it, and provides the money for it to do so.

Comment: Some comments stated that if FSIS expects States to have information systems that are identical to those used under the Federal system, some States will need to maintain two computer systems to participate in the program because the Federal computer system does not allow any State program loads, and the Federal systems cannot be operated on a computer other than a federally-sourced computer. One comment noted that federally-procured computers generally cost more than State-procured ones, and the Federal computers would only be used on a limited basis by State personnel that work in selected establishments.

Response: As noted above, to provide the necessary inspection services under the cooperative interstate shipment program, States that participate in the program will need to use computer programs that are "the same as" those used by FSIS to administer the Federal inspection program. Thus, if the Federal computer programs cannot be operated on State-sourced computers, the State may need to purchase new computers from FSIS. As a result, some States will need to maintain two computer systems to participate in the cooperative interstate shipment program.

Comment: One comment asked if states participating in the cooperative interstate shipment program will have access to all of the Federal data programs, like eADRS, Assurance Net and FSIS intranet. Another comment stated that FSIS did not explain how requiring that States have identical computer systems in order to participate in the cooperative interstate shipment program will further food safety and compliance with the Acts.

Response: States that participate in the cooperative interstate shipment program will have access to the computer programs that are necessary to provide inspection services that are "the same as" those provided under the Federal program. The computer systems used by States to administer the cooperative interstate shipment program need to be "the same as" those used under the Federal program to ensure that selected establishments are meeting all food safety standards that are "the same as" rather than "at least equal to" standards imposed under the Federal program.

Comment: Some comments asked whether the forms used by States operating under a cooperative interstate shipment need to be identical to the Federal forms that FSIS uses under its inspection program. According to one comment, State inspection programs frequently do not have access to Federal forms and, therefore, most have developed their own forms. The comment stated that, if States are required to maintain forms that are identical to the Federal forms, many States will need to manage two different sets of documentation to participate in the cooperative interstate shipment program.

Response: To provide the necessary inspection services to selected establishments participating in the cooperative interstate shipment program, States will need to use forms that are the same as those used under the Federal inspection program. FSIS's OOEET will assist the States to obtain the necessary forms.

4. "Same as" Training for Designated State Personnel

The preamble to the proposed rule stated that to qualify for a cooperative interstate shipment program, States will need to demonstrate that designated State personnel have been properly trained in Federal inspection methodology (74 FR 7652). The preamble also explained that FSIS offers training courses in Federal inspection methodology to State inspection personnel and that States that are interested in participating in a cooperative interstate shipment program will be responsible for making arrangements for their inspection personnel to attend these courses.

Comment: Several comments stated that FSIS-sponsored training is costly, lengthy, and almost always requires travel out of State for extended periods of time. The comments suggested that, instead of requiring designated State personnel to attend FSIS training, the Agency should allow States to provide training that is "equal to" FSIS's training program. The comments explained that such training would include equivalent content as FSIS training but could be administered by the individual States, other State programs, FSIS or other qualified entities.

Response: The law does not provide for training that is "equal to" FSIS's training program or that includes equivalent content. The 2008 amendments to the Acts require that designated State personnel under go "* * * all necessary inspection training

and certification to assist the [FSIS Administrator] in the administration and enforcement of [the Acts], including rules and regulations issued under [the Acts]" (21 U.S.C. 683(a)(2)and 472(a)(2)). As stated in the Senate Committee report, this means that the designated State personnel "* * * must have undergone all the necessary training to carry out the requirements of [the Acts], [their] regulations, notices, directives and policies, just as required of a Federal inspector" (S. Rep. No. 220, 110th Cong., 1st Sess. (2007), pp. 211–214) Thus, the law clearly requires that the training in Federal inspection methodology provided to designated State personnel be "the same as" the training provided to FSIS inspection personnel.

As noted in the preamble to the proposed cooperative interstate shipment rule, FSIS offers training courses in Federal inspection methodology to State inspection personnel. FSIS's OOEET will coordinate with States participating in the cooperative interstate shipment program to provide the necessary training for designated State personnel.

Comment: Some comments stated that many States conduct their own training courses, which are subject to oversight by FSIS. The commenters noted that these State courses often present the identical material that FSIS presents in its training courses. The comments suggested that FSIS consider these State courses as acceptable training for designated State personnel.

Response: Although some States may be providing training that includes the same content as the training provided by FSIS, designated State personnel will need to complete FSIS-sponsored training for the State to qualify for the cooperative interstate shipment program. FSIS-sponsored training courses will ensure that designated State personnel receive the necessary training to carryout the requirements of the Federal Acts, "just as required of a Federal inspector," as intended by Congress.

Comment: One comment asked whether State personnel will need to complete their training before the State begins its cooperative interstate shipment program. Some comments stated that State programs cannot afford the travel costs associated with sending already trained state inspectors to additional training. One comment suggested that FSIS make any required training for State inspectors available through on-line courses at no charge to the States. Two comments asked whether FSIS would be covering training and training-related expenses.

Response: As noted above, the preamble to the proposed rule explained that to qualify for the program, States would need to demonstrate, among other things, that designated State personnel have been properly trained in Federal inspection methodology. This means that when a State submits a request to FSIS for a cooperative interstate shipment program, the State must demonstrate either that its designated State personnel have completed the necessary training in Federal inspection methodology or that such personnel will have completed such training before they begin to provide inspection services to selected establishments in the State.

As previously noted, FSIS currently offers courses in Federal inspection methodology to State inspection personnel. States that are interested in participating in a cooperative interstate shipment program will be responsible for making arrangements for their inspection personnel to attend these courses. FSIS's OOEET will coordinate with the States to help make the necessary training available to designated personnel in the State. For example, if a State has a significant number of designated personnel that need to be trained Federal inspection methodology, FSIS could arrange to conduct training courses at a location within the State so that all designated State personnel can attend.

As it does for training costs associated with the State MPI program, FSIS will reimburse States for any eligible training costs associated with the cooperative interstate shipment program, including necessary travel costs. However, instead of reimbursing the State for 50% of the eligible costs, FSIS will reimburse 60% of a State's eligible costs associated with training designated State personnel.

As discussed above, for a State to qualify for the cooperative interstate shipment program, its designated State personnel will need to attend FSIS-sponsored training in person. Thus, FSIS will not be providing the required training through on-line courses as suggested by the comment. The Agency may, however, make supplemental training materials available on-line.

5. "Same as" Laboratory Testing and Analysis

The preamble to the proposed rule explained that to qualify for an interstate shipment program, States will need to demonstrate that the laboratory services that they intend to use to analyze regulatory product samples from selected establishments are capable of conducting the same chemical, microbiological, physical, and pathology testing as are required under the Federal meat and poultry products inspection programs (74 FR 47652). The preamble also explains that FSIS's Office of Public Health Science (OPHS) will provide laboratory audit assistance to the State to verify that the methodologies used by a State's laboratory services to analyze samples from selected establishments are capable of producing the same results as the methodologies used by FSIS laboratories.

Comment: Some comments agreed that State-inspected establishments participating in the cooperative interstate shipment program should be subject to the same regulatory sampling programs as those established in the Federal inspection program. One comment stated that positive results on pathogen and residue testing on products produced in selected establishments should lead to the same regulatory actions that federally-inspected establishments are subjected to.

Two comments stated that they were encouraged by the requirements for regulatory sampling and laboratory analysis described in the proposed rule. The comments stated that a robust residue, microbiological, and pathological analysis capability will assure accuracy of these test results, which, according to the comments, is essential for maintaining foreign markets.

Response: The comments present valid reasons for requiring that the selected establishments participating in the cooperative interstate shipment program be subject to the same regulatory sampling required under the Federal program.

Comment: Several comments requested that FSIS clarify its expectations with regard to the laboratory services used by States to analyze samples under the cooperative interstate shipment program. Many comments specifically asked whether FSIS expects these laboratories to be (International Organization for Standards) ISO accredited. Several comments expressed concern that if FSIS requires laboratories that analyze samples for the cooperative interstate shipment program to be ISO accredited, some laboratories will have to abandon perfectly acceptable procedures, or possibly more up-to-date procedures, to perform the methodology executed at the FSIS laboratories. The comments also said that some states would need to hire additional personnel to perform the increased paperwork with no additional benefit in the quality or quantity of tests performed.

Response: The laboratory services that States use to analyze samples collected under the cooperative interstate shipment must be capable of producing the same results as FSIS's laboratories. Therefore, to demonstrate that the laboratory services used by a State are sufficient for the State to qualify for the cooperative interstate shipment program, the State will need to show that the laboratory is accredited by an internationally recognized organization that accredits food testing laboratories against the ISO 17025 "*General Requirements for the Competence of Testing and Calibration Laboratories*" and AOAC "*Guidelines for Laboratories Performing Food Microbiological and Chemical Analyses of Food and Pharmaceuticals Testing*" written by the Analytical Laboratory Accreditation Criteria Committee (ALACC). The assessment body that FSIS uses, the American Association for Laboratory Accreditation (A2LA), is the sole organization that incorporates ALACC into their program requirements. State labs would need to use A2LA or another accrediting body that incorporates ALACC and is a signatory and in good standing to the Mutual Recognition Arrangements of the International Laboratory Accreditation Cooperation (ILAC).

The laboratory will also need to use the protocols for analytical tests required for FSIS regulatory activities on meat and poultry products described in the FSIS Chemistry, Microbiological, and Pathology Laboratory Guidebooks. However, if the laboratory that a State intends to use to analyze samples for the cooperative interstate shipment program is unable to follow an FSIS method as written, the State may submit a justification to FSIS that: (1) Explains why the laboratory is unable to follow the FSIS methodology and (2) describes the modifications that the laboratory intends to make to the FSIS methodology. FSIS will evaluate the State's justification to determine whether the modification of FSIS methodology is minimal and supportable through validation or other evidence. FSIS will allow a State to use the modified method if the Agency determines that methodology is consistent with the original FSIS protocol and the State's method is capable of achieving results that are consistent with the corresponding FSIS method.

To assist the States in developing laboratory services that are "the same as" those provided under the Federal inspection program, FSIS is adopting a "phased in" approach for the States to become ISO 17025 accredited. OPHS has developed a Quality Assurance (QA) checklist based on ISO 17025 and ALACC criteria. It is not as extensive as ISO 17025, but contains minimum QA practices that laboratories should follow to be able to defend their results. The checklist is included as an appendix in FSIS's guidance for "at least equal to" State MPI programs. States that use services from laboratories that are not ISO 17025 accredited but that can demonstrate that the laboratories meet the laboratory criteria in the FSIS QA checklist will be permitted to participate in the cooperative interstate shipment program if they agree to actively seek and obtain ISO accreditation within two years. However, if the laboratory fails to actively seek or does not obtain the necessary accreditation, FSIS will terminate the State's cooperative agreement for the interstate shipment program.

FSIS is developing materials to assist States whose laboratory services are pursuing ISO accreditation to meet the requirements to become accredited. States may also use an outside laboratory to analyze samples collected under the cooperative interstate shipment program if the outside laboratory has the necessary accreditation.

States that currently use laboratories with active ISO 17025 accreditations will need to submit the necessary documentation for FSIS to verify that the laboratories are ISO accredited and meet ALACC food laboratory requirements as assessed by an appropriate accreditation body. To remain eligible for the programs, States will need to demonstrate, through documented third-party audits or other appropriate documentation, that their laboratories are maintaining their accreditation and are continuing to use methods described in FSIS Laboratory Guidebooks.

Comment: One comment asserted that instead of conducting the same number and type of sampling that is conducted under FSIS's sampling programs, the Agency should allow States to develop sampling programs that reflect the same number of samples over the broad spectrum of meat products produced under the cooperative interstate shipment program. According to the comment, States may very well conduct more sampling or more comprehensive sampling than Federal programs. The comment also suggested that FSIS provide States with production data to guide them in selecting the same number or more samples based on the same volumes under FSIS inspection programs.

Response: To qualify for the cooperative interstate shipment program States must, at a minimum, collect and analyze the same number and type of regulatory product samples from selected establishments as are collected and analyzed under FSIS's inspection sampling program. If they have met the sampling requirements provided for in FSIS's regulatory sampling programs, States may collect additional samples or conduct additional analyses if they choose to do so. FSIS will provide guidance to States in determining the appropriate number of samples that they will need to collect to be the same as the Federal regulatory sampling program.

Comment: Some comments noted that establishing a national laboratory program to analyze samples collected under the cooperative interstate shipment program would be more economically viable than requiring that each State program conduct a laboratory program that is "the same as" FSIS's. According to the comments, it is economically unreasonable for States to set up and maintain equipment necessary for running extremely rare samples.

Response: States that do not have the laboratory capability to conduct the necessary sampling and analyses required under the cooperative interstate shipment program are permitted to submit samples collected under the cooperative interstate shipment program to an outside laboratory that does. The States may rely on the sample results obtained from an outside laboratory if the State, in coordination with FSIS's OPHS, has verified that the laboratory has the necessary accreditation and is capable of producing the same results obtained by FSIS's laboratories.

Comment: One comment stated that the level of oversight that FSIS intends to have over State laboratories under the cooperative interstate shipment program is unnecessary. The comment suggested that, if FSIS intends to oversee the analysis of samples collected from selected establishments, it should offer to analyze all samples from eligible establishments at FSIS laboratories at no cost to the State program.

Response: FSIS does not intend to oversee the analysis of samples collected from selected establishments. The Agency intends to consult with the States to verify that the laboratories that States use to analyze samples from selected establishments are capable of producing the same results as FSIS's laboratories.

Comment: One comment included a number of questions that the commenter requested FSIS address before the

Agency issues the final rule to implement the cooperative interstate shipment program. The questions are as follows:

- Will the kidney inhibition swab (KIS) test for detecting antimicrobial drug residues be required in establishments selected for the program, or will other tests be acceptable?
- If KIS is necessary, will every facility be required to have an incubator, or can samples be sent to the state laboratory, requiring only one incubator?
- If an establishment decides to participate in both the cooperative program and the state inspection program, would the sampling program required by FSIS be sufficient, or would they also have to participate in the State's sampling program?
- Could the selected establishments be put into the FSIS sampling program, with FSIS sending sample requests and supplies, and the samples analyzed at Federal labs?
- What process must be followed if a state's laboratory wants to request audit help?
- Will the recommendations of the auditor be the official required adjustments the lab must make to allow the state to participate in the program?

Response: As noted above, the laboratory services that a State uses to analyze samples under the cooperative interstate shipment program must use methods that are capable of producing results that are "the same as" those obtained from the methods used by FSIS's laboratories. Therefore, the KIS test for detecting antimicrobial drug residues used by FSIS is the acceptable test. Samples may be sent to and analyzed by the State laboratory if FSIS has evaluated and approved any minor modifications to the procedures described in the FSIS Laboratory Guidebooks.

If an establishment participates in both the cooperative interstate shipment program and the cooperative State MPI program, the sampling conducted under the cooperative interstate shipment program must be "the same as" the sampling conducted under the Federal program, while the samples collected under the State MPI program must meet standards that are "at least equal to" the Federal program.

States that participate in the cooperative interstate shipment program are responsible for scheduling, collecting and analyzing samples required under the program. FSIS will not collect or analyze regulatory samples for the cooperative interstate shipment program.

The SEC assigned to the State will facilitate the process for the State to obtain the necessary audit assistance from FSIS's OPHS. As noted above, OPHS will provide guidance and advice on laboratory accreditation requirements. However, the laboratories themselves will be responsible for obtaining the necessary ISO accreditation.

6. Related Activities

Comment: Some comments requested that FSIS clarify what States need to do to demonstrate they are able to "conduct any related activities that would be required under a cooperative interstate shipment program," as required under the proposed regulations. The comments said that the final rule must specifically describe the "related activities" required under the cooperative agreement or else the Agency should remove this statement.

One comment said that requiring that States conduct "related activities" adds requirements for a State program that are outside of what is authorized by the enabling statute, and is both unclear and unnecessary. The comment said that FSIS should not be attempting to impose ancillary requirements on the States through the cooperative agreement process. According to the comment, the State's ability to provide inspection service to selected establishments in accordance with the statute is all that is authorized and, therefore, all that is necessary.

Response: The term "related activities" refers to any activities that are necessary to ensure that the inspection services provided to selected establishments are "the same as" the inspection services provided to Federal establishments. Such activities include, but are not limited to, scheduling, collecting and analyzing regulatory samples, issuing export certificates for establishments that will be exporting products to foreign countries, and verifying that selected establishments are humanely handling livestock in connection with slaughter.

E. Additional Conditions for State Participation

In addition to requiring that a State's requests for an interstate shipment program include documentation to demonstrate that it is capable of providing the necessary inspection services to selected establishments in the State, the proposed regulations also require that, in its request, the State must agree to: (1) Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State; (2) inform the SEC for the State of any laboratory results that indicate that a product produced in a selected establishment may be adulterated or may otherwise present a food safety concern; and (3) if necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments (proposed 9 CFR 332.4(b)(3) and 381.187(b)(3)).

The proposed regulations also provide that when States submit their requests for an interstate shipment program, they must include a list of establishments that have requested to participate in the program and that the State recommends for initial selection into the program (proposed 9 CFR 332.4(b)(1) and 381.187(b)(1)).

Comment: Two comments suggested that FSIS remove the provision in the proposed regulations that requires that States give FSIS access to the results of all laboratories analyses conducted at selected establishments. The comments stated that such a requirement is unnecessary because the States are also required to notify the SEC of results that indicate that a product produced in a selected establishment may be adulterated or may otherwise present a food safety hazard.

Response: Although the States are required to notify the SEC of laboratory results that indicate that a product produced in a selected establishment may be adulterated or present a food safety hazard, the SEC or other FSIS personnel also need to have access to the results of the laboratory analyses conducted on products produced in selected establishments to verify that these establishments are operating in a manner that complies with the Acts.

Comment: One comment stated that, as written, the proposed requirement that States give FSIS "access" to all laboratory results could be interpreted as requiring that FSIS have electronic access, via a particular system, to the results of testing conducted by State programs. According to the comment, when an integrated electronic system for data sharing is developed, funded, and implemented, State programs will share laboratory results with FSIS electronically. The comment maintained that the cooperative interstate shipment program should not unintentionally limit the methods by which analytical results are shared with FSIS before an electronic system is fully operational.

Response: The regulations do not prescribe the methods by which States are required to share their analytical results with FSIS. States may share analytical results with FSIS

electronically or they may provide hard copies. The only requirement is that they give FSIS access to these results upon request.

Comment: One comment said that the proposed requirement that the State notify the SEC when laboratory results indicate that a product from a selected establishment may be "adulterated or may otherwise present a food safety concern" is overly broad and redundant. The comment asserted that any product that presents a food safety concern is, by definition, adulterated. The comment suggested that FSIS delete the phrase "may otherwise present a food safety concern" in the final regulations.

Response: There may be instances in which a product presents a food safety concern but it is unclear as to whether the product is adulterated under the FMIA or PPIA. For example, a preliminary laboratory result may indicate that a product that has been distributed in commerce is contaminated with a pathogen but the laboratory needs to complete the analysis to confirm these results. The SEC needs to be made aware of these situations to verify that the establishment and States have responded to the preliminary result in a manner that complies with the Federal Acts and implementing regulations.

Comment: One comment stated that, instead of requiring that a State's request for a cooperative interstate shipment program include a list of establishments that have submitted requests to participate in the program and that the State recommends for the program, the final regulations should permit States to submit a request for a cooperative interstate shipment program before they have identified establishments interested in being selected for the program. According to the comment, this would allow the State and Federal programs to work out any issues with their relationship before offering the program to establishments.

Response: FSIS agrees with this comment. The Agency has modified the regulations to require that a State's request for a cooperative interstate shipment program include a list of establishments that have submitted a request to participate in the program, if any. This will allow States to request an agreement for a cooperative interstate shipment program before they have identified establishments interested in participating in the program. However, FSIS will only reimburse States for 60% of their eligible costs to administer the program if, after entering into a cooperative agreement, establishments in the State are selected for, and participate in, the program.

Comment: A few comments stated that, in addition to verifying that States have sufficient authority, resources, personnel, training, sampling capability and laboratory capacity to provide the necessary inspection services to selected establishments in the State, FSIS will also need to monitor budget issues in participating States on an ongoing basis to ensure that States continue to have sufficient resources to participate in the program. The comments noted that many State governments are under financial duress and have had to make budget cuts in their State inspection programs. One comment said that even though FSIS is required to reimburse States for at least 60% of their eligible costs associated with the cooperative interstate shipment program, the Agency will need to verify that States interested in participating in the new program will be able to meet Federal inspection regulatory requirements during these hard economic times.

Response: States that enter into an agreement with FSIS for a cooperative interstate shipment program will be required to prepare annual budgets to cover the costs for the cooperative interstate shipment program, maintain complete accounting records, and conduct all other financial accountability activities just as they do for the State MPI program. FSIS will terminate a State's agreement for a cooperative interstate shipment program if the State does not have sufficient finances to comply with all aspects of the cooperative interstate shipment program.

F. Selection Process

Under the proposed regulations, State-inspected establishments that are interested in participating in the cooperative interstate shipment program must apply for the program through their State (proposed 9 CFR 332.5(a)(1) and 381.515(a)(1)). If a State determines that an establishment operating under the State's meat or poultry products inspection program qualifies for selection into a cooperative interstate shipment program, and the State is able and willing to provide the necessary inspection services to the establishment, the State is to submit its evaluation of the establishment through the FSIS District Office that covers the State (74 FR 47653). The proposed rule provides that the FSIS Administrator, in coordination with the State, will decide whether to select the establishment for the program (proposed 9 CFR 332.5(b) and 381.151(b)).

Comment: Some comments said that the State inspection program is the government entity best suited to begin the process of selecting establishments for the cooperative interstate shipment program. According to the comments the States, not the FSIS Administrator, should be responsible for selecting establishments to participate in the program. The comments suggested that after initiating the selection process, the State program could collaborate with the FSIS SEC, who can visit the establishments that are under consideration for selection into the cooperative interstate shipment program.

Response: FSIS agrees that the States are best suited to begin the process of determining which establishments in the State are eligible for selection to the cooperative interstate shipment program. Therefore, the proposed rule requires that establishments interested in participating in the cooperative interstate shipment program apply for the program through the State in which they are located (proposed 9 CFR 332.5(a) and 381.515(a). After the State recommends establishments for the program, the law requires that the FSIS Administrator coordinate with the State to select establishments for the program (21 U.S.C. 683(b)(1) and 472(b)(1)).

