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Federal Register

6–7–07 Thursday
Vol. 72 No. 109 June 7, 2007

Pages 31437–31710

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Rules and Regulations

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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

Office of the Secretary

7 CFR Part 24

48 CFR Parts 409, 432, and 433

Federal Crop Insurance Corporation

7 CFR Part 400

Forest Service

36 CFR Part 223

RIN 0510–AA02

Termination of Agriculture Board of Contract Appeals

AGENCIES: Office of the Secretary; Federal Crop Insurance Corporation; Forest Service; Office of Procurement and Property Management.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is publishing amendments to the Code of Federal Regulations (CFR) as a final rule. USDA amends its regulations to reflect the legal termination of the Agriculture Board of Contract Appeals (AGBCA) and the creation of a new consolidated Civilian Board of Contract Appeals (CBCA). Additionally, with respect to appeals heard by the AGBCA other than Contract Disputes Act appeals, the AGBCA transfers or eliminates certain appeal procedures as a result of the termination of the AGBCA. USDA eliminates the appeals of procurement suspension and debarment, as well as the appeals of export violation debarment determinations under the Forest Resources Conservation and Shortage Relief Act (16 U.S.C. 620 *et seq.*), and transfers jurisdiction to hear Federal Crop Insurance Corporation (FCIC) and Contract Work Hours and Safety Standards appeals to the new consolidated CBCA.

DATES: This final rule is effective as of June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Azine Farzami, Esq., Department of Agriculture, Office of the General Counsel, General Law Division, Room 3311–S, 1400 Independence Avenue, SW., Washington, DC 20250, telephone 202–690–1978.

SUPPLEMENTARY INFORMATION:

A. Background

Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, 119 Stat. 3136, added a new section 42 to the Office of Federal Procurement Policy Act (the Act), 41 U.S.C. 401 *et seq.,* which provided for the consolidation of the eight civilian Boards of Contract Appeals into a single entity, the Civilian Board of Contract Appeals (CBCA), to be established at the General Services Administration (GSA). Accordingly, all contract appeals under the Contract Disputes Act (CDA) of 1978, 41 U.S.C. 601 *et seq.,* currently heard by the eight civilian boards, including contract appeals to the AGBCA, will be transferred by operation of law to the consolidated board no later than January 8, 2007.

In addition, under subsection 42(c)(2)(A) of the Act, agencies may request the CBCA to take jurisdiction over non-CDA appeals. Under 7 CFR 24.4(b) and 400.169(d), the AGBCA hears appeals from final administrative determinations issued by the Risk Management Agency (RMA) on behalf of the FCIC arising under Standard Reinsurance Agreements (SRAs) issued pursuant to the Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq*. The AGBCA also has jurisdiction to hear appeals of administrative determinations of liquidated damages under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3703. Since the AGBCA is being terminated by law, USDA has requested the new CBCA to take over the FCIC and Contract Work Hours appeals.

Finally, under 7 CFR 24.4(c), the AGBCA has jurisdiction over contractor suspensions and debarments, including the debarment of persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Export Act) under 36 CFR 223.130, *et seq*. Consistent with its proposal to eliminate nonprocurement suspension and debarment appeals (68 FR 66533 (Nov. 26, 2003)), USDA also eliminates procurement suspension and debarment appeals, as well as appeals from debarment determinations under the Export Act.

B. Executive Order 12866

This final rule has been determined to be not significant and does not require review by the Office of Management and Budget under Executive Order 12866.

C. Regulatory Flexibility Act

USDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because the rule does not impose any additional costs on either small or large businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq*.

List of Subjects

7 CFR Part 24

Administrative practice and procedure, Agriculture, Government procurement.

7 CFR Part 400

Administrative practice and procedure, Agriculture, Crop insurance.

36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

48 CFR Chapter 400

Administrative practice and procedure, Agriculture, Government procurement.

■ For the reasons stated in the preamble, under the authority of USDA at 5 U.S.C. 30157 CFR parts 24 and 400; 36 CFR part 223; and 48 CFR parts 409, 432, and 433 are amended as follows:

Title—7 Agriculture

PART 24—[Removed and reserved]

■ 1. Remove and reserve part 24, consisting of §§ 24.1 through 24.21.

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 2. Revise the authority citation for part 400 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 3. Amend § 400.169 by revising the last sentence of paragraph (c) and paragraph (d) to read as follows:

§ 400.169 Disputes.

* * * * *

(c) * * * Such determinations will not be appealable to the Civilian Board of Contract Appeals.

(d) Appealable final administrative determinations of the Corporation under paragraph (a) or (b) of this section may be appealed to the Civilian Board of Contract Appeals in accordance with 48 CFR part 6102.

Title 36—Parks, Forests, and Public Property

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 4. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j; unless otherwise noted.