Comment: One comment argued that the regulations do not need to include a process for selecting establishments to participate in the cooperative interstate shipment program because establishments operating under the State MPI programs are already under an inspection system that provides for food safety in a manner that is "at least equal to" the Federal inspection program. According to the comment, there is no need for selection because the entire State program has already been approved.

Response: The law requires that the FSIS Administrator, in coordination with the State, select establishments to participate in the new cooperative interstate shipment program (21 U.S.C. 683(b) and 472(b)). There is nothing in the law to indicate that establishments operating under the existing State MPI programs have already been approved for the cooperative interstate shipment program. Therefore, these final regulations include procedures for selecting establishments for the program.

Comment: One comment suggested that the final rule require that selected establishments undergo an on-site review by FSIS at least 30 days before they become eligible to participate in the cooperative interstate shipment program. The comment noted that such a review would help to guarantee that selected establishments that wish to ship their meat products in interstate

commerce are in compliance with Federal law.

Response: The preamble to the proposed rule explained that, as part of the selection process, the SEC assigned to a State, in coordination with the State, will verify that each establishment in the State that has applied to participate in a cooperative interstate shipment program is in compliance with all Federal standards (74 FR 47653). To verify such compliance, the SEC will coordinate with the State to conduct on-site reviews of each establishment that has applied, and that the State recommends, for selection into the program.

Comment: One comment said that FSIS should better explain how establishments may be selected for the cooperative interstate shipment program.

Response: The preamble to the proposed rule provides a detailed description of the proposed selection process. FSIS is adopting that process in this final rule.

As proposed, State-inspected establishments that are interested in participating in a cooperative interstate shipment program will be required to apply for the program through the State agency that administers the State MPI program. States are responsible for establishing their own application procedures. The State will then evaluate the establishment to determine whether it qualifies for selection. To qualify for selection to the cooperative interstate shipment program, an establishment must:

- Have the appropriate number of employees;
- Not be ineligible for a cooperative interstate shipment program [2];
- Be in compliance with all requirements under the State inspection program; and
- Be in compliance with all Federal meat or poultry products inspection requirements.

If a State determines that an establishment operating under the State's MPI program qualifies for selection into a cooperative interstate shipment program, and the State is able and willing to provide the necessary inspection services to the establishment, the State is to submit its evaluation of the establishment through the FSIS District Office that covers the State. The FSIS Administrator, in coordination with the State, will then decide whether to select the establishment for the program.

In deciding whether to select an establishment that the State has recommended for the cooperative interstate shipment program, the Administrator will consider whether the establishment qualifies for the program and whether the Agency has the resources that it needs to provide the required oversight of the establishment if it is selected for the program. Before an establishment can be selected, the SEC, in coordination with the State, must verify, through record reviews and on-site visits, that the establishment is in compliance with all Federal inspection requirements under the FMIA, PPIA, and their implementing regulations in title 9, chapter III, of the CFR.

G. Mark of Inspection and Official Number

The proposed regulations require that inspection services for selected establishments be provided by designated State personnel, and that articles prepared or processed in a selected establishment that have been inspected and passed by designated personnel bear an official Federal mark of inspection (proposed 9 CFR 332.6(c) and 381.516(c)). The proposed regulations also require that the Federal mark contain a selected establishment number assigned to the establishment by the State. The proposal provides that the number must include, as a suffix, the abbreviation for the State in which the establishment is located, as well as the abbreviation "SE" for selected establishment (*e.g.* "38SETX" as a number for a selected establishment in Texas). If the establishment processes poultry products, the suffix must also contain a "P," (e.g., 38 SEPND for a selected poultry establishment in North Dakota) (proposed 9 CFR 332.5(c) and 381.515(c)). The proposed regulations also state that States that fail to assign an establishment number to selected establishments in the State and report the number to the SEC for the State will not qualify to participate in the program (proposed 9 CFR 332.5(d) and 381.515(d)).

Comment: Some comments expressed concern that allowing State-inspected meat and poultry products to bear a Federal mark of inspection will make it difficult to maintain the integrity of the Federal mark. One comment stated that the integrity of the Federal mark will be diminished if a State-inspected product distributed in interstate commerce is recalled or found to be adulterated. Another comment said that allowing State-inspected products to bear a Federal mark of inspection is misleading because consumers that see a Federal mark of inspection on the label of a meat or poultry product will think that the product is the same as all other federally-inspected products. The comment noted that the FMIA and PPIA both prohibit labeling that is false or misleading.

Response: Under the 2008 amendments to the Acts, meat and poultry products produced under the cooperative interstate shipment that designated State personnel have determined are in compliance with all Federal standards are required to bear a "Federal mark, stamp, tag, or label of inspection" (21 U.S.C. 472(b)(1) and 683(b)(1)). Thus, requiring that articles prepared or processed in a selected establishment that have been inspected and passed by designated personnel bear an official Federal mark is consistent with the law. Such a requirement will not diminish the integrity of the Federal mark or be misleading to consumers, as suggested by the comments, because all meat and poultry products that bear the Federal mark will have been produced under Federal standards.

Comment: Some comments maintained that it is not necessary to require that the meat and poultry products produced under the cooperative interstate shipment program bear a Federal mark of inspection because States that have MPI cooperative agreements already provide State marks. A State Department of Agriculture and a State agency commented that many State-inspected establishments prefer that their products bear the State mark of inspection. The comments claimed that requiring that selected establishments apply a Federal mark and identify the State in the establishment number is unacceptable to most plant owners. Another comment argued that requiring that a Federal mark of inspection be applied to products that have been inspected by a State inspector under a cooperative State meat inspection program is counterintuitive and does not accomplish the goal of providing for interstate shipment of State-inspected products.

Response: The 2008 amendments to the Acts require that meat and poultry products produced under the cooperative interstate shipment program bear a Federal mark of inspection.

As noted above, under the proposed regulations, the Federal mark is required to contain a selected establishment

[2] Examples of establishments that are ineligible for the cooperative interstate shipment program include official Federal establishments, establishments located in a State that has a State MPI program, establishments in violation of the FMIA or PPIA, establishments that are the subject of a transition to become a Federal plant, and establishments located in a State without a State MPI program.

number assigned to the establishment by the State. The selected establishment number is required to include, as a suffix, the abbreviation for the State in which the establishment is located, as well as the abbreviation "SE" for selected establishment (*e.g.* "38SETX" as a number for a selected establishment in Texas). If the establishment processes poultry products, the suffix must also include a "P" before State abbreviation (*e.g.,* 38 SEPND for a selected poultry establishment in North Dakota). Thus, although meat and poultry products produced in selected establishments will not bear a State mark of inspection, the State in which the product was produced can be readily identified by referencing the selected establishment number that is required to appear inside the Federal mark.

Comment: Some comments agreed that products produced in selected establishments should bear a Federal mark of inspection but also suggested that such products be allowed to bear a State mark if the establishment so chooses. According to the comments, many State-inspected establishments believe that compliance with their State inspection program requirements along with the Federal standards provides a marketing advantage and that appearance of the State mark may add value to State-inspected products sold in interstate commerce. One comment noted that because their State mark of inspection is an outline of the State, selected establishments in the State could use the State mark to promote their products interstate.

Response: It is not necessary for meat or poultry products that have been processed or prepared in selected establishments to bear both a State and Federal mark because the product's State-of-origin can be identified by the selected establishment number that is required to appear in the Federal mark. Moreover, allowing products produced under Federal standards to bear both a Federal and State mark of inspection may be misleading to consumers and foreign trade partners because the law prohibits interstate shipment of products produced under State MPI programs. Allowing both Federal and State marks could also be confusing to consumers and make it difficult for them to identify products potentially implicated in outbreaks or subject to recall.

Selected establishments that were interested in using the State mark to market meat or poultry products produced under the cooperative interstate shipment program could use labeling statements information to identify where the product was produced instead, provided that the statement is truthful and not misleading. For example, the label of a meat product produced in a selected establishment in Texas, could contain the statement "prepared in Texas," if the statement is presented in a manner that is truthful and not misleading to consumers.

Comment: Some comments suggested that instead of requiring that States assign a new official State establishment number to selected establishment, FSIS should allow establishments that participate in the cooperative interstate shipment program to retain their official State number in conjunction with the suffix "SE."

Response: There is nothing in the proposed rule that would prevent a State from allowing establishments selected for the cooperative interstate shipment program to retain their official State number, provided that the suffix "SE" is added to original State establishment number. The "SE" suffix is necessary to make clear that the establishment associated with the number is a selected establishment.

Comment: One comment noted that the proposed regulations identify the "SE" that is required to appear as part of a selected establishment's official State number as a suffix. The comment stated that the "SE" designation is, in fact, a prefix.

Response: FSIS refers to the "SE" along with the State abbreviation as a "suffix" because these abbreviations follow the number assigned to the selected establishment.

Comment: One comment objected to the provision in the proposed regulations that provide that a State that fails to assign an official State number to the selected establishments in the State and inform the SEC will be disqualified from participating in the cooperative interstate shipment program. The comment believed that disqualification is an overly harsh penalty for what may be a simple omission. The comment suggested that in the final rule, FSIS replace the statement that failure to assign an official number "will disqualify the State" to "may disqualify the State."

Response: As explained in the preamble to the proposed rule, full compliance by a State with the requirements for assigning official establishment numbers to establishments selected for the cooperative interstate shipment program is essential if the program is to succeed (74 FR 57654). FSIS will give States that inadvertently fail to assign a proper establishment number to a selected establishment an opportunity to take corrective actions to comply with the regulations. However, failure to comply with the establishment number requirements in this final rule will disqualify a State from participating in the cooperative interstate shipment program.

Comment: Several comments submitted by State Departments of Agriculture and State agencies requested that in the final rule FSIS make clear that it will permit selected establishments to produce products under both the cooperative interstate shipment program and the State MPI program. The comments noted that FSIS allows establishments with both a Federal grant and State grant of inspection to operate as both a Federal plant and a State plant if they maintain an appropriate separation by time or space between the State and Federal operations and that the products are appropriately marked. The comments noted that in a letter to the National Association of State Departments of Agriculture (NASDA) dated September 15, 2009, the Deputy Secretary of Agriculture said that FSIS expects to apply a similar policy to selected establishments that are interested in continuing to produce certain products solely for distribution in the State under the State MPI program. The comments maintained that allowing for this type of flexibility will benefit rural America and is necessary for the success of the new program.

One comment said that if the final rule permits selected establishments to produce products under both the State MPI program and the cooperative interstate shipment program, FSIS should allow these establishments to continue to apply the State mark to products that are not produced under the cooperative interstate shipment program.

Response: FSIS has considered these comments and has decided to revise the proposed regulations to allow selected establishments to conduct operations under both the cooperative interstate shipment program and the State MPI program if those establishments implement and maintain written procedures for complete physical separation of product and process for each operation by time or space. An establishment may provide for separation by space by conducting its State MPI operations in an area that is physically separate from the area in which it conducts operations under the cooperative interstate shipment program. Alternatively, an establishment may conduct each operation in the same area provided that the separation in space is sufficient to

ensure that potential food safety hazards, such as microbiological pathogens, if present, are not likely spread from one area to another through aerosolization, air ducts, air currents, employees, or other means and that there is no co-mingling of product. Establishments that chose to conduct both operations in the same area must clearly identify and distinguish the State MPI operation from the cooperative interstate shipment operation. For example, the establishment might designate certain employees on a given day to work exclusively on the State MPI operations and have these employees wear white clothing, and designate other employees to work exclusively on the cooperative interstate shipment operations and have these employees wear yellow clothing. The establishment could also color-code knives and other equipment associated with each operation.

In addition to separation by space, an establishment may conduct the State MPI operations and cooperative interstate shipment operations at separate times if the establishment's procedures for separation address clean-up between operations. Establishments that conduct both operations in the same facility and on the same equipment, and that separate the operations by time, will need to fully clean and sanitize the facilities and equipment in between operations as set out in their Sanitation SOPs.

Establishments that conduct operations under both the State MPI program and the cooperative interstate shipment program will also need to establish written procedures to ensure that product produced under the State MPI program will not become co-mingled with product produced under the cooperative interstate shipment program. The procedures will need to ensure that products produced under each program are appropriately identified as State MPI product or cooperative interstate shipment products, and that each product bears the appropriate mark of inspection.

Establishment will also need to maintain physical separation of product produced under the State MPI program from products produced under the cooperative interstate shipment program throughout the process, either through the use of separate facilities or by designated areas for holding or storing products produced under separate operations.

The meat or poultry products produced when the establishment is operating under the State MPI program will be required to bear the State mark of inspection and will only be permitted to be distributed within the State. Meat or poultry products produced when the establishment is operating under the cooperative interstate shipment program will be required to bear a Federal mark and may be shipped in interstate commerce.

H. Oversight and Enforcement—Selected Establishment Coordinator

The preamble to the proposed rule explained that the statute requires that FSIS appoint a "state coordinator" to "provide oversight and enforcement" of the cooperative interstate shipment program and "to oversee the training and inspection activities" of State personnel designated to provide inspection services to selected establishments (74 FR 47654). When FSIS issued the proposed rule, the Agency explained that the "state coordinator" required by statute would be referred to as the "selected establishment coordinator" (SEC) in the proposed regulations to avoid confusion with the "State coordinator" under the Talmadge-Aiken program, which is a State employee. In the preamble to the proposed rule, FSIS also explained that the Agency had tentatively decided that the SEC would be an employee of the FSIS Office of Field Operations (OFO) and would be assigned to an FSIS district office.

1. SEC Definition and FSIS Program Area

Comment: One comment stated that the codified text in the final rule should clarify that the term "selected establishment coordinator" as used in the implementing regulations is synonymous with the term "state coordinator" under the statute. The comment said that there should not be both a State coordinator and an SEC.

Response: As noted in the preamble to the proposed rule, the term "State coordinator" is often used to refer to a State employee under the Talmadge-Aiken program. Therefore, to make clear that the "State coordinator" for the cooperative interstate shipment program is an FSIS employee, this final rule identifies that employee as the FSIS "selected establishment coordinator" in the codified text. The codified text in the final rule does not provide for both a State coordinator and an SEC.

Comment: Some comments stated that, instead of being under the direct supervision of an FSIS District Manager, as FSIS tentatively decided in the proposed rule, the SEC should be under the direct supervision of the Secretary of Agriculture as provided under the statute.

Other comments agreed with FSIS's tentative determination that the SECs operate out of the district offices. One comment noted that the SEC is a Federal employee. The comment stated that, as such, it is appropriate that the SEC be stationed at the district office and report to a District Manager and ultimately, FSIS headquarters. The comment asserted that the SEC should not be stationed at the State meat and poultry inspection agency, but should maintain frequent communication with State agency officials.

Response: The Secretary of Agriculture has delegated the administration and enforcement of the cooperative interstate shipment program to FSIS. Since the SEC will be an FSIS employee that operates out of the FSIS district office, it is appropriate for the SEC to be under the direct supervision of the FSIS District Manager.

Comment: Several comments were concerned about the Agency's tentative decision to assign the SEC to an FSIS district office. According to the comments, FSIS district offices are not always consistent in their interpretation and enforcement of the Agency's policies. The comments stated that administering the cooperative interstate shipment program from different district offices will make it difficult for FSIS to implement and enforce the program in a consistent manner. The comment suggested that, instead of assigning SECs to multiple district offices, FSIS should designate a single entity within the Agency to implement and enforce the cooperative interstate shipment program.

Some comments suggested that FSIS create a branch in OPEER, similar to the Federal/State Audit Branch (FSAB), or assign the FSAB to administer, review, and enforce the cooperative interstate shipment program. The comments noted that the OPEER/FSAB is already responsible for verifying that the State MPI programs are operating in a manner that is "equal to" the Federal standards, and States now spend a considerable amount of time providing information to OPEER/FSAB. The comments stated that allowing a centralized Agency branch, such as the OPEER/FSAB, to administer and enforce the cooperative interstate shipment program will promote consistency in the program by providing the FSIS SECs, the State programs, and selected establishments with a single point of contact for guidance, policy implementation, and enforcement.

Response: The FSIS SEC is required to provide "oversight and enforcement" of the cooperative interstate shipment program and "to oversee the training

and inspection activities" of State personnel designated to provide inspection services to selected establishments (21 U.S.C. 683(d)(1) and 472(d)(1)). As noted above, when FSIS issued the proposed rule, it had tentatively decided that the SEC would be an employee of the FSIS Office of Field Operations (OFO) assigned to an FSIS District Office. Because OFO has expertise in management and enforcement of Federal inspection standards, FSIS is affirming that decision. The SEC will be an OFO employee assigned to an FSIS district office as proposed.

As noted by the comments, the OPEER/FSAB is responsible for conducting comprehensive audits of Federal and State MPI programs. OPEER/FSAB verifies that State MPI programs are operating in a manner that is "at least equal to" the Federal program. Although OPEER/FSAB will not have direct oversight and enforcement of the cooperative interstate shipment program, once the cooperative interstate shipment program is fully implemented, the OPEER/FSAB will be responsible for auditing that program to verify that it is operating in a manner that is "the same as" the Federal inspection program.

2. Number of SECs per State

In the preamble to the proposed rule, FSIS explained that the number of States in an FSIS district assigned to an SEC will likely depend on several factors, including, but not limited to: (1) The number of States and selected establishments, if any, that participate in the cooperative interstate shipment program; (2) the location of each selected establishment; (3) the number of State inspection personnel providing inspection services to selected establishments in a State; (4) the complexity of the operations conducted at each selected establishment; and (5) the schedule of operations for each selected establishment (74 FR 47654). The preamble also noted that the number of States assigned to an SEC would also need to be based on consideration of the most effective allocation of available Agency resources.

In the PRIA to the proposed rule, FSIS also estimated that 13 full-time equivalent FSIS employees would be needed to perform the SEC functions for the 16 States expected to participate in the cooperative interstate shipment program (74 FR 47660). If 400 establishments participate in the new program, the Agency estimated each SEC will be responsible for 31 establishments in a geographically-limited area.

Comment: Several comments, most submitted by consumer advocacy organizations, stated that 13 SECs to oversee cooperative interstate shipment programs in 16 States is not sufficient to provide adequate oversight of the new program. The comments urged FSIS to assign a separate SEC to each State that participates in the program. The comments asserted that to effectively verify that selected establishments operating in a manner consistent with the Acts, the SECs need to be spending most of their time in these establishments rather than driving from state-to-state. One comment said that when the provisions of the law were negotiated, the parties understood that there was to be one SEC per State.

Other comments questioned whether the Agency's estimate of one SEC for 31 establishments is adequate to ensure that these establishments are operating in a manner that complies with the Acts. The comments stated that FSIS must provide enough flexibility to reduce the number of establishments covered by an SEC if circumstances warrant.

One comment expressed concern over the statement in the proposed rule that "[t]he number of States assigned to an SEC would also need to be based on consideration of the most effective allocation of available Agency resources." The comment stated this sentence demonstrates that there is reason to be concerned that the new program may not receive adequate resources to best protect public health and safety. The comment maintained that there should be at minimum one SEC per participating State and that the SEC's sole function should be oversight and enforcement of the program, unless the State has so few participating establishments that a full-time SEC is not warranted.

Response: As noted in the preamble to the proposed rule, the number of SECs needed to provide effective oversight of the cooperative interstate shipment program will depend on several factors, all of which are intended to ensure that there is sufficient Federal oversight of the program. FSIS agrees with the comments that stated that the SECs should be spending most of their time overseeing activities in selected establishments, and the Agency intends to structure the SEC's assignment in a manner that will, to the greatest extent possible, limit the time spent traveling between selected establishments. In some instances, this will require that an SEC cover selected establishments located in different States, particularly in States with selected establishments located near the State borders.

As noted above, FSIS estimated that there would be one SEC for 31 establishments in a geographically-limited area. This number is an estimate and assumes a certain level of participation by State-inspected establishments that employed fewer than 35 employees when the 2008 Farm Bill was enacted. The actual number of establishments assigned to an SEC will depend on a number of factors, including the complexity of the operations conducted at the selected establishments and the schedule of operations for each selected establishment.

3. Frequency of SEC Visits

As required under the statute, the proposed regulation provided that the FSIS SEC is to visit each selected establishment in the State on a regular basis to verify that these establishments are operating in a manner that is consistent with the Acts and the implementing regulations (proposed 9 CFR 332.7(a) and 318.517(a)). In the preamble to the proposed rule, FSIS noted that the SEC's frequency of visits and oversight activities for each selected establishment will need to reflect the type of operations conducted by a selected establishment, as well as the establishment's production processes (74 FR 47654). The Agency requested comments on how frequently the SEC should visit each establishment under his or her jurisdiction.

Comment: Several comments said that, since the law requires that the SECs file quarterly reports on the status of the selected establishment under their jurisdiction, they should visit each selected establishment at least quarterly. Some comments stated that requiring that the SEC visit selected establishments more often than once a quarter would seem overly burdensome and ineffective. One comment suggested that FSIS modify the proposed regulation to read that the SEC will visit, "each selected establishment in the State on a regular basis, but no less frequently than quarterly, to verify that the establishment is operating in a manner that is consistent with the Act."

One comment stated that requiring quarterly or bi-annual visits will allow the SECs to both cover their assigned establishments and conduct the day-to-day operations of managing the program for their region. The comment said that if a problem arises, the SEC can visit the establishment more frequently. The comment suggested that SECs also rely on State inspection personnel to advise them if additional visits are needed.

Many comments stated that the frequency of the SEC's visits should be based on the performance of the establishment. The comments noted that the number of visits may need to be higher when the program is first implemented while the State inspection personnel gain experience with the program's regulatory requirements. Two comments suggested that initially, the visits should be weekly and that subsequent visits should be based on the establishment's performance.

One comment said that the final regulations should clearly state that the frequency of the SEC's visits shall be based on the performance of the establishment's food safety control systems. The comment maintained that such a statement will ensure judicious use of FSIS resources and create an additional incentive for the establishment to effectively operate their food safety control systems.

One comment stated that the SEC should visit selected establishments no more frequently than FSIS front line supervisors typically visit federally-inspected establishments in their circuit. Another comment said that the SECs will need to visit selected establishments quite frequently to ensure that they are in compliance with Federal standards. One comment stated the goal in determining how frequently SECs should visit establishments under their jurisdiction should be to provide a statistically relevant sample to check on the level of compliance and performance of inspections by state inspectors.

One comment suggested that in addition to prescribing the frequency of SEC visits, the final regulations should specify that the SEC's visits to selected establishments are to occur at different times and be unannounced.

Response: The comments submitted on this issue indicate that there is a general lack of consensus on how frequently the SEC should visit selected establishments in the States. As noted above, some comments suggested that the SEC conduct quarterly or even bi-annual visits, while others suggested that the SEC visit each selected establishment at least weekly.

The 2008 amendments to the Acts do not specify how frequently the SECs are to visit selected establishments, but they do provide that the SEC "* * *shall visit selected establishments with a frequency that is appropriate to ensure that selected establishments are operating in a manner that is consistent with this Chapter (including regulations and policies under this Chapter (21 U.S.C. 683(d)(3)(a) and 472(d)(3)(a)). The Senate Committee report that explains this provision states that "[i]t is the Committee's intent that the [SEC] inspect selected establishments frequently each month" (S. Rep. No. 110–20, 110th Cong., 1st Sess. (2007), pp 211–214)).

Therefore, after considering the comments on this issue, as well as the language in both the statute and the Senate Committee report, FSIS has decided not to prescribe how frequently SECs are to visit selected establishments under their jurisdiction. Instead, the Agency is revising the proposed rule to clarify that the frequency with which the SEC will visit selected establishments under the SEC's jurisdiction will be based on a number of factors, including the complexity of the operations conducted at the selected establishment, the establishment's schedule of operations, and the establishment's performance under the cooperative interstate shipment program. The Agency has concluded that such an approach will ensure that the number of SEC visits reflects the appropriate level of oversight needed for each selected establishment.

FSIS agrees with the comments that noted that the number of SEC visits may need to be higher when the program is first implemented in order for the State personnel to gain experience in enforcing Federal food safety standards. FSIS also intends to schedule some unannounced SEC visits to selected establishments, as suggested by the comments. However, the SEC will also conduct scheduled visits to selected establishments to give State personnel the opportunity to prepare to discuss issues related to their role in enforcing Federal standards.

Although FSIS is not prescribing a specific minimum number of SEC visits, based on the statement in the Senate Committee report, FSIS has concluded that bi-annual or quarterly visits to selected establishments, as suggested by some comments, are most likely not frequent enough to carry out the intent of the statutes.

Comment: One comment stated that the provision in the proposed rule that allows the SEC, in consultation with the District Manager, to designate qualified FSIS personnel to visit a selected establishment on behalf of the SEC is an appropriate use of Agency resources. The comment said that assigning other designated FSIS personnel to visit establishments on behalf of the SEC makes sense from a practical and financial standpoint. The comment stated that FSIS could use inspection personnel who are already out in the field to conduct visitations to check compliance on a more frequent basis than sending the SEC into the field.

Response: FSIS agrees that providing for qualified FSIS personnel to visit selected establishment on behalf of the SEC is an appropriate use of Agency resources.

4. SEC Duties—Oversight

Comment: Some comments supported the level of Federal oversight provided for in the proposed regulations as necessary to maintain the safety and security of all meat and poultry products distributed in interstate commerce. One of the comments stated that any cooperative interstate shipment program must be federally driven and that FSIS must be in charge.

Other comments complained that the proposed rule would give the SEC an excessive and unnecessary level of Federal oversight over the cooperative interstate shipment program. The comments stated that FSIS currently evaluates "at least equal to" State MPI programs through reviews of State self-assessment and through an on-site evaluation of the State's program every three years. The comments asserted that this evaluation methodology has proven effective for assuring that State programs are in compliance with Federal requirements. The comments said that FSIS should, to the extent allowed by statute, consider using this same method for evaluating a State's performance under the new cooperative interstate shipment program.

Response: FSIS disagrees with the comments that stated that the proposed rule would give the SEC an excessive and unnecessary level of Federal oversight over the cooperative interstate shipment program. As noted throughout this document, under the Acts, as amended by the 2008 Farm Bill, the FSIS Administrator is required to designate an FSIS employee as an SEC for each State to "provide oversight and enforcement of the program" and to "oversee the training and inspection activities" of the designated State personnel providing inspection services to a selected establishment. (21 U.S.C. 683(d)(1) and 472(d)(1)). The Acts also require that the SEC visit selected establishments as frequently as necessary to ensure that these establishments are operating in a manner consistent with the Federal Acts (21 U.S.C. 683(d)(3) and 472(d)(3)). Thus, the level of Federal oversight that the proposed rule provides for the cooperative interstate shipment program reflects the level of oversight that is required by law.

FSIS disagrees with the comments that suggested that the Agency use

OPEER/FSAB's evaluation methodology to oversee a State's performance under the new cooperative interstate shipment program. As noted by the comments, the OPEER/FSAB conducts comprehensive audits of the State MPI programs to verify that States are enforcing laws and regulations that "are at least equal to" to requirements of the Federal Acts. The evaluation methodology used by the OPEER/FSAB is designed to provide a comprehensive annual assessment of the State MPI programs rather than continuous Federal oversight and enforcement of these programs. Thus, this methodology would not provide the necessary level of oversight that the Acts require for the cooperative interstate shipment program.

Comment: Some comments expressed concern that the proposed rule would give "de facto constant regulatory oversight authority" to the FSIS SEC. The comments stated that this would basically give State personnel working in selected establishments two supervisors. According to the comments, this chain-of-command will create confusion and needless redundancy.

One comment said that the SEC needs to work with the States to coordinate Federal oversight of the program to reduce the burden on the selected establishments to the extent possible. The comments stated that the program should not become one in which both Federal and State officials are routinely inspecting the same facilities.

Another comment agreed with the provision in the proposed rule that stated that the SEC's role is limited to oversight and enforcement of the program. The comment also agreed that the State program should continue to be responsible for the direct supervision of designated State personnel.

Response: The proposed rule makes clear that inspection services for selected establishments participating in the cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee (proposed 9 CFR 332.6(b) and 381.516(b)). Although the SEC will be responsible for overseeing the inspection activities of the designated personnel, the State program will continue to be responsible for the direct supervision of all designated State personnel. Thus, the comment that stated that the proposed rule would give State personnel working in selected establishments two supervisors is inaccurate.

5. SEC Duties—Enforcement

The proposed regulation gave the SEC the authority to initiate any appropriate enforcement action provided for in the FSIS rules of practice in 9 CFR part 500 if the SEC determines that a selected establishment under his or her jurisdiction is operating in a manner that is inconsistent with the Acts (proposed 9 CFR 332.9(b) and 381.189(b)). As noted in the preamble, such actions include regulatory control actions, withholding actions, and suspensions (74 FR 47655).

Comment: Some comments supported the proposed enforcement provisions. One comment stated that it is appropriate for the SECs to have the same authority to initiate enforcement actions with respect to selected establishments as FSIS inspection personnel are authorized to do with federally-inspected establishment. The comment also supported the proposed requirement that selected establishments provide FSIS officials with "access to all establishment records required under the Act and the implementing regulations in this chapter."

Some comments said that the proposed rule's enforcement provisions go beyond what is authorized under the statute and will result in duplicative efforts. The comments asserted that the designated State personnel, not the SEC, should be responsible for initiating enforcement action in selected establishments.

Response: Under the proposed rule, designated State personnel are responsible for providing the necessary inspection services to selected establishments in the State. The SEC is responsible for verifying that the designated personnel are providing inspection services in compliance with the Acts.

In the preamble to the proposed rules, FSIS explained that to verify that designated personnel are providing the necessary inspection services, the SEC for the establishment, in coordination with the State, will verify that the designated personnel are correctly applying Federal inspection methodology, making decisions based upon the correct application of this methodology, accurately documenting their findings, and, when authorized to do so, implementing enforcement actions in accordance with the FSIS Rules of Practice in 9 CFR part 500 (74 FR 47655). Thus, the proposed rule makes clear that, as part of their inspection activities, designated State personnel are responsible for initiating enforcement actions in selected establishments if such personnel determine that an enforcement action is authorized under 9 CFR part 500.

The 2008 amendments to the Acts provide that if the SEC determines that any selected establishment is in violation of any requirement of the Acts, the SEC is required to: (1) Immediately notify the Administrator and (2) "deselect" the establishment or suspend inspection at the establishment (21 U.S.C. 683(d)(3)(C) and 472(d)(3)(C)). As explained in the preamble to the proposed rule, in adopting this language, Congress intended that the SEC "* * * shall be provided all the tools necessary * * * to prevent or control any food safety issue that would harm human health" (S. Rep. No. 220, 110th Cong., 1st Sess., at 211 (2007)). Therefore, to ensure that the SEC has the appropriate authority to address any food safety issues as required by the statutes, the proposed rule authorizes the SEC to initiate any appropriate enforcement action provided for in 9 CFR part 500 if he or she determines that a selected establishment under his or her jurisdiction is operating in a manner that is inconsistent with the Acts or their implementing regulations.

Thus, under the proposed rule, designated State personnel are responsible for taking appropriate enforcement action for violations of Federal food safety standards in selected establishments when such actions are authorized under 9 CFR part 500. The SEC covering a selected establishment is also authorized to take any necessary enforcement actions if the SEC identifies the need to take such action when conducting oversight activities at a selected establishment.

Comment: One comment agreed with the proposed enforcement provisions and stated that selected establishments should be subject to Food Safety Assessments (FSAs) just as federally-inspected establishments are. The comment also maintained that NRs issued to selected establishments and other enforcement action should be made available through the Freedom of information Act (FOIA).

Response: States that participate in the cooperative interstate shipment program will need to conduct comprehensive FSAs in order to properly enforce Federal food safety standards. As discussed in the preamble to the proposed rule, the SEC will also be authorized to conduct an FSA, or to request that an FSIS Enforcement, Investigation, and Analysis Officer (EIAO) conduct an FSA, if the SEC in consultation with the District Manager determines that such action would help

determine whether the establishment is operating in compliance with the Acts.

Any records that the States and selected establishment are required to provide to FSIS to allow the Agency to provide the necessary oversight and enforcement of the cooperative interstate shipment program, including NRs issued to selected establishments, will be made available to the public through the FOIA if the records are not subject to an exemption under the FOIA.

Comment: One comment stated that the final rule needs to specify an appeals process for non-compliances to ensure that all establishments that participate in the program understand the process and their rights.

Response: The proposed rule provided that selected establishments participating in the cooperative interstate shipment program would be subject to the notification and appeal procedures set out in 9 CFR part 500 (proposed 9 CFR 332.9(b) and 381.519(b)). Thus, the proposed rule did provide for an appeals process for non-compliances.

6. SEC Duties—Quarterly Reports

As provided for in the law, the proposed rule provides that the SEC is to prepare a report on a quarterly basis that describes the status of each selected establishment under the SEC's jurisdiction (proposed 9 CFR 332.8 and 381.518).

Comment: Some comments requested clarification on the type of information the SECs will be required to include in their quarterly reports. One comment asked whether the quarterly reports will include the SEC's assessment of the performance of the designated State personnel or of the selected establishments. One comment stated that the quarterly report should include the SEC's assessment of the State program's performance in providing inspection services to selected establishments and not be limited to the performance of the designated personnel.

Response: The proposed rule provided that the SEC quarterly report will: (1) Include the SEC's assessment of the performance of the designated personnel in conducting inspection activities at selected establishments and (2) identify the selected establishments that the SEC has verified are in compliance with all Federal requirements, those that have been deselected, and those that are transitioning to become Federal establishments (proposed 9 CFR 332.8(b) and 381.518(b). Thus, the quarterly report includes the SEC's assessment of the performance of both the selected establishments and the designated State personnel.

The designated personnel's ability to provide inspection services to selected establishments in a manner that complies with Federal standards reflects the State's ability to administer the cooperative interstate shipment program. Thus, the quarterly report will reflect the SEC's assessment of the State program's performance in providing inspection services to selected establishments.

Comment: One comment asserted that the SEC's do not need to visit selected establishments on a quarterly basis to complete the quarterly report. The comment stated that SECs will be able to determine the status of selected establishments based on routine reports and other documentation submitted by designated State personnel. Another comment stated that requiring an assessment on a quarterly basis would establish a burdensome Federal oversight process for States that participate in the program.

Response: As discussed above, the 2008 amendments to the Acts require that SECs visit selected establishments with a frequency that is appropriate to ensure that selected establishments are operating in a manner that is consistent with the Federal Act. There is nothing in the law to indicate that the SEC is to determine the status of selected establishments based on routine reports and other documentation submitted by designated State personnel, as suggested by the comments.

FSIS disagrees with the comment that stated that requiring an assessment on a quarterly basis would establish a burdensome Federal oversight process for States that participate in the program. As noted above, the 2008 amendments to the Acts require that the SECs prepare a quarterly report.

Comment: Some comments asked whether the State MPI programs would have a role in preparing the quarterly reports. One comment asked whether the States will receive copies of the quarterly reports from the SECs.

Response: The proposed rule provides that the SEC, in coordination with the State, will verify that selected establishments in the State are receiving the necessary inspection services from designated State personnel and that these establishments are eligible, and remain eligible, to participate in the cooperative interstate shipment program (proposed 9 CFR 332.8(b) and 381.517(b)). Although the SEC is responsible for preparing the quarterly reports, the SEC will coordinate with the State to assess the status of selected establishments under the SEC's jurisdiction. FSIS will provide the State copies of the SEC's quarterly reports on the status of selected establishments in the State upon request.

I. Deselection and Transition To Become Federal Establishment

The proposed regulations provide that the FSIS Administrator will "deselect" a selected establishment that becomes ineligible to participate in the cooperative interstate shipment program (proposed 9 CFR 332.10(a) and 381.520(a)). The preamble to the proposed rule explained that an establishment could become ineligible for the program for various reasons, such as hiring additional employees or for violating the Federal Acts (74 FR 47656). The preamble also noted that establishments located in a State whose cooperative interstate shipment program was terminated would also be ineligible for the program. Consistent with the statute, the proposed regulations require that a deselected establishment be transitioned to become a Federal establishment (proposed 9 CFR 332.11 and 381.521).

1. Establishment Deselection

Comment: One comment requested that FSIS provide more specific information on the circumstances in which an establishment will be deselected for non-compliance with the Acts. The comment asked whether a non-compliance report (NR) or a Notice of Intended Enforcement (NOIE) could result in deselection. According to the comment, NRs and NOIEs can sometimes be subjective depending on the inspection program personnel writing them. The comment encouraged FSIS and State inspection program directors to work with selected establishments that have non-compliances or enforcement actions against them to help those establishments come back into compliance and successfully continue within the program. The comment also asked FSIS to provide proper oversight and training to the SECs to ensure that the standards for non-compliances and enforcement actions are applied consistently across the country.

Response: As noted above, under the proposed rule, the SEC is authorized to initiate any appropriate enforcement actions authorized under the Agency's Rules of Practice in 9 CFR part 500, which include, among others, regulatory control actions, withholding actions, and suspensions (proposed 332.9(b) and 381.189(b)). The proposed regulations provide that if inspection at a selected establishment is suspended for any of

the reasons specified in 9 CFR 500.3 or 500.4, the Agency will provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program or the Agency will move to deselect the establishment (proposed 9 CFR 332.9(c) and 381.519(c)).

The proposed rule provides that the decision to deselect a selected establishment under a suspension will be made on a case-by-case basis (proposed 9 CFR 332.9(d) and 381.519(d)). The proposed rule also states that in making this decision the FSIS Administrator, in consultation with the State, will consider, among other factors: (1) The non-compliance that led to the suspension; (2) the selected establishment's compliance history; and (3) the corrective actions proposed by the establishment (proposed 9 CFR 332.9(d) and 381.519(d)). Thus, under certain conditions, the proposed rule does authorize the FSIS Administrator to coordinate with the States to help selected establishments with non-compliances come back into compliance and successfully continue within the program.

FSIS will provide the SECs with the training they need to oversee and enforce the cooperative interstate shipment program in a manner that is consistent with the law and these implementing regulations.

Comment: One comment asserted that the State, not the SEC, should initiate deselection of a selected establishment. The comment noted that some States have not incorporated 9 CFR part 500 into their State laws or regulations. The comment suggested that instead of referencing 9 CFR part 500, the final regulations should give States the authority to take "appropriate enforcement action" against selected establishments when necessary.

Response: Consistent with the law, under the proposed regulations, designated State personnel are required to provide inspection services in compliance with the Federal Acts and implementing regulations. Part of the designated personnel's inspection duties involves taking appropriate enforcement actions when authorized to do so. The FSIS Rules of Practice in 9 CFR part 500 identify the conditions under which inspection personnel are authorized to take enforcement actions and include the criteria for when those actions are warranted. Thus, unless they follow the procedures prescribed in the FSIS Rules of Practice, designated State personnel will be unable to properly enforce Federal standards in selected establishments.

Because States are responsible for providing inspection services to selected establishments participating in the cooperative interstate shipment program, the States may recommend that an establishment be deselected from the program if the State determines that the establishment is not complying with the requirements of the program. FSIS is likely to accept the State's recommendation.

2. Deselected Establishments To Become Official Establishment

Comment: Some comments supported the provisions in the proposed rule that require that establishments that become ineligible for the cooperative interstate shipment program be transitioned to become Federal establishments. These comments said that such a requirement is necessary to prevent establishments from attempting to move into and out of the program with no long-term commitment.

Several comments stated that requiring that a deselected establishment transition to become a Federal establishment is a disincentive for establishments to participate in the program and could force deselected establishments that choose not to come under Federal regulation out of business. One comment suggested that instead of requiring that deselected establishments transition to become Federal establishments, FSIS should allow them to implement corrective actions and revert back to State inspection.

Response: The 2008 amendments to the Acts authorize the Agency to establish a procedure to transition selected establishments that employ, on average, more than 25 employees to become Federal establishments (21 U.S.C. 683(b)(3)(A) and 472(b)(3)(A)). The 2008 amendments also require that selected establishments that the Administrator determines to be in violation of any provision of the Acts be transitioned to become Federal establishments in accordance with the procedure developed to transition selected establishments that employ more than 25 employees (21 U.S.C. 683(h) and 472(g)). Thus, requiring that deselected establishments be transitioned to become Federal establishments is necessary to implement the law. The law does not authorize FSIS to allow deselected establishments to revert back to the State MPI program without transitioning to become a Federal establishment, even if such establishments implement corrective actions.

Comment: Many comments stated that FSIS should allow establishments that have been deselected and successfully transitioned to become Federal establishments to revert back to the State MPI program if they choose. The comments stated that if FSIS is concerned that establishments might find it advantageous to periodically switch from under one jurisdiction to under another, the Agency could establish a reasonable time period, such as one-year, before an establishment that has transitioned to become a Federal establishment could revert back to a State's jurisdiction. One comment suggested that FSIS give establishments that have successfully transitioned to become Federal establishments the option to either revert to the State MPI program or be reselected for the cooperative interstate shipment program.

Response: After considering these comments, FSIS has decided to amend the proposed regulations to allow establishments that were deselected from the cooperative interstate shipment and that have successfully transitioned to become Federal establishments to revert back to the cooperative State MPI program after operating as a Federal establishment for one year.

As noted above, the 2008 amendments to the Acts require that establishments that are in violation of the Acts be transitioned to Federal establishments. The amendments also authorize FSIS to deselect and transition to Federal establishments selected establishments that consistently employ more than 25 employees on average. However, the statutes are silent on whether establishments that have successfully transitioned to become Federal establishments must remain in the Federal program or whether they can later revert back to the State program. Therefore, FSIS has determined that the law does not prohibit such an action.

Allowing deselected establishments that have successfully transitioned to become Federal establishments to revert back to the State MPI program will provide flexibility for establishments to determine which inspection system (Federal or State) best meets their needs. In addition, requiring that deselected establishments operate under Federal inspection for a year will promote food safety by ensuring that these establishments can perform in accordance with Federal standards before reverting back to the State program.

The statutes provide that the Administrator, in coordination with the States, shall not select for the

cooperative interstate shipment program, an establishment that is a Federal establishment (21 U.S.C. 683 (b)(2)(C)(i), 683(b)(2)(F)). Thus, FSIS does not believe that the law would allow establishments that have been deselected from the cooperative interstate shipment program and transitioned to become a Federal establishment to be re-selected for the program at a later date.

3. Establishments Deselected for Exceeding Employee Threshold

Comment: A few comments suggested that FSIS allow selected establishments that were deselected and transitioned to become Federal establishments because they now have more than 25 employees on average to revert back to the State MPI program at a later date if they reduce their average number of employees to fewer than 25. One of these comments noted that it is not inconceivable that a selected establishment could quickly exceed its employee-based eligibility threshold, forcing it to transition to an official Federal establishment, only to later discover that it does not desire to maintain the larger operation. The comment stated that in such case, the establishment should not be prohibited from reverting back to State jurisdiction or from participating in the cooperative interstate shipment program if it reduces its average number of employees to fewer than 25.

One comment stated that selected establishments that have more than 25 employees on average should be required to transition to become Federal establishments, and that once they have transitioned, they should not be permitted to revert back to the State MPI program. The comment stated that selected establishments should anticipate that as they grow and add additional employees beyond the 25 employee limit, they will be transitioned to the Federal inspection system. The comment stated that it is essential that establishments not be permitted to "forum shop" for regulatory oversight. According to the comment, if establishments are meeting the requirements of the new program and are succeeding, there should be no reason why the establishments that outgrow this special program should not operate under Federal inspection.

One comment asked whether an establishment that was deselected because its average number of employees exceeded 25 rather than for food safety violations will remain ineligible to participate in the program in the future.

Response: As discussed above, FSIS has decided to amend the proposed rule to allow deselected establishments that have been transitioned to become Federal establishments to revert back to the State MPI program after successfully operating as a Federal establishment for one year. This amendment will apply to establishments that have been deselected for exceeding the average number of employees limit regardless of whether they reduce their average number of employees to fewer than 25 or not.

As noted above, because the law prohibits Federal establishments from being selected for the cooperative interstate shipment program, FSIS does not believe that it should permit establishments that have been deselected from the program and transitioned to become Federal establishments to be re-selected for the program at a later date, regardless of the reason for the deselection.

Deselection and State Operations

Comment: One comment stated that if the final regulations resulting from the proposal allow selected establishments to produce some products under State inspection and other products under the cooperative interstate shipment program, FSIS must make clear that the provision that requires that deselected establishments transition to become Federal establishments only applies to operations conducted under the cooperative interstate shipment program. The comment asserted that selected establishments that produce certain products under a State MPI program should be permitted to continue these operations without transitioning to become a Federal establishment if the establishment is deselected from the cooperative interstate shipment program.

Response: The requirements associated with the cooperative interstate shipment program only apply to operations that State-inspected establishments conduct as part of that program. Thus, deselected establishments that conduct operations under both the cooperative interstate shipment program and the cooperative State MPI program will be required to transition the operations subject to the cooperative interstate shipment program to become a Federal establishment. These establishments may continue to produce products under the State MPI program if they maintain an appropriate separation by time or space between operations.

4. Voluntary Withdrawal

Comment: Several comments requested that FSIS give selected establishments that continue to be eligible for the cooperative interstate shipment program the option to voluntarily leave the program and revert back to operating under the State MPI program. The comments noted that after being selected for the cooperative interstate shipment program, some establishments may find that their businesses have changed such that they no longer need to ship their products interstate. The comments asserted that it makes no sense to force establishments that are in full compliance with the program's requirements but that no longer need to participate in the program to become Federal establishments.

Most of the comments that requested that selected establishments be permitted to voluntarily leave the cooperative interstate shipment program and revert back to their State MPI programs also said that FSIS should allow these establishments to re-enter the program at a later date. These comments acknowledged that the rules should prohibit State-inspected establishments from freely moving into and out of the program and suggested that the final regulations prescribe a waiting period that establishments that voluntarily leave the program must comply with before they may re-apply for the program. Most comments suggested a one-year waiting period, and one suggested a five year wait. One comment asked whether an establishment that voluntarily leaves the program will be allowed to re-apply for the program if it comes under new ownership at a later date.

Response: FSIS has considered these comments and has concluded that it would not be inconsistent with the law to allow a selected establishment that is in full compliance with the cooperative interstate shipment program to voluntarily leave the program and operate under a State grant of inspection.

The 2008 amendments to the Acts require that any establishment selected for the cooperative interstate shipment program that is in violation of any requirement of the Federal Acts be "transitioned to a Federal establishment" (21 U.S.C. 683(h) and 472(g)). However, the statutes do not address situations in which an establishment that is in full compliance with the Federal Acts elects to voluntarily withdraw from the program for business reasons, *e.g.,* the establishment is in compliance with all

Federal standards but has been unable to establish a market for its products outside of the State. FSIS has concluded that allowing these establishments to voluntarily end their participating in the cooperative interstate shipment program will give them the flexibility they need to determine which inspection program can best meet their business needs.

FSIS has also decided to permit establishments that have voluntarily left the cooperative interstate shipment program to apply for and be re-selected for the program at a later date. Allowing these establishments to be re-selected for the program presents little concern about regulatory forum shopping because they would be leaving the program for business reasons and not because they are having difficulty meeting Federal food safety standards.

In addition, establishments that voluntarily withdraw from the cooperative interstate shipment program would need to re-apply through the State and be re-selected by the FSIS Administrator in coordination with the State in order participate in the program again at a later date. Both FSIS and the States are unlikely to select an establishment that has a history of applying for and then withdrawing from the program. Therefore, FSIS has decided that the one-year waiting period suggested by the comment is a reasonable amount of time for establishments that voluntarily leave the program to wait before they may re-apply for the program. Such a policy will give establishments that are in full compliance with the program flexibility to re-apply for the program if, at a later date, they find that there may be a market for their products in other States.

Comment: One comment recommended that FSIS distinguish between selected establishments that want to withdraw completely from the program, and those that want to withdraw temporarily and resume operations under the program at a later date. According to the comment, such a distinction is necessary because many very small establishments operate on a seasonal basis or part of the year. The comment stated that the final regulations should include a process in which entities that operate on a seasonal basis could apply for a temporary withdrawal from the program. The comments said that the process could be similar to the process used by Federal establishments to apply for a temporary withdrawal of inspection.

One comment stated that it is not uncommon for very small establishments to operate infrequently or in response to local consumer demands. The comment noted that State MPI programs are generally able to offer a great amount of flexibility in providing inspection services to these small establishments upon request. The comment recommended that FSIS provide for this type of practice in the final regulations implementing the cooperative interstate shipment program. The comment also stated that the decision to provide infrequent or sporadic inspection should be the State's.

Response: As explained above, selected establishments that are in compliance with the cooperative interstate shipment will be permitted to voluntarily withdraw from the program. However, if these establishments want to resume operations as a selected establishment, they will need to re-apply and be re-selected for the program by the FSIS Administrator in coordination with the States.

On the other hand, selected establishments that operate on a seasonal basis may also request a voluntary suspension of inspection from the State to cover times when the establishment does not operate. Selected establishments that are granted a voluntary suspension will not need to re-apply for selection to resume operations under the cooperative interstate shipment program. As suggested by the comment, the decision to provide infrequent or sporadic inspection in response to a request from a selected establishment will be the State's.

Comment: One comment suggested that FSIS consider implementing an open enrollment period during which State-inspected establishments could get in or out of the interstate shipment program without penalties, so long as they are qualified for the program. The comment said that FSIS could limit the number of times that establishments are allowed to make such changes. The comment claimed that such a program would give State-inspected establishments the option to take advantage of the program when it worked best for their business.

Response: The proposed regulations specified how State-inspected establishments that are interested in participating in the cooperative interstate shipment program are to apply for the program, and FSIS is amending the proposed regulations to allow selected establishments that are in compliance with the program to voluntarily end their participation. Therefore, FSIS has concluded that it is unnecessary to establish an open enrollment period in which State-inspected establishments that qualify for the cooperative interstate shipment program could enter or withdraw from the program.

The proposed regulations require that State-inspected establishments that are interested in participating in the cooperative interstate shipment program apply for the program through the State in which the establishment is located (proposed 9 CFR 332.5(a)(1) and 381.515(a)(1)). The preamble to the proposed rule makes clear that States participating in the cooperative interstate shipment program will develop their own application procedures (74 FR 47653). Thus, State-inspected establishments that are interested in participating in the cooperative interstate shipment program will follow their State's application procedures to request that they be selected for the program.

As explained above, an establishment that has been selected for the cooperative interstate shipment program and that is in compliance with all of the programs requirements may voluntarily end its participation at any time. Such establishments will be permitted to re-apply for the program after a waiting period of one year.

5. Termination of State's Cooperative Agreement

Comment: Several comments asserted that selected establishments that become ineligible for the cooperative interstate shipment program because their State's agreement for the program was terminated should not be required to transition to become Federal establishments. Instead, the comments suggested that FSIS give these establishments the option of either applying for a Federal grant or reverting back to the State MPI program. The comments said that establishments that are deselected because the State agreement is terminated have no control over the circumstances under which they were deselected and, therefore, it is unfair to require that they become Federal establishments.

A few comments asked FSIS to consider the impact of requiring that selected establishments transition to Federal establishments if the State's agreement for a cooperative interstate shipment program is terminated. According to the comments, such a requirement could affect the future viability of some of these establishments. The comments said that it would be devastating to local markets if deselected establishments had to shut down because they are not allowed to revert back to the State MPI program.

Response: The 2008 amendments to the Acts do not require that establishments that are no longer

eligible to participate in the cooperative interstate shipment program because they are located in a State whose agreement for such a program was terminated transition to become Federal establishments. Therefore, FSIS is amending the proposed rule to give these establishments the option to either revert back to the State MPI inspection program or obtain a Federal grant of inspection.

If a State's agreement for a cooperative interstate shipment program is terminated, some establishments that were operating under the cooperative interstate shipment program may be willing to forgo interstate shipment and revert back to the State MPI program because they prefer to receive inspection services from State personnel. Other establishments may prefer to continue to market their products interstate under a Federal grant of inspection. It only seems fair to give establishments that are in compliance with the requirements of the program, but that become ineligible because of a situation that is beyond their control, the option of transitioning to become a Federal establishment or reverting back to the State program.

Comment: One comment stated that the decision to terminate a State's agreement for a cooperative interstate shipment program should not be taken lightly or without considering circumstances unique to the State and its selected establishments. The comment suggested that FSIS revise the provision in proposed rule that states: "If the State fails to develop a corrective action plan, or the selected establishment coordinator for the State determines that the corrective action plan is inadequate, the Administrator will terminate the agreement for the cooperative interstate shipment program * * *" to change "will" to "may." The comment stated that this revision will provide an appropriate degree of flexibility for the Administrator in deciding whether to terminate an agreement for a cooperative interstate shipment program.

Response: The proposed regulation provides that if the SEC determines that designated State personnel are providing inspection services to selected establishments in the State in a manner that is inconsistent with the Federal Acts and implementing regulations, the Administrator will provide an opportunity for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the SEC (proposed 9 CFR 332.7(c) and 381.517(c)). The SEC will advise the State on the issues that the State needs to address to ensure that the corrective action plan adequately addresses the deficiencies identified by the SEC. However, if the State fails to develop a corrective action plan that adequately addresses the issues identified by the SEC, FSIS believes that the Administrator has no choice but to terminate the cooperative agreement. Therefore, the Agency is not changing "will" terminate the agreement to "may" terminate the agreement, as suggested by the comment.

7. Transition Procedures

Comment: The proposed regulations provide that if a selected establishment is deselected, FSIS will coordinate with the State where the establishment is located to develop and implement a plan to transition the establishment to become an official establishment. One comment stated that FSIS needs to clearly state the procedures needed to transition a selected establishment to become a Federal establishment to ensure that all States and establishments that are interested in participating in the program agreement fully understand all of the requirements and potential consequences of deselection.

Response: The 2008 amendments to the Acts authorize FSIS to develop a procedure to transition selected establishments to become Federal establishments if they employ more than 25 employees on average, or if the Administrator determines that they are in violation of any provision of the Acts (21 U.C.S. 683(b), 683(h), 472(b) and 472(h)). In the preamble to the proposed rule, the Agency explained that it was not prescribing specific procedures to transition selected establishments to become official establishments because the actions needed to successfully make such a transition are likely to depend on the reason the establishment was deselected (74 FR 47656). As an example, FSIS noted that an establishment that was deselected for violating the Acts would likely need to develop a corrective action plan to transition to an official establishment, while an establishment that was deselected for hiring additional employees would not.

Therefore, consistent with the proposal, FSIS has decided to not prescribe specific procedures to transition selected establishments to become Federal establishments, as suggested by the comment. As was proposed, if a selected establishment is deselected from the cooperative interstate shipment program, FSIS will coordinate with the State where the establishment is located to develop and implement a plan to transition the establishment. As noted in the preamble, at a minimum, such a plan will include: (1) Adding the establishment to an FSIS circuit; (2) replacing the establishment's State establishment number with a Federal number; and (3) replacing the designated personnel with FSIS personnel.

Comment: One comment noted that in the proposed rule FSIS outlined some general procedures that would be necessary to transition a selected establishment to become a Federal establishment (*e.g.,* changing the establishment number and replacing state personnel with FSIS inspection personnel) but that the Agency also explained it would collaborate with the States to implement specific transition procedures on a case-by-case basis. The comments stated that while this approach may be appropriate in dealing with individual establishments in a State, FSIS should develop specific procedures for instances when the State's agreement for a cooperative interstate shipment program is terminated.

Response: As discussed above, under this final rule, establishments that are no longer eligible to participate in a cooperative interstate shipment because they are located in a State whose agreement for such a program was terminated will have the option to either revert back to the State MPI inspection program or obtain a Federal grant of inspection. Selected establishments that choose to operate under Federal inspection will need to transition to become a Federal establishment. FSIS will coordinate with the State where the establishment is located to develop and implement a plan for the establishment to obtain a Federal grant of inspection. Selected establishments that choose to revert to the State MPI program will need to obtain a State grant of inspection through the State in which they are located.

J. Federal Contribution, Technical Assistance, and Transition Grants

1. Federal Contribution 60% State Costs

As noted in the preamble to the proposed rule, the statute requires that the Federal contribution for inspection services provided by States that enter into an agreement for a cooperative interstate shipment program be at least 60% of eligible State costs. In the preamble, FSIS also explained that the Agency had tentatively concluded that eligible State costs are those costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected

establishments in the State (74 FR 47650). The Agency requested comments on whether it should codify this definition or any other requirements related to State reimbursement for eligible costs in the final rule.

Comment: Comments submitted by both State Departments of Agriculture and consumer advocacy organizations stated that FSIS should codify requirements related to reimbursement of States for at least 60% of their eligible costs associated with the cooperative interstate shipment program. According to some comments, codifying these requirements would provide both States and FSIS personnel with consistent guidance on the level of reimbursement and requirements for receiving payment under the program. The comments also said that codifying the reimbursement requirements will prevent ad hoc interpretations and inequitable reimbursement policies over time.

Some comments requested that FSIS more clearly define "eligible costs." The comments specifically asked whether the following State costs would be considered eligible costs under the final rule: (1) Federal Indirect Cost Reimbursement to pay for office and administrative support services; (2) rent for computers, (3) administrative offices and field staff offices; and (4) fees associated with information technology and laboratory services.

One comment supported the proposed definition of eligible State costs as those direct costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected establishments in the State. The comment argued that these are Federal taxpayer dollars that should be spent on Federal programs. The commenter stated that it understands that the law requires FSIS to reimburse States not less than 60% of eligible State costs but, according to the comment, such reimbursement should be confined to direct costs only. The comment asserted that costs that fall under Federal Indirect Cost Reimbursement definitions should not be included.

Response: To be reimbursed for 60% of their eligible costs to administer the cooperative interstate shipment program, States will need to follow the same financial accountability and budget submission requirements needed to receive the maximum 50% Federal reimbursement under the cooperative State MPI program. These requirements include, but are not limited to, the administrative rules for Federal grants and cooperative agreements prescribed in USDA's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments regulations (7 CFR part 3016), as well as the principles provided in the Office of Management and Budget's (OMB) circular A–87 "*Cost Principles for State, Local, and Indian and Tribal Governments*" (2 CFR Part 225); OMB circular A–102, "*Grants and Cooperative Agreements with State and Local Governments*"; and OMB circular A–133, "*Audits of States, Local Governments, and Non-Profit Organizations*".

FSIS will only reimburse 60% of a State's costs to administer the cooperative interstate shipment program if the State can justify that the costs are necessary to provide inspection services to selected establishments in the State and that the costs are allowable under the applicable Federal cost principles or other terms and conditions of the cooperative agreement. To make this clear, FSIS is codifying the definition of eligible State costs that it had tentatively decided on in the proposed rule. Thus, 9 CFR 321.3 and 381.187 of this final rule provide that for purposes of the cooperative interstate shipment program, eligible State costs are those costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected establishments in the State.

The Federal requirements and procedures for the financial administration and operation of cooperative State agreements are described in FSIS Directive 3300.1 "*Fiscal Guidance for Cooperative Inspection Programs*". These requirements and procedures apply to all cooperative inspection program agreements, including agreements for the cooperative interstate shipment program. FSIS will update directive 3300.1 to specifically address the cooperative interstate shipment program.

Comment: One comment asked whether a State's administrative costs to begin an interstate shipment program will be eligible for at least 60% reimbursement from FSIS. The comment also asked whether there is anything in the program that would prohibit a State from charging an establishment a fee to participate in the program to help cover the State's additional costs. Another comment asked whether the final rule will require that States submit separate financial reports for inspection costs associated with the State MPI program and for costs associated with the cooperative interstate shipment program.

Response: As noted above, FSIS will only reimburse 60% of a State's costs to administer the cooperative interstate shipment, including the administrative costs to begin the program, if the State can justify that the costs are necessary to provide inspection services to selected establishments in the State and that the costs are allowable under the applicable Federal cost principles or other terms and conditions of the cooperative agreement. The 2008 amendments to the Acts are silent on whether a State may charge an establishment a fee to participate in the cooperative interstate shipment program. The proposed rule provides that States are responsible for developing their own procedures for establishments to apply to be selected for the cooperative interstate shipment program.

The agreement between FSIS and a State for a cooperative interstate shipment program is separate from the cooperative State MPI agreement. Therefore, States that participate in the cooperative interstate shipment program will be required to submit separate financial reports for inspection costs associated with the State MPI program and for costs associated with the cooperative interstate shipment program. The States must also clearly document the time and cost that they spent to provide administrative support for the State MPI program versus the time and cost needed to provide administrative support for the cooperative interstate shipment program.

Comment: Some comments supported the requirement that Federal reimbursement for the cooperative interstate shipment program be in an amount of not less than 60% of eligible State costs. The comments urged FSIS to provide more funding if, and when, the budget allows.

One comment stated that in order for the program to succeed, it is critically important for FSIS, the Obama Administration, and Congress to commit sufficient resources to carry out the program. The comment stated that under no circumstances should FSIS be required to absorb these resources from its existing budget.

One comment stated that the higher the Federal contribution, the more likely it is that State programs will be able to participate in the interstate shipment program. The comment encouraged FSIS to be creative in finding ways to increase the Federal contribution to the program. The comment noted that cash infusions are the best way to support the program, but that other contributions, such as equipment (including computers discussed above) and services (including training and

laboratory services), would also be helpful.

Response: FSIS agrees that the success of the cooperative interstate shipment program will depend on the level of funding that Congress provides for the Agency to administer the program.

2. Technical Assistance and Outreach

As required by the statute, FSIS established the Office of Outreach Employee Education and Training (OOEET) to provide "outreach, education, and training to certain small and very small establishments" and to provide "grants to States to provide outreach, technical assistance, education, and training to certain small and very small establishments" (21 U.S.C. 683(f)).

In the preamble to the proposed rule, FSIS explains that the Agency fulfilled this requirement by establishing the Office of Outreach Employee Education and Training (OOEET). OOEET is responsible for directing outreach, education, and training programs for FSIS to ensure public health and food safety through both inspection and enforcement activities. FSIS received several comments and suggestions on how OOEET should provide outreach and technical assistance to support the cooperative interstate shipment program. FSIS has included a general description of these comments below. However, OOEET's outreach and assistance activities were not specifically addressed in the proposed rule. Thus, these comments are outside the scope of this rulemaking.

Comment: Some comments encouraged OOEET to work with other Federal agencies to assist establishments that are interested in participating in the cooperative interstate shipment program to acquire grants or loans to fund modifications that they may need to make to their facilities in order to comply with Federal standards. The comments noted that in the preamble to the proposed rule, FSIS estimated that establishments that need to make structural modifications or perform new construction could incur costs in the range of $15,000 to $30,000. The comments said that the States should not be expected to fund these costs.

A few comments suggested that FSIS use USDA's "Know Your Farmer, Know Your Food" initiative to provide information about USDA grant and loan programs to help small and very small facilities upgrade their infrastructure.

The consumer advocacy organization Food and Water Watch submitted identical comment letters on behalf of 5,083 private citizens. The comment letters supported FSIS's proposed regulation implementing the cooperative interstate shipment program. The comments also suggested that FSIS take a number of actions to ensure that the change to the new program goes smoothly and is feasible for States and small establishments.

Three comments reference a report issued by Food and Water Watch entitled "Where's the Local Beef?" The comments stated that the report provides a number of recommendations that FSIS should consider for the technical assistance required under the statute. The comments encouraged FSIS to consider these recommendations.

One comment stated that to ensure that States and establishments receive the assistance that they need to participate in the program, the Administration must budget, and Congress must appropriate, adequate funding for outreach and training activities. The comment said that, in particular, OOEET will need sufficient resources to conduct workshops, training sessions, and other activities to ensure that small and very small establishments in the new program understand the requirements they are expected to meet.

Response: As noted above, the issues raised by these comments are outside the scope of this rulemaking. However, the Agency will take them into consideration when it implements this final rule.

3. Transition Grants

Under the statute, FSIS is authorized to provide "transition grants" to States to assist the States in helping State-inspected establishments transition to selected establishments (21 U.S.C. 683(g) and 472(f)). In the proposed rule, FSIS explained that it has tentatively decided to define transition grants as funds that a State participating in a cooperative interstate shipment program must use to reimburse selected establishments in the State for the cost to train one individual in individual in HACCP requirements for meat and poultry products and associated training in the development of Sanitation SOPs.

FSIS received several comments on the proposed definition of transition grants.

Comment: Some comments supported FSIS' tentative conclusion to use its transition grant authority to reimburse States for the costs of HACCP training for establishment employees as an appropriate use of these funds. According to one comment, FSIS has already created a division to provide technical assistance for small and very small establishments, *i.e.,* OOEET, so it is not necessary to provide transition grants to the States to use for duplicative outreach services.

Other comments said that the proposed transition grant definition is too narrow, unnecessarily restrictive, and does not reflect the fact that training may be more urgently needed in other areas essential to food safety, such as microbiological sampling, process control, validation, determination of HACCP Critical Limits, or use of modern monitoring techniques. The comments suggested that FSIS revise the definition to allow the funds to be used to provide outreach, technical assistance, education, and training that establishments may need to become selected establishments and maintain this designation.

Other comments stated that while HACCP training is an appropriate use of transition grants, it should not be the only use permitted for these funds. The comments asserted that transition grants could be used in some States for relevant state and local agencies to convene workshops and listening sessions on the application of local, State and Federal food safety regulations on small and very small processing establishments. The comments asserted that these workshops could generate approaches to improve and streamline food safety regulations, including HACCP requirements, to ensure that they are appropriate for achieving food safety standards in smaller facilities.

A few comments stated that FSIS should permit transition grant funds to be used for tangible items, such as facility upgrades or other one-time start up costs for establishments to become eligible for the cooperative interstate shipment program. One comment said that, if necessary FSIS could limit the amount it would provide to States to reimburse selected establishments to $5,000 per establishment, which was the Agency's estimated cost to train an individual in HACCP.

Two comments submitted by animal welfare advocacy organizations stated that, in addition to HACCP training, FSIS should also allow States to use transitions grant funds to reimburse selected establishments for their costs to train personnel in humane handling and humane slaughter.

Response: The comments indicate that there is a general lack of consensus on the appropriate use of transition grant funds. Therefore, because the comments offered no compelling reason to change it, FSIS is adopting the proposed definition of transition grant as funds that a State participating in a cooperative interstate shipment program must use to reimburse selected establishments in the State for the cost

to train one individual in HACCP requirements for meat and poultry products and associated training in the development of Sanitation SOPs.

FSIS has very limited authority for and experience in administering grants for financial assistance outside the scope of cooperative inspection programs, and its food safety focus suggests that it would be of limited value for the Agency to gain such experience. Other USDA agencies, such as Rural Development and the National Institute for Food and Agriculture provide loans and grants of the kind that might be useful for establishments that may need to make modifications to their facilities to become eligible for the cooperative interstate shipment program. FSIS will coordinate with these other USDA agencies in developing and publicizing such programs, but will defer to them as USDA's loan and grant program specialists.

A limited grants program to provide Federal funds to States so that they may reimburse selected establishments for HACCP training is, however, consistent with FSIS's authorities and capabilities. It will help to ensure that establishments that participate in the cooperative interstate shipment program are able to comply with Federal food safety standards. Limiting the use of transition grants to HACCP training for one individual will ensure that the costs associated with these grants are limited, predictable, and simple to monitor.

Comment: One comment requested that FSIS provide more details on the transition grants. The comment noted that while funds from transition grants will be available to help establishments with the costs of training on HACCP and SSOPs, some establishments are likely to have already completed the necessary HACCP training. For those establishments, the comment asked whether States could use transition grant funds to reimburse the establishment's costs to send an employee to advanced HACCP training courses or to send another employee for training in basic HACCP and SSOPs. The comment also asked if the grant includes all costs associated with the training, from travel costs to the cost of registration or materials.

Response: The proposed rule requires that States use transition grant funds to reimburse selected establishments for their costs to train one individual in HACCP requirements for meat and poultry products as required under 9 CFR 417.7 of the HACCP regulations and associated training in the development of Sanitation SOPs. These regulations require that the individual successfully complete a course of instruction in the application of the seven HACCP principles to meat or poultry product processing. Thus, transition grant funds may be used to reimburse the costs associated with the basic training required to comply with 9 CFR 417.7, which does not include advanced HACCP training. The transition grant would include any costs that the establishment can demonstrate were necessary to provide HACCP training to one individual.

K. Potential Benefits

FSIS received several comments on the potential benefits of allowing small and very small State-inspected establishments to ship meat and poultry products in interstate commerce. Following is a general description of these comments categorized by potential benefit.

1. Expand Markets for Small Establishments

Several comments said that allowing State-inspected products to ship meat and poultry products interstate will benefit small and very small State-inspected establishment by providing new markets for their products. The comments also stated that, as small processors expand their markets, consumers will also benefit from an increase in product choice.

2. Rural Development

Some comments stated that, if implemented correctly, the cooperative interstate shipment program will provide opportunities for rural development. One comment said that a workable cooperative interstate shipment program will stimulate small business sales, expand rural development and jobs, and increase local tax bases, strengthening the stability of rural communities. Another comment noted that increasing the market opportunities for small processors is important to rural development because it will help to maintain and increase jobs in the rural areas where many of these small processors are located.

3. Small Farmers and Livestock Producers

Several comments stated that allowing State-inspected processing plants to ship products interstate will benefit small farmers and local livestock and poultry producers by providing them with access to processing plants that can sell meat and poultry products across State lines. The comments noted that farmers rely on processing plants to sell their products to consumers, and that allowing interstate shipment of State-inspected products will help family farmers raising livestock and poultry, as well as small processing plants, to increase their access to larger markets.

One commenter had conducted a survey of farmers across the country in spring 2009 to identify barriers to local food marketing. The comment noted that by far, the number one barrier mentioned was access to processing plants for meat, poultry, and value-added crops.

Several comments said that, in addition to expanding markets for local livestock and poultry producers, allowing small State-inspected processing plants to ship products interstate will also benefit these local producers by reducing travel costs that many must incur to send their livestock to a federally-inspected establishment. One comment said that a producer in central Wyoming estimated that he could save almost $220,000 per year if he could have his animals processed locally in a state-inspected establishment. Some comments noted that many small livestock and poultry producers prefer to have their products processed in small State-inspected establishments, but that for some of these producers, the closest small processing establishment may be located across State lines.

Some comments stated that the cooperative interstate shipment program could benefit cattle producers by increasing the demand for beef. The comment said that allowing state-inspected establishments to ship interstate will provide many smaller packing plants with an opportunity to expand into new markets. According to the comment, growth and new opportunities for these smaller plants means that they will have the opportunity to buy more cattle from producers. The comment asserted that this further demand for cattle will provide more competition in the market and will potentially provide more opportunities for cattlemen.

One comment stated that the increased market opportunities for small processors will be passed on to livestock and poultry producers, which will lead to increased on-farm revenues.

A few comments stated that the proposed cooperative interstate shipment program will offer independent family farmers and niche producers whose operations use humane and sustainable animal agricultural practices greater opportunity to market their products to a broader range of consumers. One comment believed that the proposed

rule has the potential to benefit small organic livestock operations. According to the comment, it is often difficult for these producers to find local slaughter or processing facilities.

One comment stated that the proposed interstate shipment program has the potential to benefit not only family farmers but the animals they raise by reducing the stress associated with long transport times to slaughter.

Some comments stated that the proposed rule will enhance the USDA's "Know Your Farmer, Know Your Food" initiative by helping to break down structural barriers that have inhibited local food systems from thriving.

4. Protect Public Health

One comment stated that the proposed program will protect public health by facilitating traceback of State-inspected products that may be the subject of a recall.

Response: FSIS agrees that these comments all identify potential benefits associated with the cooperative interstate shipment program.

L. Interstate Shipment and Humane Handling of Livestock

Comment: A few comments noted that the proposed rule did not mention the Federal Humane Methods of Slaughter Act (HMSA). One comment stated that, while the FMIA incorporates the HMSA by reference, it is imperative that FSIS make clear in the final rule's codified text that establishments must be in compliance with the HMSA and all State humane handling requirements to be eligible for the cooperative interstate shipment program.

One comment stated that in May 2008, the commenter published a report on the enforcement of humane slaughter laws in the United States. The comment explained that the report included results from a series of public records requests that the commenter made to the 30 States accredited to administer the Federal humane slaughter laws (the 27 States with cooperative agreements for State MPI programs and 3 States with cooperative programs for custom plants).

Based on this report, the comment concluded that most states that operate meat inspection programs are not enforcing the HMSA at state-inspected establishments. The comment said that small state-inspected establishments are probably less likely to have staff and management with training in humane handling and slaughter as Federal establishments, and that small state-inspected establishments are also probably less likely to have specialized equipment for proper animal handling or a facility design that promotes humane handling and slaughter.

Response: To qualify for the cooperative interstate shipment program, establishments will need to comply with, and States will need to enforce, standards that are "the same as" those imposed under the Federal Acts and implementing regulations. As noted by the comments, the FMIA incorporates the HMSA by reference. Therefore, selected establishments must comply with, and participating States must enforce, humane handling procedures that are "the same as" those imposed under the HMSA and FSIS's implementing regulations.

Because the FMIA incorporates the HMSA, it is not necessary to include additional requirements to implement the HMSA in the regulations implementing the cooperative interstate shipment program.

Comment: One comment suggested that as part of its outreach efforts to small and very small establishments, FSIS include training in the humane handling of livestock and poultry during slaughter and processing. One comment suggested that FSIS grade and identify establishments based on how humanely they raise their livestock.

Response: These comments are outside the scope of the proposed rule.

M. Miscellaneous Comments

Comment: A few comments noted that many small and very small establishments process bison, elk, and other species that are not amenable to the Federal Acts. The comments asked whether FSIS would address the processing of these species in the final rule implementing the cooperative interstate shipment program. One comment asked whether the final regulations will permit selected establishments to continue to slaughter non-amenable species under the State inspection program. The comment also asked whether the "same as" standard proposed for the cooperative interstate shipment program will affect State-inspected operations related to non-amenable species.

Response: The cooperative interstate shipment program does not cover operations for the processing of bison, elk, and other species that are not amenable to the FMIA or PPIA. However, as discussed above, this final rule will allow State-inspected establishments to operate under both the State MPI program and the cooperative interstate shipment program. Under this final rule, selected establishments may continue to slaughter and process non-amenable species under the State inspection program as long as they maintain an appropriate separation of time or space between these operations and the operations conducted under the cooperative interstate shipment program. Because operations associated with non-amenable species are not eligible for the cooperative interstate shipment program, these operations are not affected by the "same as" standard required for the program.

Comment: One comment stated that FSIS must make clear in the final rule that state-inspected horse slaughter facilities are not eligible to participate in the new cooperative interstate shipment program. The comment noted that currently there are no such facilities in operation in the United States, but expressed concern that providing certain state-inspected establishments access to the interstate market may encourage some small establishments to initiate new horse slaughter operations. The comment stated that Congress has made its intent clear that Federal funding must not be used to inspect such facilities, and FSIS must not allow establishments to use the cooperative interstate shipment program to circumvent the law.

The comment also stated that any attempt by FSIS to regulate horse slaughter facilities must comply with the National Environmental Policy Act, 42 U.S.C. 4231 *et seq.,* and cited *Humane Society of the United States* v. *Johanns* (520 F.Supp.2d 8 (D.D.C. 2007)) to support this statement. The comment asserted that unless FSIS makes clear that the final rule does not encompass horse slaughter, the Agency will need to prepare an Environmental Impact Statement or Environmental Assessment before finalizing the rule to avoid a potential violation of a federal court order.

Response: As noted by the comment, the FY 2010 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act prohibits the use of appropriated funds and user fees to pay the salaries of expenses of personnel to inspect horses prior to slaughter for human food (Pub. L. 111–80, § 739). FSIS will comply with these and any future restrictions on the use of appropriated funds as it implements the cooperative interstate shipment program.

Comment: One comment suggested that, when developing the final rule to implement the cooperative interstate shipment program, FSIS should review its data on FSAs, NRs, suspensions, HACCP deviations, number of lab tests, and laboratory results to compare FSIS regulatory oversight of very small State-

inspected establishments with large and small establishments. According to the comment, this information may help identify specific areas of concern that the Agency should address in the final rule.

Response: FSIS believes that this final rule provides the appropriate level of Federal oversight required under the 2008 amendments to the Acts. The data identified by the comment will be useful to FSIS in overseeing the program.

Comment: One comment asked whether the labels for products produced in establishments selected to participate in the cooperative interstate shipment program will be granted expedited review so that they can begin to operate under the new program more quickly. The comment also asked whether such labels would be approved by the FSIS Labeling and Program Delivery Division (LPDD). The comment stated that it would be disappointing if an establishment's ability to participate in the cooperative interstate shipment program was delayed because of the label approval process.

Response: The labels of meat and poultry products produced under the cooperative interstate shipment program will be subject to FSIS' prior label approval system to ensure that such labels comply with Federal labeling requirements. The SEC for the State where a selected establishment is located will coordinate with the State to facilitate the label submission process. The SEC will also verify that the labels applied to meat and poultry products produced under the cooperative interstate shipment program have been evaluated and approved by LPDD, except for generically approved labeling authorized for use in Title 9 of the Code of Federal Regulations (CFR), §§ 317.5 and 381.133. Because the labels of meat and poultry products produced in selected establishments are required to bear a Federal mark, it is essential that these labels comply with all Federal labeling requirements.

Comment: One comment requested that FSIS explain whether, under the final rule, *E. coli* O157:H7 would be considered an adulterant if detected on an intact muscle cut of beef. The comment asserted that if *E. coli* O157:H7 is only considered an adulterant if it is detected in a ground beef sample, selected establishments whose operations are limited to further processing will be subject to enforcement action, i.e., deselection, for upstream contamination over which they have no control.

Two comments suggested that in the final rule, FSIS add a provision to ensure that selected establishments whose operations are limited to further processing are not subject to enforcement actions for product contamination that originated in an upstream slaughter facility.

Response: These comments address issues associated with FSIS's existing policies with respect to *E. coli* O157:H7. They are outside the scope of this rulemaking.

Comment: One comment stated that processors and regulatory staff have been trained to recognize "shall" as an indication of mandatory requirements. The comment inserted suggested revisions to the proposed codified text, such as replacing "will" with "shall." According to the comment, the suggested revisions are needed to make clear which provisions of the regulations are mandatory.

Response: This is the only comment to make these suggested revisions. FSIS believes that the language in the codified text clearly articulates the requirements associated with the cooperative interstate shipment program.

Comment: One comment noted that throughout the proposed regulations FSIS uses the terms such as "in compliance with the Acts" or "consistent with the Acts." The comment stated that since State meat and poultry inspection programs already comply with the FMIA and PPIA, FSIS needs to make clear that most references to "the Act" in the proposed regulation are intended to refer to the new legislation, i. e., Title V of these Acts. According to the comment, Section 11015 of the 2008 Farm Bill did not amend the existing sections of FMIA and PPIA, but rather created a new section in each of these Acts. The comment suggested that FSIS revise "in compliance with the Acts" to "in compliance with this Act" to make this clear.

Response: In the final codified text, "this Act" was changed to "this chapter." As used in the statutes, "this chapter" means the FMIA and PPIA, not section 11015 of the 2008 Farm Bill (see 21 U.S.C.A. 683 and 472, Historical and Statutory Notes, References in Text). Thus, the terms "in compliance with the Acts" or "consistent with the Acts" better reflect the intent of the statutes than "in compliance with this Act" meaning section 11015 of the 2008 Farm Bill.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. It has been determined to be significant, but not economically significant for purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Currently, 27 States administer cooperative State meat or poultry inspection (MPI) programs. These States have approximately 1,873 establishments that would be eligible to apply for selection into the new cooperative interstate shipment program. However, because participation in the new program is voluntary, FSIS will not know how many States and establishments will apply to participate until this final rule becomes effective and establishments are selected for the program.

In the proposed rule's Preliminary Regulatory Impact Analysis (PRIA), FSIS explained that information obtained through the Agency's outreach activities indicated that, as of July 2008, about 170 establishments in sixteen States had approached the State MPI programs to express interest in the new cooperative interstate shipment program. These sixteen States have in total 1,133 establishments that could potentially be eligible for the new program. However, more recent Agency outreach activities conducted after the proposed rule was published indicate that there now may be only four States interested in participating in the cooperative interstate shipment program.[3] The four States that have recently expressed interest in the program are North Dakota, Ohio, Wisconsin, and Vermont. According to the State Directors of these four States, the total number of establishments in these States that might participate is between 27 and 102, and the actual number will depend on the language of the final rule. This finding is consistent with information provided in the public comments submitted in response to the proposed rule that indicated that the participation number we estimated in the proposed rule was too high. Therefore, we have adjusted the budget impact downward by incorporating the new information.

Expected Benefits of the Proposed Action

State-inspected establishments selected to participate in the new cooperative interstate shipment program will be permitted to ship and sell their meat and poultry products in interstate and foreign commerce. Thus, this final

[3] These four States have each signed an agreement with the Agency to conduct a comparative analysis to determine what the States would need to do to meet the "same as" requirements for the cooperative interstate shipment program. FSIS provided funds for the States to conduct the assessment.

rule will benefit these establishments by opening new markets for their products.

This final rule will also benefit consumers by generating more product choices, as more products can be shipped to new markets. In addition, requiring that products produced under the cooperative interstate shipment program bear a Federal inspection legend that includes an official State selected establishment inspection number will allow consumers to identify that these products were produced under the cooperative interstate shipment program if such products are ever the subject of an investigation or recall.

States that participate in the program will benefit because the law requires that FSIS reimburse them for at least 60% of their eligible costs related to inspection of selected establishments in the State. FSIS provides up to 50% of the costs to provide inspection under the existing cooperative State MPI programs. States are likely to benefit from the 10% increase in reimbursement for the cooperative interstate shipment program because, as explained below, for many States, the costs to administer the new program are not expected to greatly exceed the costs to administer the State MPI programs.

The Agency received several comments that identified additional potential benefits of allowing small and very small State-inspected establishments to ship meat and poultry products in interstate commerce. These benefits include:

1. Rural development: Allowing certain small and very small State-inspected establishments to ship their products across State lines may stimulate small business sales, expand rural development and jobs, and increase local tax bases, strengthening the stability of rural communities, where many of these small establishments are located.

2. Benefits for small farmers and livestock producers: Allowing State-inspected processing plants to ship products in interstate commerce will benefit small farmers and local livestock and poultry producers by providing them with access to processing plants that can sell meat and poultry products across State lines. It will also benefit local producers by reducing travel costs that many must incur to send their livestock to a federally-inspected establishment, as the closest small processing establishment may be located across State lines.

Expected Costs of the Proposed Action

1. Costs to the participating establishments. To be eligible to participate in the cooperative interstate shipment program, a State-inspected establishment must be in compliance with: (1) The State-inspection program of the State in which the establishment is located and (2) the FMIA or PPIA, and their implementing regulations. Before State-inspected establishments can be selected to participate in a cooperative interstate shipment program, they will need to apply for selection into the program and demonstrate that they comply with both State and Federal requirements.

Thus, an establishment that chooses to apply for selection into the program will incur one-time start-up costs associated with filing an application, training employees, meeting regulatory performance standards, obtaining label approval, and implementing a food safety system that complies with all Federal requirements (e.g. Sanitation SOP and HACCP requirements).

In addition, to qualify for a cooperative interstate shipment program, some State-inspection establishments may need to invest in structural modifications to their facilities in order to comply with Federal standards. Based on information obtained through FSIS' outreach activities with the States in 2008, in the PRIA of the proposed rule, the Agency estimated that the cost for State-inspected establishments to fully comply with Federal standards, as required by the law, will range from $1,500 to $50,000. FSIS did not receive any comments or new information in response to the proposed rule to suggest changes to these estimates.

According to most State Directors, the cost to very small establishments that do not need to make structural modifications to their facilities is likely to be in the range of $5,000 to $10,000. If the establishments need to make structural modifications or perform new construction, the estimated range would be about $15,000 to $30,000.[4] However, because the cooperative interstate shipment program is a voluntary program, establishments that choose to incur the costs associated with participating in the program will most likely do so because they anticipate that such participation will provide an overall net benefit for them.

Looking at the potential for the establishments to experience new (incremental) burden or expenses due to State inspection under the proposed cooperative interstate shipment program, FSIS believes that there will be essentially no change. FSIS is aware that the cooperative State MPI programs are not identical to the Federal inspection program. FSIS anticipates that States may need to modify their existing inspection procedures when providing inspection services to selected establishment in the State to ensure that these establishments receive inspection services that are "the same as" those required under the Federal program. However, since the State programs are required to be "at least equal to" the Federal inspection programs now, FSIS anticipates that changes that States will need to make to provide inspection to selected establishments will largely be procedural, and there will not be any particular increase or decrease in overall State effort that would change the burden of the inspection regimen on the establishments.

2. Costs to the participating States. States that choose to participate in the program will be required to pay 40 percent of the eligible costs related to inspection of establishments in the State that are selected for the program. Under the current cooperative program, the States are paying 50 percent of the eligible inspection costs. Although the inspection costs under the new program may be different from the costs under the existing program, the States' share of 40 percent or less is unlikely to be higher than its current share.

One area the States will have to address is the laboratory services that they will be using to analyze samples collected under the cooperative interstate shipment program. To demonstrate that the laboratory services used by a State are sufficient for the State to qualify for the cooperative interstate shipment program, the State will need to show that the laboratory is accredited by an internationally recognized organization that accredits food testing laboratories against the ISO 17025 "General requirements for the competence of testing and calibration laboratories" and AOAC "Guidelines for Laboratories Performing Food Microbiological and Chemical Analyses of Food and Pharmaceuticals Testing" written by the Analytical Laboratory Accreditation Criteria Committee (ALACC). The assessment body that FSIS uses, the American Association for Laboratory Accreditation (A2LA), is the sole organization that incorporates ALACC into their program requirements. State labs would need to use A2LA or another accrediting body that incorporates ALACC and is a signatory and in good standing to the Mutual Recognition Arrangements of

[4] Note that under this final rule, establishments selected for the program will be eligible to be reimbursed the cost to train one employee in HACCP and Sanitation SOPs.

the International Laboratory Accreditation Cooperation (ILAC).

Currently three State labs are ISO 17025 accredited—Minnesota, North Carolina, and Florida (FL does not have a State MPI program), four States are actively seeking ISO 17025 accreditation—Ohio, Wisconsin, North Dakota, and Vermont, and four States use commercial labs that are ISO accredited.

States that use laboratories that do not use the methods described in FSIS's Laboratory Guidebooks may incur costs to adopt such methods to analyze samples under the cooperative interstate shipment program. If a test or product described in the FSIS Guidebook is not commercially available, FSIS will assist the laboratory in developing an appropriate alternative method.

To assist the States in developing laboratory services that are "the same as" those provided under the Federal inspection program, FSIS is adopting a "phased in" approach for the States to become ISO 17025 accredited. FSIS's Office of Public Health Science (OPHS) intends to provide advice and answer questions from State labs as they seek ISO accreditation. FSIS estimates the cost for a State lab to obtain the necessary accreditation to be "the same as" to be somewhere between $28,000 and $350,000. These costs reflect the costs associated with purchasing additional equipment, hiring additional staff (QC manager for Chemistry, QC manager for Microbiology, Document Control Clerk, and additional analysts,) the initial application fee to apply for ISO 17025 accreditation, the annual fee to maintain accreditation, and the accrediting body's assessment fee.

States that choose to participate in the interstate shipment program may need to make certain modifications to their State inspection programs to provide inspection services to selected establishments in a manner that is "the same as" the Federal inspection program. However, most States that have implemented State meat and poultry products inspection (MPI) programs have incorporated the Federal requirements into their programs.[5] Thus, State costs to train State personnel are likely to be minimal because many State personnel have received training in Federal inspection methodology as part of the State MPI program. In addition, as noted above, FSIS offers training courses in Federal inspection methodology to State inspection personnel. FSIS's OOEET will coordinate with States participating in the cooperative interstate shipment program to provide the necessary training for designated State personnel.

States may incur some costs associated with the processing and evaluation of applications submitted by establishments requesting to be selected for the cooperative interstate shipment program. However, because the States will develop their own application procedures, FSIS is unable to estimate these costs with any certainty.

FSIS anticipates that States may need to revise their State inspection procedures when providing inspection services to selected establishments in the State to ensure that these inspection services are "the same as" those provided under the Federal program. However, since the cooperative State MPI programs are required to be "at least equal" to the Federal inspection programs now, FSIS anticipates that changes will largely be procedural, and there will not be any particular increase or decrease in overall State effort or cost. FSIS has no basis on which to assume anything else.

Expected FSIS Budgetary Effects

The new cooperative interstate shipment program that we are implementing in this final rule is expected to have budgetary effects on FSIS. This section discusses the baseline costs and activities, i.e., what is happening now before the cooperative interstate shipment program option is available, and then lays out the incremental effects on FSIS. The PRIA in the proposed rule presented a baseline scenario outlining the Agency's spending for the Federal-State cooperative inspection programs for FY 2009 through 2014 in case the cooperative interstate shipment program option is not enacted (see table below).[6] We did not receive any data or comment in response to the proposed rule to suggest changes to these numbers.

TABLE 1—BASELINE: COST FEDERAL STATE COOP PROGRAM WITH NO CHANGE

FSIS level costs, fiscal year	2010 (Budget)	2011	2012	2013	2014	Total 5-year
FSIS costs	$15.3	$15.9	$16.5	$17.1	$17.8	$82.5
Reimburs. to States	50.3	52.1	54.1	56.2	58.4	271.1
Total	65.7	68.0	70.5	73.3	76.1	353.6
FSIS Staff Years	29	29	29	29	29	.....
Federal reimbursement	$50.3	$52.1	$54.1	$56.2	$58.4	$271.1
State program spending	50.3	52.1	54.1	56.2	58.4	271.1
Total MPI program	100.7	104.2	108.1	112.4	116.7	542.1
Number of plants	1,873	1,873	1,873	1,873	1,873	.....
Economic Assumptions from OMB for the 2010 Budget						
State & Local Exp, %	3.1	3.5	3.8	3.9	3.9	.....
FSIS Civilian pay, %	5.1	4.1	4.1	4.1	4.1	.....
Non-Pay Expenditure, %	0.8	1.2	1.4	1.6	1.6	.....

[5] Based on Agency's most recent (FY 2009) review of the 27 States' self-assessment reports (including the State Laboratory Activity Tables) by the Federal State Audit Branch, Internal Control and Audit Division of the Office of Program Evaluation, Enforcement, and Review.

[6] For details, including assumptions, for the baseline scenario, please see the proposed rule "Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products," September 16, 2009, 74 FR 47658–47659.

Interstate Scenario

To evaluate this scenario, we must estimate the number of establishments and States that will seek to participate and be selected for the new cooperative interstate shipment program. Then we will discuss the likely incremental changes in activity that could reasonably suggest any changes in cost or burden for FSIS, the States, or establishments.

As noted above, in the proposed rule, through its outreach activities, FSIS had identified sixteen States that expressed an interest in the new cooperative interstate shipment program. These States have a total of 1,133 establishments that could potentially be eligible for the new program. Because participation in the cooperative interstate shipment program is voluntary, the Agency could not estimate with certainty the number of eligible establishments that will choose to participate. Therefore, in the proposed rule, for illustration purposes, the Agency estimated the costs for three scenarios: 200, 400 and 600 establishments.

However, comments received in response to the proposed rule suggested that the Agency overestimated both the number of States and establishments that were interested in participating in the program. The most recent Agency outreach activities confirmed this assertion. As of November 2010, only four States (North Dakota, Ohio, Wisconsin, and Vermont) expressed interest in participating and, according to the State Directors, about 27 to 102 establishments may apply for selection into the program through these four States. Therefore, we revised the three scenarios to be (1) 27 establishments in four States participating from FY 2011 through 2014, (2) 102 establishments from four States from FY 2011 through 2014, and (3) 102 establishments from 4 States in FY 2011, then the participation increases to 200 establishments from all 27 eligible States in FY 2012 through 2014. The Agency understands that there are many other possible scenarios. Nevertheless, it is difficult to determine with any certainty which scenarios are more likely to occur than others; and the farther out (in terms of fiscal years) the projection, the greater the uncertainty. These three scenarios are for illustration purposes only as the number of participating States and establishments can go up or down depending on the perception of the final rule, the experience of the program once it starts, and other socio-economic factors.

We started with the change in Federal costs for the program caused by the new statutory reimbursement level. For the cooperative interstate shipment program the law requires that FSIS reimburse States for their eligible costs related to the inspection of selected establishments in the State in an amount not less than 60 percent of eligible State costs. Under the existing law, FSIS may reimburse a State for up to 50 percent of eligible State costs to administer and enforce the cooperative State MPI. This analysis projects the effects of the different reimbursement rate on FSIS fiscal requirements assuming no change in State level activity over the baseline. FSIS assumes that States will not change their level of activity associated with selected establishments in the cooperative interstate shipment program as discussed above.

To calculate this figure, FSIS estimated average per establishment spending for the cooperative interstate shipment program for the establishments in four States. For FY 2011, the estimated additional State reimbursement for inspection of an establishment selected for the cooperative interstate shipment program compared to the reimbursement for an establishment operating under the cooperative State MPI program, is $12,415 (per establishment)in North Dakota, $5,283 in Ohio, $16,123 in Wisconsin, and $3,314 in Vermont.[7] This and analogous figures are reflected in the tables below in the "Total grants to States" line for the 27, 102, and 102–200 establishment scenarios.

Under section 11015 of the 2008 Farm Bill, FSIS is required to oversee the inspection activities of State personnel designated to provide inspection to selected establishments in the State. FSIS will incur costs associated with providing the necessary oversight. FSIS also expects to incur new costs for outreach and training. This will result in increased demand for FSIS staff and resources. In summary, this includes state coordinators, Deputy District Managers (DDM), outreach and training staff, and lab analysts to certify State laboratories, transition grants to hone establishment staff skills with HACCP and SOPs, and associated operating expenses and travel expenses.

The statute requires FSIS to appoint a Federal employee to be a State Coordinator. As explained earlier in this document, the State Coordinator prescribed by the statute is referred to as the "selected establishment coordinator" (SEC) in this proposed rule. The SEC is required by statute to visit selected establishments with a frequency that is appropriate to ensure that such establishments are operating in a manner that is consistent with the FMIA and PPIA, including regulations and policies there under and to: (1) Provide oversight and enforcement of the program, and (2) oversee the training and inspection activities of State-personnel designated to provide inspection services to the selected establishments. SECs will further provide quarterly reports on each selected establishment under his or her jurisdiction to document their level of compliance with the requirements of the Acts.

We estimate that 2 to 3 full-time equivalent FSIS employees will be able to perform the SEC functions for the 4 States interested in participating in the cooperative interstate shipment program. It is expected that early in the program the SEC time will initially focus on outreach and start-up activities (including establishment selection) and shift over until it is more completely the oversight activities stipulated in the Acts.

In the start-up period, in addition to SEC outreach efforts, FSIS expects to incur costs for outreach and training, and administration from OOEET for the small and very small establishments that are considering the cooperative interstate shipment program, that decide to apply for the program, and for those who are selected to participate in the program. OOEET will conduct face-to-face workshops in every State to provide information to establishment owners and operators about the requirements of the new cooperative interstate shipment program. These workshops will not only educate the interested owners and operators about the requirements, they will also help them meet the requirements. This allocation will cover the cost of developing, printing, and shipping the workshop materials, as well as the cost of traveling Agency personnel to conduct the workshops, and the cost of meeting space. The cost is reflected in the tables below in the "Training/Outreach" line. The reason these costs do not change between the scenarios of 27 and 102 is because the information will be provided in a classroom. Costs are expected to be largely the same whether attendance is high or low. Also, note that these costs drop sharply for each subsequent year as the cooperative interstate shipment program specific effort changes to operating training for establishments selected to participate in the program.

[7] For methodology of calculating this please see 74 FR 47659–47660.

To summarize, for each State we took the allocation for FY 2010 under the cooperative State MPI program, divided by the number of establishments, and then multiplied it by 1.2.

In the start-up period, transition grant authority under 9 CFR 332.12 and 9 CFR 381.522 will be used to provide States funds to reimburse selected establishments in the State for their costs to train one individual in HACCP and associated training in Sanitation SOP requirements. The Agency estimates that the cost of training each establishment specialist will average about $5,000, including staff time and travel necessary for the training. Since this is a new expense necessary to implement the cooperative interstate shipment program and since statute authorizes it without State matching funds, these costs will be entirely new costs for FSIS that are part of "Total grants to States" in Table 2 below. This training will only be needed in the start-up period and, accordingly, appears only in FY 2011 in Table 2 for all three scenarios, and again in FY 2012 in the 102–200 establishments scenario when more establishments participate.

SECs are likely to be supervised by Deputy District Managers (DDMs) at the equivalent of about 1 DDM per 300 establishments. This is similar to the ratio of DDM effort used to manage frontline FSIS supervisors in the Federal programs. For the four States scenario, though, since the numbers of establishments are less than 300, there will be one DDM. This is reflected in the "DDM" line of the tables below.

FSIS estimates that two laboratory staff will be needed to complete periodic audits of the State inspection program laboratory systems and otherwise coordinate with the laboratories to ensure the sampling and testing programs are "the same as" the Federal program. We anticipate that the program needs two lab staff regardless of how many establishments eventually participate because most of the labs typically have a chemistry residue program and a microbiology program. This is reflected in the "Lab staff" line of the tables below.

Travel costs are included on the "Travel—SC & lab staff" line in the tables below. The SECs will need to travel a fair amount to complete their duties and the lab staff will need to travel some. Travel for SECs and lab staff starts in FY 2011.

As noted above, early in the program the SEC's duties will initially focus on outreach and start-up activities and later will shift to the oversight activities stipulated in the Acts. Thus, we project about $6,150 for travel for each SEC in the first year and $6,300 per year for subsequent years.[8]

For the lab staff we based our trips to the State program laboratories on one audit of each laboratory to make an initial assessment, so that would be one trip to the labs for each of the 4 States. Because most of the labs typically have a chemistry residue program and a microbiology program, two lab-auditors will go on each trip—one chemist and one microbiologist. These labs would also need a follow-up the next year and then we would make a judgment as to whether there needed to be annual visits after that. We based the number of audits on the figures that we had regarding the number of States that will participate. Each trip ran about $1,500 for each auditor.

Finally, there are the normal operating expenses associated with field operations including office space, communications costs, information technology costs (such as laptop computers), other equipment, and office supplies. FSIS estimates $3,500 per new staff for laptop, LincPass, and Black Berries. These costs are generally stable over time, although they inflate and, of course, are a little higher in the start-up year. These costs are found in the "Equipment and admin" line of the tables below.

Table 2, below, summarizes the incremental costs to FSIS to operate the new cooperative interstate shipment program in the three scenarios: 27, 102 and 102-to-200 establishments.

TABLE 2—COOPERATIVE INTERSTATE SHIPMENT PROGRAM COST ESTIMATES—THREE SCENARIOS ($ MILLIONS)

Fiscal year	2011	2012	2013	2014	4-Year
Interstate Program—Summary of Incremental Cost Estimates					
Costs if 27 establishments	1.09	0.95	0.83	0.87	3.74
Costs if 102 establishments	1.94	1.43	1.34	1.40	6.11
Costs if 102, then 200 establishments	1.94	4.22	4.40	4.58	15.14
Interstate Program with 27 Establishments					
Number of establishments	27	27	27	27	.....
Total grants to States *	0.28	0.15	0.15	0.16	.....
Total salaries & benefits	0.51	0.53	0.55	0.58	.....
DDM	0.09	0.10	0.10	0.11	.....
State coordinator (SC)	0.16	0.17	0.17	0.18	.....
Lab staff	0.25	0.26	0.27	0.29	.....
Operating expenses	0.31	0.26	0.12	0.12	.....
Travel–SC & lab staff	0.02	0.02	0.03	0.03	.....
Training/Outreach	0.21	0.19	0.04	0.04	.....
Equipment and admin	0.07	0.07	0.07	0.07	.....
Total	1.09	0.95	0.83	0.87	3.74
Interstate Program with 102 Establishments					
Number of establishments	102	102	102	102	.....
Total grants to States *	0.99	0.50	0.52	0.54	.....
Total salaries & benefits	0.59	0.61	0.63	0.67	.....
DDM	0.09	0.10	0.10	0.11	.....
State coordinator (SC)	0.24	0.25	0.26	0.27	.....
Lab staff	0.25	0.26	0.27	0.29	.....

[8] The PRIA stated that the estimated travel cost per SEC's in subsequent years would be $630. This was a technical error and should have read $6,300.

TABLE 2—COOPERATIVE INTERSTATE SHIPMENT PROGRAM COST ESTIMATES—THREE SCENARIOS ($ MILLIONS)—Continued

Fiscal year	2011	2012	2013	2014	4-Year
Operating expenses	0.36	0.30	0.18	0.18	
Travel–SC & lab staff	0.03	0.3	0.03	0.03	
Training/Outreach	0.21	0.19	0.05	0.05	
Equipment and admin	0.12	0.11	0.11	0.11	
Total	1.94	1.43	1.34	1.40	6.11
Interstate Program with 102, then 200 Establishments					
Number of establishments	102	200	200	200	
Total grants to States *	0.99	1.64	1.20	1.25	
Total salaries & benefits	0.59	2.25	2.35	2.45	
DDM	0.09	0.16	0.17	0.18	
State coordinator (SC)	0.24	1.83	1.91	1.98	
Lab staff	0.25	0.26	0.27	0.29	
Operating expenses	0.36	0.82	0.85	0.89	
Travel–SC & lab staff	0.03	0.09	0.10	0.10	
Training/Outreach	0.21	1.40	1.12	0.35	
Equipment and admin	0.12	0.36	0.38	0.39	
Total	1.94	4.22	4.40	4.58	15.14

* Note "Total grants to States" includes funding for Transition Grants to help establishments train one person in HACCP and SOPs per § 332.12 and § 381.522.

Effect on Small Entities—Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FSIS Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based primarily on the fact that (1) the program is voluntary, and (2) the rule will benefit very small and certain small establishments that operate under cooperative State MPI programs. Based on FSIS's HACCP (Hazard Analysis and Critical Control Points) size definitions, very small establishments have fewer than 10 employees or generate less than $2.5 million in annual sales; small establishments have 10 or more but fewer than 500 employees and generate more than $2.5 million in annual sales; and establishments having 500 or more employees are large establishments. Thus, very small State-inspected establishments and small State-inspected establishments that have fewer than 25 employees on average will be eligible to participate in the cooperative interstate shipment program.

This final rule will benefit very small and certain small establishments that operate under cooperative State MPI programs. Under section 11015, State-inspected establishments that employ on average 25 or fewer employees would be permitted to be selected to participate in a cooperative interstate shipment program. The law also permits the Secretary to select State-inspected establishments that employ, on average, more than 25 but less than 35 employees to participate in the program. However, to remain in the program, these establishments must employ, on average, 25 or fewer employees three years after the regulations implementing the new cooperative interstate shipment program become effective. FSIS provides for the selection of State-inspected establishments that employ, on average, more than 25 but fewer than 35 employees in the implementing regulations. Thus, this rule will benefit these very small and small State-inspected establishments by allowing them to ship meat and poultry products in interstate and foreign commerce, thereby opening new markets for their products.

Currently, 27 States administer cooperative State meat or poultry inspection (MPI) programs. These States have approximately 1,873 establishments that would be eligible to apply for selection into the new cooperative interstate shipment program. As mentioned earlier in the preamble to this final rule, the Agency's most recent outreach activities indicate that four States may be interested in participating in the program and the number of establishments in these States that might participate is between 27 and 102. However, because participation in the new program is voluntary, FSIS will not know how many States and establishments will apply to participate until this final rule becomes effective and establishments are selected for the program.

As discussed above, costs to the participating establishments are likely to be small. An establishment that chooses to apply for selection into the program will incur one-time start-up costs associated with filing an application, training employees, meeting regulatory performance standards, obtaining label approval, and implementing a food safety system that complies with all Federal requirements (e.g. Sanitation SOP and HACCP requirements). In addition, to qualify for a cooperative interstate shipment program, some State-inspection establishments may need to invest in structural modifications to their facilities in order to comply with Federal standards. Based on information obtained through FSIS' outreach activities with the States in 2008, in the PRIA of the proposed rule, the Agency estimated that the cost for State-inspected establishments to fully comply with Federal standards, as required by the law, will range from $1,500 to $50,000. Looking at the potential for the establishments to experience new (incremental) burden or expenses due to State inspection under the proposed cooperative interstate shipment program, FSIS believes that there will be essentially no change. FSIS did not receive any comments or new information in response to the proposed rule to suggest changes to these estimates.

Because the cooperative interstate shipment program is a voluntary

program, establishments that choose to incur the costs associated with participating in the program will most likely do so because they anticipate that such participation will provide an overall net benefit for them.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to government information and services, and for other purposes.

Executive Order 13175

This final rule has been carefully evaluated for potential tribal implications in accordance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." FSIS has concluded based on its evaluation that this final rule will not have any direct or substantial effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power or responsibilities between the Federal Government and Indian Tribes. This final rule implements the Congressional enactment providing that States with approved MPI programs, that is State established and administered meat or poultry inspection programs, approved by FSIS pursuant to the Federal meat and poultry inspection laws, may now be eligible in their discretion to participate in the cooperative interstate shipment program established by this final rule. Accordingly, because this program is only authorized under law and this rule is for States with approved MPI programs, there are no significant tribal implications. Nonetheless, FSIS will include Tribes and intertribal organizations, involved in or interested in the meat and poultry sectors, in the Agency's outreach efforts associated with implementation and administration of this final rule. In addition, if and when a State, with an MPI program approved by FSIS, satisfies the requirements of this final rule and enters into an agreement with FSIS regarding a cooperative interstate shipment program, FSIS will conduct outreach to Tribes and intertribal organizations to ensure that they are fully aware of the cooperative interstate shipment program in that State, and to ensure that meat or poultry establishments on Tribal lands have the opportunity to participate in the approved State interstate shipment program if they are interested in doing so.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2011_Interim_&_Final_Rules_Index.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_&_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the information collection and recordkeeping requirements included in this rule were submitted for approval to the Office of Management and Budget (OMB) when the proposed rule was published. OMB preapproved the information collection; the OMB Control number is 0583–0144.

The estimated number of respondents in the preapproved information collection reflects the number of States and establishments that FSIS estimated would participate in the cooperative interstate shipment program when the Agency issued the proposed rule. FSIS believes that it overestimated the participation by States and establishments in the proposed rule. However, the Agency's final estimated hours of paperwork burden per respondent is the same as the estimate provided in the proposed rule.

Title: "Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products."

Type of collection: New.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this final rule in accordance with the Paperwork Reduction Act. Under this final rule, FSIS is requiring certain information collection and recordkeeping activities.

States that are interested in participating in the cooperative interstate shipment program are required to submit a request for an agreement to establish such a program through the appropriate FSIS District Office. In their requests, States must: (1) Identify establishments in the State that the State recommends for initial selection into the program, if any; (2) include documentation to demonstrate that the State is able to provide necessary inspections services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program; and (3) agree to comply with certain conditions to assist with enforcement of the

program. States that have entered into an agreement with FSIS for a cooperative interstate shipment program must submit, through the FSIS district office, an evaluation of each State-inspected establishment that has applied, and that the State recommends be selected, for the cooperative interstate shipment program.

Under this final rule, State inspected establishments selected to participate in the cooperative interstate shipment program will be required to develop and maintain the same records that are required under the Acts and their implementing regulations. Selected establishment will also be required to give the FSIS selected establishment coordinator (SEC) access to all establishment records required under the Acts and implementing regulations. Most States that have cooperative State meat or poultry products inspection (MPI) programs have incorporated the Federal standards into their programs. Thus, most establishments selected to participate in the interstate shipment program are currently required to maintain records that comply with Federal standards. However, establishments located in States that have implemented recordkeeping requirements that are "at least equal to" but not identical to Federal requirements will need to modify their recordkeeping procedures to comply with Federal standards. All selected establishments will be required to give the FSIS SEC access to their records upon request.

Estimate of Burden: When it proposed these regulations, FSIS estimated that 16 of the 27 States that currently have agreements for cooperative State meat or poultry products inspection programs will prepare and submit a request to FSIS to establish a cooperative interstate shipment program. The Agency also estimated that approximately 400 establishments will apply for the program. Thus, FSIS estimated that each of the 16 States mentioned above will need to prepare and submit, on average, 25 evaluations for the State-inspected establishments that have applied for, and that the State recommends, for selection into the program, for an estimated total of 400 evaluations.

FSIS estimates that it will take approximately 40 hours for each State to prepare and submit a request to establish a cooperative interstate shipment program, for a total burden of 640 hours. The Agency estimates that it will take each State approximately 24 hours to prepare an evaluation of a State-inspected establishment's qualifications to be selected for a cooperative interstate shipment program, for a total burden of 9,600 hours.

FSIS estimates that if all of the 400 establishments that apply are selected for the program, approximately 100 of these establishments will need to modify their recordkeeping procedures to come into compliance with Federal standards. The extent to which these establishments will need to modify their recordkeeping procedures will depend on requirements under the State inspection program. Because recordkeeping requirements under the State inspection program must be "at least equal to" the Federal requirements, these modifications should be minor. FSIS estimates that it will take approximately 16 hours for each establishment that is currently maintaining records under State standards to review and revise its recordkeeping procedures, and about 5 minutes for each establishment to file these records, for a total burden of approximately 1608 hours.

All of the estimated 400 establishments that participate in the program will be required to give the SEC access to all records required under the Federal Acts. FSIS estimates that it will take each establishment approximately 15 minutes to assist the SEC to locate the necessary records for review on the initial visit, for a total burden of 100 hours. FSIS estimates that these establishments will need to spend and approximately 5 minutes to assist the SEC locate records for review for each subsequent visit. If the SEC visits each selected establishment at least once a month, the total burden per establishment per year will be 1 hour, for a total estimated annual burden of 400 hours.

Respondents: State agencies that administer cooperative State meat and poultry products inspection programs and State-inspected establishments selected to participate in a cooperative interstate shipment program.

Estimated number of respondents: 416 (16 States and 400 State-inspected establishments).

Estimated number of responses per respondent: One request to establish a cooperative interstate shipment program per State and 25 evaluations of State-inspected establishments per State, on average.

A one-time modification of records for each selected establishment whose recordkeeping does not comply with all Federal standards. One initial SEC visit in which each selected establishment will need to provide the SEC with access to all required records. Each establishment selected for the program will need to provide the FSIS access to its records on an ongoing basis.

Estimated Total Annual Burden on Respondents: 11,848 hours to establish and implement the cooperative interstate shipment program in 16 States. Once the program has been implemented, an estimated annual burden of 400 hours for selected establishments to provide the SEC access to establishment records on-going basis.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532 South Building, Washington, DC 20250.

Proposed Regulations

List of Subjects

9 CFR Part 321

Grant programs-agriculture, Intergovernmental relations, Meat inspection.

9 CFR Part 332

Grant programs-agriculture, Intergovernmental relations, Meat inspection.

9 CFR Part 381

Grant programs-agriculture, Intergovernmental relations, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 321—COOPERATION WITH STATES AND TERRITORIES

■ 1. The authority citation for part 321 is revised to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 321.3 is added to read as follows:

§ 321.3 Cooperation of States for the interstate shipment of carcasses, parts of carcasses, meat, and meat food products.

(a) The Administrator is authorized under 21 U.S.C. 683(b) to coordinate with States that have meat inspection programs as provided in § 321.1 of this part to select certain establishments operating under these programs to participate in a cooperative program to ship carcasses, parts of carcasses, meat, and meat food products in interstate commerce. A cooperative program for this purpose is called a "cooperative interstate shipment program."

(b) Establishments selected to participate in a cooperative interstate shipment program described in this

section must receive inspection services from designated State personnel that have been trained in the enforcement of the Act. If the designated personnel determine that the carcasses, parts of carcasses, meat, and meat food products prepared in establishments selected to participate in the cooperative interstate shipment program comply with all requirements under the Act, these items will bear an official Federal mark of inspection and may be shipped in interstate commerce. The Administrator will assign an FSIS "selected establishment coordinator," who will be an FSIS employee, to each State that participates in a cooperative interstate shipment program to provide Federal oversight of the program and enforcement of the program's requirements. The Federal contribution for inspection services provided by States that enter into a cooperative interstate shipment program under this section will be at least 60 percent of eligible State costs. Eligible State costs are those costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected establishments in the State.

(c) Part 332 of this subchapter prescribes conditions under which States and establishments may participate in the cooperative interstate shipment program.

(d) The Administrator will terminate a cooperative interstate shipment agreement with a State if the Administrator determines that the State is not conducting inspection at selected establishments in a manner that complies with the Act and the implementing regulations in this chapter.

■ 3. Part 332 is added to read as follows:

PART 332—SELECTED ESTABLISHMENTS; COOPERATIVE PROGRAM FOR INTERSTATE SHIPMENT OF CARCASSES, PARTS OF CARCASSES, MEAT, AND MEAT FOOD PRODUCTS

Sec.

332.1 Definitions.
332.2 Purpose.
332.3 Requirements for establishments; ineligible establishments.
332.4 State request for cooperative agreement.
332.5 Establishment selection; official number for selected establishments.
332.6 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.
332.7 Federal oversight of a cooperative interstate shipment program.
332.8 Quarterly reports.
332.9 Enforcement authority.
332.10 Deselection of ineligible establishments.
332.11 Transition to official establishment.
332.12 Transition grants.
332.13 Separation of operations.
332.14 Voluntary withdrawal.

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 332.1 Definitions.

Cooperative interstate shipment program. A cooperative meat inspection program described in § 321.3 of this subchapter.

Cooperative State meat inspection program. A cooperative State-Federal meat inspection program described in § 321.1 of this subchapter.

Designated personnel. State inspection personnel that have been trained in the enforcement of the Act and any additional State program requirements in order to provide inspection services to selected establishments.

Interstate commerce. "Interstate commerce" has the same meaning as "commerce" under § 301.2 of this subchapter.

Selected establishment. An establishment operating under a State cooperative meat inspection program that has been selected by the Administrator, in coordination with the State where the establishment is located, to participate in a cooperative interstate shipment program.

§ 332.2 Purpose.

This part prescribes the conditions under which States that administer cooperative State meat inspection programs and establishments that operate under such programs may participate in a cooperative interstate shipment program.

§ 332.3 Requirements for establishments; ineligible establishments.

(a) An establishment that operates under a cooperative State meat inspection program may apply to participate in a cooperative interstate shipment program under this part if:

(1) The establishment employs on average no more than 25 employees based on the standards described in paragraph (b) of this section, or

(2) The establishment employed more than 25 employees but fewer than 35 employees as of June 18, 2008. If selected to participate in a cooperative interstate shipment program, an establishment under this paragraph must employ on average no more than 25 employees as of July 1, 2014, or it must transition to become an official establishment as provided in § 332.11 of this part.

(b) An establishment that has 25 or fewer employees based on the following standards is considered to have 25 or fewer employees on average for purposes of this part.

(1) All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis whose duties involve handling the meat or meat food products prepared by the establishment are counted when calculating the total number of employees.

(2) All individuals employed by the establishment from a temporary employee agency, professional employee organization, or leasing concern whose duties involve handling the meat or meat food products prepared by the establishment are counted when calculating the total number of employees.

(3) The average number of employees is calculated for each of the pay periods for the preceding 12 calendar months.

(4) Part-time and temporary employees are counted the same as full-time employees.

(5) If the establishment has not been in business for 12 months, the average number of employees is calculated for each of the pay periods in which the establishment has been in business.

(6) Volunteers who receive no compensation are not considered employees unless their duties involve handling the meat or meat food products prepared by the establishment.

(7) The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees.

(c) The following establishments are ineligible to participate in a cooperative interstate shipment program:

(1) Establishments that employ more than 25 employees on average (except as provided under paragraph (a)(2) of this section);

(2) Establishments operating under a Federal-State program as provided in § 321.2 of this subchapter as of June 18, 2008;

(3) Official establishments;

(4) Establishments that were official establishments as of June 18, 2008, but that were re-organized on a later date by the person that controlled the establishment as of June 18, 2008;

(5) Establishments operating under a cooperative State meat inspection that employed more than 35 employees as of June 18, 2008, that were reorganized on a later date by the person that controlled the establishment as of June 18, 2008;

(6) Establishments that are the subject of a transition under § 332.11 of this part;

(7) Establishments that are in violation of the Act; and

(8) Establishments located in States without a cooperative State meat inspection program.

(9) Establishments located in a State whose agreement for a cooperative interstate shipment program was terminated by the Administrator as provided in § 321.3(d) of this subchapter.

(d) An establishment that meets the conditions in paragraph (a) of this section and that is not an ineligible establishment under paragraph (c) of this section may apply for selection into a cooperative interstate shipment program through the State in which the establishment is located.

§ 332.4 State request for cooperative agreement.

(a) State participation in a cooperative interstate shipment program under this part is limited to States that have implemented cooperative State meat inspection programs.

(b) To request an agreement for a cooperative interstate shipment program under this part, a State must submit a written request to the Administrator through the FSIS District Office for the FSIS District in which the State is located. In the request the State must:

(1) Identify establishments in the State that have requested to be selected for the program that the State recommends for initial selection into the program, if any;

(2) Demonstrate that the State is able to provide the necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program established under this part; and

(3) Agree that, if the State enters into an agreement with FSIS for a cooperative interstate shipment program, the State will:

(i) Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State;

(ii) Notify the selected establishment coordinator for the State of the results of any laboratory analyses that indicate that a product prepared in a selected establishment may be adulterated or may otherwise present a food safety concern; and

(iii) When necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments.

(c) If the Administrator determines that a State that has submitted a request to participate in a cooperative interstate shipment program qualifies to enter into a cooperative agreement for such a program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments located in the State.

(d) After the Administrator and a State have signed an agreement for a cooperative interstate shipment program as provided in paragraph (c) of this section, the Administrator will:

(1) Appoint an FSIS employee as the FSIS selected establishment coordinator for the State and

(2) Coordinate with the State to select establishments to participate in the program as provided in § 332.5(b) of this part.

§ 332.5 Establishment selection; official number for selected establishments.

(a) An establishment operating under a cooperative State meat inspection program will qualify for selection into a cooperative interstate shipment program if the establishment:

(1) Has submitted a request to the State to be selected for the program;

(2) Has the appropriate number of employees under § 332.3(a) of this part;

(3) Is not ineligible to participate in a cooperative interstate shipment program under § 332.3(c) of this part;

(4) Is in compliance with all requirements under the cooperative State meat inspection program; and

(5) Is in compliance with all requirements under the Act and the implementing regulations in this chapter.

(b) To participate in a cooperative interstate shipment program, an establishment that meets the conditions in paragraph (a) of this section must be selected by the Administrator, in coordination with the State where the establishment is located.

(c) If an establishment is selected to participate in a cooperative interstate shipment program as provided in paragraph (b) of this section, the State is to assign the establishment an official number that reflects the establishment's participation in the cooperative interstate shipment program and advise the FSIS selected establishment coordinator for the State of the official number assigned to each selected establishment in the State. The official number assigned to every selected establishment must contain a suffix, e.g., "SE," that identifies the establishment as a selected establishment and that identifies the State, e.g., "SETX," for "selected establishment Texas."

(d) Failure of the State to comply with paragraph (c) of this section will disqualify the State from participation in the cooperative interstate shipment program.

§ 332.6 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.

(a) A cooperative interstate shipment program will commence when the Administrator, in coordination with the State, has selected establishments in the State to participate in the program.

(b) Inspection services for selected establishments participating in a cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee.

(c) Carcasses, parts of carcasses, meat, and meat food products prepared in a selected establishment and inspected and passed by designated State personnel must bear an official Federal mark, stamp, tag, or label of inspection in the appropriate form prescribed in part 312 of this subchapter that includes the information specified in § 332.5(c) of this part.

(d) Carcasses, parts of carcasses, meat, and meat food products prepared in a selected establishment that comply with the conditions in paragraph (c) of this section may be distributed in interstate commerce.

§ 332.7 Federal oversight of a cooperative interstate shipment program.

(a) The FSIS selected establishment coordinator for a State that has entered into an agreement for a cooperative interstate shipment program will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the Act and the implementing regulations in this chapter. The frequency with which the SEC will visit selected establishments under the SEC's jurisdiction will be based on factors that include, but are not limited to, the complexity of the operations conducted at the selected establishment, the establishment's schedule of operations, and the establishment's performance under the cooperative interstate shipment program. If necessary, the selected establishment coordinator, in consultation with the District Manager that covers the State, may designate qualified FSIS personnel to visit a selected establishment on behalf of the selected establishment coordinator.

(b) The selected establishment coordinator, in coordination with the

State, will verify that selected establishments in the State are receiving the necessary inspection services from designated personnel, and that these establishments are eligible, and remain eligible, to participate in a cooperative interstate shipment program. The selected establishment coordinator's verification activities may include:

(1) Verifying that each selected establishment employs, and continues to employ, 25 or fewer employees, on average, as required under § 332.3(a) of this part, unless the establishment is transitioning to become an official establishment;

(2) Verifying that the designated personnel are providing inspection services to selected establishments in a manner that complies with the Act and the implementing regulations in this chapter;

(3) Verifying that that the State staffing levels for each selected establishments are appropriate to carry out the required inspection activities; and

(4) Assessing each selected establishment's compliance with the Act and implementing regulations under this chapter.

(c) If the selected establishment coordinator determines that designated personnel are providing inspection services to selected establishments in the State in a manner that is inconsistent with the Act and the implementing regulations in this chapter, the Administrator will provide an opportunity for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the selected establishment coordinator. If the State fails to develop a corrective action plan, or the selected establishment coordinator for the State determines that the corrective action plan is inadequate, the Administrator will terminate the agreement for the cooperative interstate shipment program as provided in § 321.3(d) of this chapter.

§332.8 Quarterly reports.

(a) The selected establishment coordinator will prepare a report on a quarterly basis that describes the status of each selected establishment under his or her jurisdiction.

(b) The quarterly report required in paragraph (a) of this section will:

(1) Include the selected establishment coordinator's assessment of the performance of the designated personnel in conducting inspection activities at selected establishments and

(2) Identify those selected establishments that the selected establishment coordinator has verified are in compliance with the Act and implementing regulations in this chapter, those that have been deselected under § 332.10 of this part, and those that are transitioning to become official establishments under § 332.11 of this part.

(c) The selected establishment coordinator is to submit the quarterly report to the Administrator through the District Manager for the State where the selected establishments identified in the report are located.

§ 332.9 Enforcement authority.

(a) To facilitate oversight and enforcement of this part, selected establishments operating under a cooperative interstate shipment program must, upon request, give the FSIS selected establishment coordinator or other FSIS officials access to all establishment records required under the Act and the implementing regulations in this chapter. The Administrator may deselect any selected establishment that refuses to comply with this paragraph.

(b) Selected establishment coordinators may initiate any appropriate enforcement action provided for in part 500 of this chapter if they determine that a selected establishment under their jurisdiction is operating in a manner that is inconsistent with the Act and the implementing regulations in this chapter. Selected establishments participating in a cooperative interstate shipment program are subject to the notification and appeal procedures set out in part 500 of this chapter.

(c) If inspection at a selected establishment is suspended for any of the reasons specified in § 500.3 or § 500.4 of this chapter, FSIS will:

(1) Provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or

(2) Move to deselect the establishment as provided in § 332.10 of this part.

(d) The decision to deselect a selected establishment under a suspension will be made on a case-by-case basis. In making this decision, FSIS, in consultation with the State where the selected establishment is located, will consider, among other factors:

(1) The non-compliance that led to the suspension;

(2) The selected establishment's compliance history; and

(3) The corrective actions proposed by the selected establishment.

§ 332.10 Deselection of ineligible establishments.

(a) The Administrator will deselect a selected establishment that becomes ineligible to participate in a cooperative interstate shipment program for any reason listed under § 332.3(c) of this part.

(b) An establishment that has been deselected must transition to become an official establishment as provided in § 332.11 of this part.

§ 332.11 Transition to official establishment.

(a) If an establishment is deselected from a cooperative interstate shipment program as provided in § 332.10 of this part, FSIS, in coordination with the State where the establishment is located, will develop and implement a plan to transition the establishment to become an official establishment. Except that an establishment that was deselected from a cooperative interstate shipment program because it is located in a State whose agreement for such a program was terminated may either transition to become an official establishment or transition to become a State-inspected establishment under the cooperative State meat inspection program.

(b) An establishment that has been deselected from a cooperative interstate shipment program and successfully transitioned to become an official establishment may withdraw from the Federal inspection program and resume operations under the cooperative State meat inspection program after operating as an official establishment in full compliance with the Act for a year.

§ 332.12 Transition grants.

(a) Transition grants are funds that a State participating in a cooperative interstate shipment program under this part may apply for to reimburse selected establishments in the State for the cost to train one individual in the seven HACCP principles for meat or poultry processing as required under § 417.7 of this chapter and associated training in the development of sanitation standard operating procedures required under part 416 of this chapter.

(b) A State participating in a cooperative interstate shipment program that receives a transition grant must use grant funds to reimburse the training costs of one employee per each selected establishment in the State. Any other use of such funds is prohibited.

§ 332.13 Separation of operations.

A selected establishment may conduct operations under the cooperative State meat inspection program if the establishment implements and maintains written procedures for complete physical separation of product and process for each operation by time or space.

§ 332.14 Voluntary withdrawal.

A selected establishment that is in full compliance with the requirements in this part may voluntarily end its participation in a cooperative interstate shipment program and operate under the cooperative State meat inspection program. Establishments that voluntarily end their participation in the cooperative may re-apply for the program after operating under the cooperative State meat inspection program for one year.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

■ 5. Add § 381.187 to subpart R to read as follows:

§ 381.187 Cooperation of States for the interstate shipment of poultry products.

(a) The Administrator is authorized under 21 U.S.C. 472(b) to coordinate with States that have poultry products inspection programs as provided in § 381.185 of this subpart to select certain establishments operating under these programs to participate in a cooperative program to ship poultry products in interstate commerce. A cooperative program for this purpose is called a "cooperative interstate shipment program."

(b) Establishments selected to participate in a cooperative interstate shipment program described in this section must receive inspection services from designated State personnel that have been trained in the enforcement of the Act. If the designated personnel determine that the poultry products prepared in establishments selected to participate in the cooperative interstate shipment program comply with all requirements under the Act, these items will bear an official Federal mark of inspection and may be shipped in interstate commerce. The Administrator will assign an FSIS "selected establishment coordinator," who will be an FSIS employee, to each State that participates in a cooperative interstate shipment program to provide Federal oversight of the program and enforcement of the program's requirements. The Federal contribution for inspection services provided by States that enter into a cooperative interstate shipment program under this section will be at least 60 percent of eligible State costs. Eligible State costs are those costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected establishments in the State.

(c) Subpart Z, of this part 381 prescribes conditions under which States and establishments may participate in the cooperative interstate shipment program.

(d) The Administrator will terminate a cooperative interstate shipment agreement with a State if the Administrator determines that the State is not conducting inspection at selected establishments in a manner that complies with the Act and the implementing regulations in this chapter.

■ 6. Add subpart Z to read as follows:

Subpart Z—Selected Establishments; Cooperative Program for Interstate Shipment of Poultry Products

Sec.
381.511 Definitions.
381.512 Purpose.
381.513 Requirements for establishments; ineligible establishments.
381.514 State request for cooperative agreement.
381.515 Establishment selection; official number for selected establishments.
381.516 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.
381.517 Federal oversight of a cooperative interstate shipment program.
381.518 Quarterly reports.
381.519 Enforcement authority.
381.520 Deselection of ineligible establishments.
381.521 Transition to official establishment.
381.522 Transition grants.
381.523 Separation of operations.
381.524 Voluntary withdrawal.

Subpart Z—Selected Establishments; Cooperative Program for Interstate Shipment of Poultry Products

§ 381.511 Definitions.

Cooperative interstate shipment program. A cooperative poultry products inspection program described in § 381.187 of this part.

Cooperative State poultry products inspection program. A cooperative State-Federal poultry products inspection program described in § 381.185 of this part.

Designated personnel. State inspection personnel that have been trained in the enforcement of the Act and any additional State program requirements in order to provide inspection services to selected establishments.

Interstate commerce. "Interstate commerce" has the same meaning as "commerce" under § 381.1 of this part.

Selected establishment. An establishment operating under a State cooperative poultry products inspection program that has been selected by the Administrator, in coordination with the State where the establishment is located, to participate in a cooperative interstate shipment program.

§ 381.512 Purpose.

This subpart Z prescribes the conditions under which States that administer cooperative State poultry products inspection programs and establishments that operate under such programs may participate in a cooperative interstate shipment program.

§ 381.513 Requirements for establishments; ineligible establishments.

(a) An establishment that operates under a cooperative State poultry products inspection program may apply to participate in a cooperative interstate shipment program under this subpart if:

(1) The establishment employs on average no more than 25 employees based on the standards described in paragraph (b) of this section, or

(2) The establishment employed more than 25 employees but fewer than 35 employees as of June 18, 2008. If selected to participate in a cooperative interstate shipment program, an establishment under this paragraph must employ on average no more than 25 employees as of July 1, 2014, or it must transition to become an official establishment as provided in § 381.521 of this subpart.

(b) An establishment that has 25 or fewer employees based on the following standards is considered to have 25 or fewer employees on average for purposes of this subpart.

(1) All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis whose duties involve handling the poultry products prepared by the establishment are counted when calculating the total number of employees.

(2) All individuals employed by the establishment from a temporary employee agency, professional employee organization, or leasing concern whose duties involve handling the poultry products prepared by the establishment are counted when calculating the total number of employees.

(3) The average number of employees is calculated for each of the pay periods for the preceding 12 calendar months.

(4) Part-time and temporary employees are counted the same as full-time employees.

(5) If the establishment has not been in business for 12 months, the average

number of employees is calculated for each of the pay periods in which the establishment has been in business.

(6) Volunteers who receive no compensation are not considered employees unless their duties involve handling the poultry products prepared by the establishment.

(7) The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees.

(c) The following establishments are ineligible to participate in a cooperative interstate shipment program:

(1) Establishments that employ more than 25 employees on average (except as provided under paragraph (a)(2) of this section);

(2) Establishments operating under a Federal-State program as provided in § 381.186 of this part as of June 18, 2008;

(3) Official establishments;

(4) Establishments that were official establishments as of June 18, 2008, but that were re-organized on a later date by the person that controlled the establishment as of June 18, 2008;

(5) Establishments operating under a cooperative State poultry products inspection program that employed more than 35 employees as of June 18, 2008, that were reorganized on a later date by the person that controlled the establishment as of June 18, 2008;

(6) Establishments that are the subject of a transition under § 381.521 of this subpart;

(7) Establishments that are in violation of the Act; and

(8) Establishments located in States without a cooperative State poultry products inspection program.

(9) Establishments located in a State whose agreement for a cooperative interstate shipment program was terminated by the Administrator as provided in § 381.187(d) of this part.

(d) An establishment that meets the conditions in paragraph (a) of this section and that is not an ineligible establishment under paragraph (c) of this section may apply for selection into a cooperative interstate shipment program through the State in which the establishment is located.

§ 381.514 State request for cooperative agreement.

(a) State participation in a cooperative interstate shipment program under this subpart is limited to States that have implemented cooperative State poultry products inspection programs.

(b) To request an agreement for a cooperative interstate shipment program under this subpart, a State must submit a written request to the Administrator through the FSIS District Office for the FSIS District in which the State is located. In the request the State must:

(1) Identify establishments in the State that have requested to be selected for the program that the State recommends for initial selection into the program, if any;

(2) Demonstrate that the State is able to provide the necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program established under this subpart; and

(3) Agree that, if the State enters into an agreement with FSIS for a cooperative interstate shipment program, the State will:

(i) Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State;

(ii) Notify the selected establishment coordinator for the State of the results of any laboratory analyses that indicate that a product prepared in a selected establishment may be adulterated or may otherwise present a food safety concern; and

(iii) When necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments.

(c) If the Administrator determines that a State that has submitted a request to participate in a cooperative interstate shipment program qualifies to enter into a cooperative agreement for such a program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments located in the State.

(d) After the Administrator and a State have signed an agreement for a cooperative interstate shipment program as provided in paragraph (c) of this section, the Administrator will:

(1) Appoint an FSIS employee as the FSIS selected establishment coordinator for the State and

(2) Coordinate with the State to select establishments to participate in the program as provided in § 381.515(b) of this subpart.

§ 381.515 Establishment selection; official number for selected establishments.

(a) An establishment operating under a cooperative State poultry products inspection program will qualify for selection into a cooperative interstate shipment program if the establishment:

(1) Has submitted a request to the State to be selected for the program;

(2) Has the appropriate number of employees under § 381.513(a) of this subpart;

(3) Is not ineligible to participate in a cooperative interstate shipment program under § 381.513(c) of this subpart;

(4) Is in compliance with all requirements under the cooperative State poultry products inspection program; and

(5) Is in compliance with all requirements under the Act and the implementing regulations in this chapter.

(b) To participate in a cooperative interstate shipment program, an establishment that meets the conditions in paragraph (a) of this section must be selected by the Administrator, in coordination with the State where the establishment is located.

(c) If an establishment is selected to participate in a cooperative interstate shipment program as provided in paragraph (b) of this section, the State is to assign the establishment an official number that reflects the establishment's participation in the cooperative interstate shipment program and advise the FSIS selected establishment coordinator for the State of the official number assigned to each selected establishment in the State. The official numbers assigned to every selected establishment must contain a suffix, e.g., "SE," that identifies the establishment as a selected establishment; that includes the letter "P," which identifies the establishment as a poultry establishment; and that identifies the State, e.g., "SEPND," for "selected establishment poultry North Dakota."

(d) Failure of a State to comply with paragraph (c) of this section will disqualify the State from participation in the cooperative interstate shipment program.

§ 381.516 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.

(a) A cooperative interstate shipment program will commence when the Administrator, in coordination with the State, has selected establishments in the State to participate in the program.

(b) Inspection services for selected establishments participating in a cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee.

(c) Poultry products processed in a selected establishment and inspected and passed by designated State

personnel must bear an official Federal mark, stamp, tag, or label of inspection in the appropriate form prescribed in subpart M of this part that includes the information specified in § 381.515(c) of this subpart.

(d) Poultry products processed in a selected establishment that comply with the conditions in paragraph (c) of this section may be distributed in interstate commerce.

§ 381.517 Federal oversight of a cooperative interstate shipment program.

(a) The FSIS selected establishment coordinator for a State that has entered into an agreement for a cooperative interstate shipment program will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the Act and the implementing regulations in this chapter. The frequency with which the SEC will visit selected establishments under the SEC's jurisdiction will be based on factors that include, but are not limited to, the complexity of the operations conducted at the selected establishment, the establishment's schedule of operations, and the establishment's performance under the cooperative interstate shipment program. If necessary, the selected establishment coordinator, in consultation with the District Manager that covers the State, may designate qualified FSIS personnel to visit a selected establishment on behalf of the selected establishment coordinator.

(b) The selected establishment coordinator, in coordination with the State, will verify that selected establishments in the State are receiving the necessary inspection services from designated personnel, and that these establishments are eligible, and remain eligible, to participate in a cooperative interstate shipment program. The selected establishment coordinator's verification activities may include:

(1) Verifying that each selected establishment employs, and continues to employ, 25 or fewer employees, on average, as required under § 381.513(a) of this part, unless the establishment is transitioning to become an official establishment;

(2) Verifying that the designated personnel are providing inspection services to selected establishments in a manner that complies with the Act and the implementing regulations in this chapter;

(3) Verifying that that the State staffing levels for each selected establishments are appropriate to carry out the required inspection activities; and

(4) Assessing each selected establishment's compliance with the Act and implementing regulations in this chapter.

(c) If the selected establishment coordinator determines that designated personnel are providing inspection services to selected establishments in the State in a manner that is inconsistent with the Acts and the implementing regulations in this chapter, the Administrator will provide an opportunity for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the selected establishment coordinator. If the State fails to develop a corrective action plan, or the selected establishment coordinator for the State determines that the corrective action plan is inadequate, the Administrator will terminate the agreement for the cooperative interstate shipment program as provided in § 381.187(d) of this part.

§ 381.518 Quarterly reports.

(a) The selected establishment coordinator will prepare a report on a quarterly basis that describes the status of each selected establishment under his or her jurisdiction.

(b) The quarterly report required in paragraph (a) of this section will:

(1) Include the selected establishment coordinator's assessment of the performance of the designated personnel in conducting inspection activities at selected establishments and

(2) Identify those selected establishment that the selected establishment coordinator has verified are in compliance with the Act and implementing regulations in this chapter, those that have been deselected under § 381.520 of this subpart, and those that are transitioning to become official establishments under § 381.521 of this subpart.

(c) The selected establishment coordinator is to submit the quarterly report to the Administrator through the District Manager for the State where the selected establishments identified in the report are located.

§ 381.519 Enforcement authority.

(a) To facilitate oversight and enforcement of this subpart, selected establishments operating under a cooperative interstate shipment program must, upon request, give the FSIS selected establishment coordinator or other FSIS officials access to all establishment records required under the Act and the implementing regulations in this chapter. The Administrator may deselect any selected establishment that refuses to comply with this paragraph.

(b) Selected establishment coordinators may initiate any appropriate enforcement action provided for in part 500 of this chapter if they determine that a selected establishment under their jurisdiction is operating in manner that is inconsistent with the Act and the implementing regulations in this chapter. Selected establishments participating in a cooperative interstate shipment program are subject to the notification and appeal procedures set out in part 500 of this chapter.

(c) If inspection at a selected establishment is suspended for any of the reasons specified in § 500.3 or § 500.4 of this chapter, FSIS will:

(1) Provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or

(2) Move to deselect the establishment as provided in § 381.520 of this subpart.

(d) The decision to deselect a selected establishment under a suspension will be made on a case-by-case basis. In making this decision, FSIS, in consultation with the State where the selected establishment is located, will consider, among other factors:

(1) The non-compliance that led to the suspension;

(2) The selected establishment's compliance history; and

(3) The corrective actions proposed by the selected establishment.

§ 381.520 Deselection of ineligible establishments.

(a) The Administrator will deselect a selected establishment that becomes ineligible to participate in a cooperative interstate shipment program for any reason listed under § 381.513(c) of this subpart.

(b) An establishment that has been deselected must transition to become an official establishment as provided in § 381.521 of this subpart.

§ 381.521 Transition to official establishment.

(a) If an establishment is deselected from a cooperative interstate shipment program as provided in § 381.520 of this subpart, FSIS, in coordination with the State where the establishment is located, will develop and implement a plan to transition the establishment to become an official establishment. Except that an establishment that was deselected from a cooperative interstate shipment program because it is located in a State whose agreement for such a program was terminated may either transition to become an official establishment or transition to become a State-inspected establishment under the

cooperative State poultry products inspection program.

(b) An establishment that has been deselected from a cooperative interstate shipment program and successfully transitioned to become an official establishment may withdraw from the Federal inspection program and resume operations under the cooperative State poultry products inspection program after operating as an official establishment in full compliance with the Act for a year.

§ 381.522 Transition grants.

(a) Transition grants are funds that a State participating in a cooperative interstate shipment program under this subpart may apply for to reimburse selected establishments in the State for the cost to train one individual in the seven HACCP principles for meat or poultry processing as required under § 417.7 of this chapter and associated training in the development of sanitation standard operating procedures required under part 416 of this chapter.

(b) A State participating in a cooperative interstate shipment program that receives a transition grant must use grant funds to reimburse the training costs of one employee per each selected establishment in the State. Any other use of such funds is prohibited.

§ 381.523 Separation of operations.

A selected establishment may conduct operations under the cooperative State poultry products inspection program if the establishment implements and maintains written procedures for complete physical separation of product and process for each operation by time or space.

§ 381.524 Voluntary withdrawal.

A selected establishment that is in full compliance with the requirements in this part may voluntarily end its participation in a cooperative interstate shipment program and operate under the cooperative State poultry products inspection program. Establishments that voluntarily end their participation in the cooperative may re-apply for the program after operating under the cooperative State poultry products inspection program for one year.

Done at Washington, DC, on: March 31, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–9865 Filed 4–29–11; 8:45 am]

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Part IV

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment; Rule; Correction

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–CE–0014]

RIN 1904–AC23

Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: This document contains technical corrections to the final rule regarding certification, compliance, and enforcement regulations that was published on March 7, 2011. In that final rule, the U.S. Department of Energy (DOE) adopted regulations that provided for sampling plans used in determining compliance with existing standards, manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or noncompliance with an applicable standard. Due to drafting error, language was inadvertently deleted from the rule and certain provisions contained erroneous internal cross references.

DATES: This correction is effective May 2, 2011. The technical corrections to §§ 429.12 through 429.54 are effective July 5, 2011.

The corrections to § 429.70, Appendix A to Subpart B of Part 429, Appendix C to Subpart C of Part 429, Appendix A1 to Subpart B of Part 430, and Appendix B1 to Subpart B of Part 430 are effective as of May 2, 2011.

The corrections to Appendix A to Subpart B of Part 430 and Appendix B to Subpart B of Part 430 are effective November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: 202–586–6590. E-mail: *Ashley.Armstrong@ee.doe.gov*; and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–32, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202–287–6122. E-mail: *Laura.Barhydt@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 2011, the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) published a final rule titled " Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment." 76 FR 12421. Since the publication of that rule, it has come to DOE's attention that, due to a technical oversight, certain parts of the final regulation were inadvertently deleted by the rule. Additionally, several sections of the regulatory text have internal referencing errors.

II. Need for Correction

In FR Doc. 2011–3146, beginning on page 12421 in the **Federal Register** of Monday, March 7, 2011, the following corrections are made:

PART 429—[CORRECTED]

§ 429.12 [Corrected]

■ 1. On page 12453, in the second column, correct § 429.12, General requirements applicable to certification reports, paragraph (a), to read as follows:

(a) *Certification.* Each manufacturer, before distributing in commerce any basic model of a covered product or covered equipment subject to an applicable energy conservation standard set forth in parts 430 or 431, and annually thereafter on or before the dates provided in paragraph (d) of this section, shall submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard(s). The certification report(s) must be submitted to DOE in accordance with the submission procedures of paragraph (h) of this section.

* * * * *

§ 429.14 [Corrected]

■ 2. On page 12455, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.14 Residential refrigerators, refrigerator-freezers and freezers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.15 [Corrected]

■ 3. On page 12456, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.15 Room air conditioners.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.16 [Corrected]

■ 4. On page 12457, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(A)(2), and on page 12458, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B)(2) to read as follows:

§ 429.16 Central air conditioners and heat pumps.

(a) * * *

(2)(i) * * *

(A) * * *

(2) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(B) * * *

(2) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.17 [Corrected]

■ 5. On page 12459, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.17 Residential water heaters.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.18 [Corrected]

■ 6.a. On page 12460, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B)(2);

■ b. On page 12461, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(ii)(A)(2) and (a)(2)(ii)(B)(2);

■ c. On page 12462, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(iii)(A)(2) and (a)(2)(iii)(B)(2); and

■ d. On page 12463, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(iv)(B)(1)(ii) and (a)(2)(iv)(B)(2)(ii).

The corrections read as follows:

§ 429.18 Residential furnaces.

(a) * * *

(2)(i) * * *

(B) * * *

(2) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(ii) * * *

(A) * * *

(2) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(B) * * *

(2) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(iii) * * *

(A) * * *

(2) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(B) * * *

(2) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(iv) * * *

(B) * * *

(1) * * *

(ii) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(2) * * *

(ii) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.19 [Corrected]

■ 7. On page 12464, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12465, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.19 Dishwashers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.20 [Corrected]

■ 8. On page 12465, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12466, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.20 Residential clothes washers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.21 [Corrected]

■ 9. On page 12466, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12467, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.21 Residential clothes dryers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.22 [Corrected]

■ 10. On page 12467, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(A)(2), and on page 12468, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B)(2) to read as follows:

§ 429.22 Direct heating equipment.

(a) * * *

(2)(i) * * *

(A) * * *

(2) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(B) * * *

(2) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.23 [Corrected]

■ 11. On page 12468, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12469, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.24 [Corrected]

■ 12. On page 12469, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii) to read as follows:

§ 429.24 Pool heaters.

(a) * * *

(2) * * *

(ii) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.26 [Corrected]

■ 13. On page 12470, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.26 Fluorescent lamp ballasts.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 99 percent confidence limit (UCL) of the true mean divided by 1.01, where:

$$UCL = \bar{x} + t_{.99}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 99 percent confidence limit (LCL) of the true mean divided by 0.99, where:

$$LCL = \bar{x} - t_{.99}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.27 [Corrected]

■ 14. On page 12471, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.27 General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.

(a) * * *

(2)(i) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.28 [Corrected]

■ 15. On page 12472, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii) to read as follows:

§ 429.28 Faucets.

(a) * * *

(2) * * *

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.29 [Corrected]

■ 16. On page 12473, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii), and add at the end of the last sentence in paragraph (b)(3) ", 7.4.4(a)".

The correction reads as follows:

§ 429.29 Showerheads.

(a) * * *

(2) * * *

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: A declaration that the showerhead meets the requirements of ASME/ANSI A112.18.1M–1996, 7.4.4(a).

§ 429.30 [Corrected]

■ 17. On page 12473, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii) to read as follows:

§ 429.30 Water closets.

(a) * * *

(2) * * *

(ii) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.31 [Corrected]

■ 18. On page 12474, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii) to read as follows:

§ 429.31 Urinals.

(a) * * *

(2) * * *

(ii) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.33 [Corrected]

■ 19. On page 12474, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12475, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.33 Ceiling fan light kits.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.9, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.35 [Corrected]

■ 20. On page 12476, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B) to read as follows:

§ 429.35 Bare or covered (no reflector) medium base compact fluorescent lamps.

(a) * * *

(2) * * *

(i) * * *

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.36 [Corrected]

■ 21. On page 12476, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12477, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.36 Dehumidifiers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.37 [Corrected]

■ 22. On page 12477, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12478, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.37 Class A external power supplies.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97.5 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.39 [Corrected]

■ 23. On page 12479, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.39 Battery chargers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97.5 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A of this part).

* * * * *

§ 429.40 [Corrected]

■ 24. On page 12480, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii) to read as follows:

§ 429.40 Candelabra base incandescent lamps and intermediate base incandescent lamps.

(a) * * *

(2) * * *

(ii) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A of this part).

* * * * *

§ 429.42 [Corrected]

■ 25. On page 12480, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12481, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.42 Commercial refrigerators, freezers, and refrigerator-freezers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.43 [Corrected]

■ 26. On page 12482, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.44 [Corrected]

■ 27. On page 12483, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12484, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.44 Commercial water heating equipment.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.45 [Corrected]

■ 28. On page 12484, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12485, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.45 Automatic commercial ice makers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.46 [Corrected]

■ 29. On page 12485, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B), and on page 12486, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(ii)(B) to read as follows:

§ 429.46 Commercial clothes washers.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.48 [Corrected]

■ 30. On page 12487, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.48 Illuminated exit signs.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.49 [Corrected]

■ 31. On page 12488, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.49 Traffic signal modules and pedestrian modules.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.51 [Corrected]

■ 32. On page 12489, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.51 Commercial pre-rinse spray valves.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.52 [Corrected]

■ 33. On page 12490, correct the references to "Appendix D" to "Appendix A" in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B) to read as follows:

§ 429.52 Refrigerated bottled or canned beverage vending machines.

(a) * * *

(2) * * *

(i) * * *

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(ii) * * *

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

§ 429.54 [Corrected]

■ 34. On page 12491, correct the reference to "Appendix D" to "Appendix A" in paragraph (a)(2)(i)(B) to read as follows:

§ 429.54 Metal halide lamp ballasts and fixtures.

(a) * * *

(2) * * *

(i) * * *

(B) The lower 99-percent confidence limit (LCL) of the true mean divided by 0.99.

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

* * * * *

APPENDIX A—[Corrected]

■ 35. On page 12494, correct the reference to "Appendix D" to "Appendix A" in Figure 1 to read as follows:

APPENDIX A TO SUBPART B OF PART 429—STUDENT'S t-DISTRIBUTION VALUES FOR CERTIFICATION TESTING

FIGURE 1—T-DISTRIBUTION VALUES FOR CERTIFICATION TESTING

[One-sided]

Degrees of freedom (from Appendix A)	Confidence interval			
	90%	95%	97.5%	99%
1	3.078	6.314	12.71	31.82
2	1.886	2.920	4.303	6.965
3	1.638	2.353	3.182	4.541
4	1.533	2.132	2.776	3.747
5	1.476	2.015	2.571	3.365
6	1.440	1.943	2.447	3.143
7	1.415	1.895	2.365	2.998
8	1.397	1.860	2.306	2.896
9	1.383	1.833	2.262	2.821
10	1.372	1.812	2.228	2.764
11	1.363	1.796	2.201	2.718
12	1.356	1.782	2.179	2.681
13	1.350	1.771	2.160	2.650
14	1.345	1.761	2.145	2.624
15	1.341	1.753	2.131	2.602
16	1.337	1.746	2.120	2.583
17	1.333	1.740	2.110	2.567
18	1.330	1.734	2.101	2.552
19	1.328	1.729	2.093	2.539
20	1.325	1.725	2.086	2.528

APPENDIX C—[Corrected]

■ 36. On page 12501, in the first column, correct the reference to "Appendix D" to "Appendix A" in paragraph (b)(5) to read as follows:

APPENDIX C TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF DISTRIBUTION TRANSFORMERS

* * * * *

(b) * * *

(5) Compute the lower control limit (LCL_1) for the mean of the first sample as follows:

$$LCL_1 = SSD(m_1) - tSE(\bar{X}_1) \qquad [5]$$

Where t is statistic based on a 97.5 percent one-tailed t test with degrees of freedom (from Appendix A) $n_1 - 1$.

* * * * *

■ 37. On page 12502, second column, correct amendatory instruction 6 to read as follows:

6. "In Appendix A to subpart B of part 430, revise paragraph 5.1, introductory text, to read as follows:".

■ 38. On page 12502, third column, correct amendatory instruction 8 to read as follows:

8. "In Appendix B to subpart B of part 430, revise paragraph 5.1, introductory text, to read as follows:".

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Accordingly, 10 CFR parts 429 and 430, are corrected by making the following correcting amendments:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for Part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

§ 429.70 [Corrected]

■ 2. Section 429.70 is amended:

■ a. In paragraph (d)(2)(ii) by correcting the reference to "§ 429.42" to read "§ 429.47"; and

■ b. In paragraphs (d)(2)(iii) and (d)(2)(iv) by correcting the references to "(c)(2)(i)" to read "(d)(2)(i)", and by correcting the references to "(c)(2)(ii)" to read "(d)(2)(ii)".

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

Appendix A1 [Corrected]

■ 4. In Appendix A1 to subpart B of part 430, revise introductory paragraph 5.1 to read as follows:

Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Regrigerator-Freezers

* * * * *

5. *Test Measurements*

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 7.1 and 7.2 of HRF–1–1979 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model. If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.14, and the certification report shall indicate that non-standard sensor locations were used.

5.1.1 Measured Temperature. The measured temperature of a compartment is to be the average of all sensor temperature readings taken in that compartment at a particular time. Measurements shall be taken at regular intervals not to exceed four minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.1. For models with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings, rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour, whichever is greater. One of the compressor cycles shall be the last complete compressor cycle during the test period.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs, the compartment temperatures shall be the average of the measured temperatures taken during the last three hours of the last complete compressor "on" period.

5.1.3 Fresh Food Compartment Temperature. The fresh food compartment temperature shall be calculated as:

$$TR = \frac{\sum_{i=1}^{R}(TR_i) \times (VR_i)}{\sum_{i=1}^{R}(VR_i)}$$

Where:

R is the total number of applicable fresh food compartments, which include the first fresh food compartment and any number of separate auxiliary fresh food compartments (including separate auxiliary convertible compartments tested as fresh food compartments in accordance with section 2.7);

TR_i is the compartment temperature of fresh food compartment "i" determined in accordance with section 5.1.2; and

VR_i is the volume of fresh food compartment "i".

5.1.4 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments (including separate auxiliary convertible compartments tested as freezer compartments in accordance with section 2.7);

TF_i is the compartment temperature of freezer compartment "i" determined in accordance with section 5.1.2; and

VF_i is the volume of freezer compartment "i".

* * * * *

Appendix B1 [Corrected]

■ 5. In Appendix B1 to subpart B of part 430, revise introductory paragraph 5.1 to read as follows:

Appendix B1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 7.2 of HRF–1–1979 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C). If the interior arrangements of the cabinet do not conform with those shown in Figure 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.14, and the certification report shall indicate that non-standard sensor locations were used.

5.1.1 Measured Temperature. The measured temperature is to be the average of all sensor temperature readings taken at a particular time. Measurements shall be taken at regular intervals not to exceed four minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperature shall be that measured in the first part of the test period specified in 4.2.1. For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in 4.2.2.

5.1.2.1 The number of complete compressor motor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings rounded up to the next whole minute or a number of complete cycles over a time period exceeding one hour. One of the compressor cycles shall be the last complete compressor cycle during the test period before start of the defrost control sequence for products with automatic defrost.

5.1.2.2 If no compressor motor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last thirty-two minutes of the test period.

5.1.2.3 If incomplete cycling occurs (less than one compressor cycle), the compartment temperature shall be the average of all readings taken during the last 3 hours of the last complete compressor "on" period.

5.1.3 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments;

TF_i is the compartment temperature of freezer compartment "i" determined in accordance with section 5.1.2; and

VF_i is the volume of freezer compartment "i".

* * * * *

Issued in Washington, DC, on April 22, 2011.

Kathleen Hogan,

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Part V

The President

Proclamation 8658—Workers Memorial Day, 2011

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Presidential Documents

Title 3—

The President

Proclamation 8658 of April 27, 2011

Workers Memorial Day, 2011

By the President of the United States of America

A Proclamation

Every year in America, nearly four million workers suffer an occupational injury or illness, and thousands die from work-related injuries. These preventable tragedies disable workers, devastate families, and erode our economy. On Workers Memorial Day, we celebrate the improvements in American workplaces and remember those who have been injured, sickened, or killed on the job. This year, we also recognize the 40th anniversary of the Occupational Safety and Health Administration, and we pay tribute to all those who have dedicated their lives to ensuring safety in the workplace.

The protections working Americans enjoy today were not easily gained. They had to be won by generations of courageous men and women, fighting to secure decent working conditions, standing up for those most vulnerable, and sometimes risking their own economic security and lives. One century ago in New York City, nearly 150 young garment workers either burned or jumped to their deaths when a fire ignited in the Triangle Shirtwaist Factory. This senseless tragedy inspired a movement, calling Americans to pay attention to workplace conditions and bestowing a new relevance on the importance of unions. Organized labor has continued to give voice to millions of working men and women by representing their views and fighting for good working conditions and fair wages.

Until 1970, many Americans still did not have the legal right to a safe workplace, and many employers were not legally obligated to control hazards. The Federal Coal Mine Health and Safety Act of 1969 and the Occupational Safety and Health Act of 1970 fundamentally changed American workplaces. These laws provided workers the right to safe and healthy workplaces, ensured workers were protected from dangerous conditions, and provided protections to employees who reported safety and health hazards.

In the four decades since those landmark laws were enacted, we have seen great progress in conditions for working Americans. Federal agencies are helping reduce workplace injury rates and control exposure to deadly hazards by using research on injury and illness causation, implementing common sense standards, and promoting cooperative programs. The Department of Labor is continuing to enforce and improve our workplace safety regulations and is partnering with the Department of Justice to make sure the full force of the law is brought to bear in cases where workers are put in harm's way. Many of our Nation's employers have embraced exemplary worker injury and illness prevention programs—efforts that exceed Federal safety and health standards. Together, these improvements have fostered innovation, increased productivity, and bolstered competitiveness while saving countless lives in the process.

On Workers Memorial Day, we reflect on the vital achievements of the past and recommit to keeping all workers safe and healthy in the future. We owe nothing less to the countless working Americans who have built and shaped our Nation, and to those who have lost their lives or been injured on the job.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 28, 2011, as Workers Memorial Day. I call upon all Americans to participate in ceremonies and activities in memory of those killed or injured due to unsafe working conditions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of April, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

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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.

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S. 307/P.L. 112–11
To designate the Federal building and United States courthouse located at 217 West King Street, Martinsburg, West Virginia, as the "W. Craig Broadwater Federal Building and United States Courthouse". (Apr. 25, 2011; 125 Stat. 213)

S.J. Res. 8/P.L. 112–12
Providing for the appointment of Stephen M. Case as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 25, 2011; 125 Stat. 214)

Last List April 19, 2011

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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