■ 5. Amend § 223.138 by removing paragraph (b)(8) and revising paragraphs (b)(7)(i)(C) and (D) and by removing paragraph (b)(7)(i)(E) to read as follows:

§ 223.138 Procedures for Debarment.

* * * * *

(b) * * *

(7) * * *

(i) * * *

(C) State the period of debarment, including effective dates (see § 223.139); and

(D) Specify any limitations on the terms of the debarment.

* * * * *

Title 48—Federal Acquisition Regulations System, chapter 4, Department of Agriculture.

PART 409—CONTRACTOR QUALIFICATIONS

■ 6. Revise the authority citation for part 409 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 7. Remove § 409.470.

PART 432—CONTRACT FINANCING

■ 8. Revise the authority citation for part 432 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 9. Revise § 432.616 to read as follows:

§ 432.616 Compromise Actions.

Compromise of a debt within the proceedings under appeal to the Civilian Board of Contract Appeals is the responsibility of the contracting officer.

PART 433—PROTESTS, DISPUTES AND APPEALS

■ 10. Revise the authority citation for part 433 to read as follows:

Authority: 40 U.S.C. 121, 41 U.S.C. 421.

■ 11. Revise § 433.203–70 to read as follows:

§ 433.203–70 Civilian Board of Contract Appeals.

The organization, jurisdiction, and functions of the Civilian Board of Contract Appeals, together with its Rules of Procedure, are set out in 48 CFR part 6101.

Done in Washington, DC, this 25th day of May 2007.

Mike Johanns,

Secretary of Agriculture.

[FR Doc. 07–2702 Filed 6–6–07; 8:45 am]

BILLING CODE 3410–01–M

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2007–13]

Statement of Policy Regarding Treasurers' Best Efforts To Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission (the ''Commission'') is issuing a Policy Statement to clarify its enforcement policy with respect to the circumstances under which it intends to consider a political committee and its treasurer to be in compliance with the recordkeeping and reporting requirements of the Federal Election Campaign Act, as amended (''FECA''). Section 432(i) of FECA provides that when the treasurer of a political committee demonstrates that best efforts were used to obtain, maintain, and submit the information required by FECA, any report or records of such committee shall be considered in compliance with FECA or the statutes governing the public financing of Presidential candidates. In the past, the Commission has interpreted this section to apply only to a treasurer's efforts to obtain required information from contributors to a political committee, and not to maintaining information or to submitting reports. However, the district court in *Lovely* v. *FEC*, 307 F. Supp. 2d 294 (D. Mass. 2004), held that the Commission should consider whether a treasurer used best efforts under FECA with regard to efforts made to submit a report in a timely manner. This Policy Statement makes clear that the Commission intends to apply FECA's best efforts provision to treasurers' and committees' efforts to obtain, maintain, and submit information and records to the Commission consistent with the holding of the Federal court in *Lovely*. Further information is provided in the supplementary information that follows.

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

FOR FURTHER INFORMATION CONTACT: Mr. Ron B. Katwan, Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Provisions

FECA states the ''best efforts defense'' in 2 U.S.C. 432(i) as follows:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of title 26.

The Commission implemented this provision in 11 CFR 104.7(a) with regulatory language virtually identical to the statutory provision:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

Paragraph (b) of 11 CFR 104.7 specifies the actions that treasurers of a political committee must take to demonstrate that they have exercised best efforts to obtain and report the ''identification'' of each person whose contribution(s) to the political committee and its affiliated political committees aggregate in excess of $200 in a calendar year (or in an election

cycle in the case of an authorized committee).[1] ''Identification'' includes the person's full name, mailing address, occupation, and name of employer. *See* 11 CFR 100.12.

Both the language of FECA and the Commission's regulation at 11 CFR 104.7(a) apply the best efforts defense broadly to efforts by treasurers to ''obtain, maintain and submit'' the information required to be disclosed by FECA. In past enforcement actions, however, the Commission has interpreted this statutory and regulatory language to apply only to efforts to ''obtain'' contributor information.[2] This interpretation draws from an example contained in the provision's legislative history. *See* H.R. Rep. No. 96–422, at 14 (1979) (''One illustration of the application of this [best efforts] test is the current requirement for a committee to report the occupation and principal place of business of individual contributors who give in excess of $100'').

B. The Lovely Decision

In *Lovely*, a political committee challenged an administrative fine the Commission had assessed for failing to file timely a report. The committee argued that it had made best efforts to file the report and that this constituted a complete defense to the fine. The court concluded that the plain language of the Act requires the Commission to entertain a best efforts defense in the Administrative Fine Program (''AFP''), and that it was unclear from the record if the Commission had done so.

In so holding, the court drew on the legislative history of the best efforts provision, and specifically noted the 1979 amendments to FECA that made the best efforts defense ''applicable to the entirety of FECA, rather than merely to one subsection.'' *Lovely*, 307 F. Supp. 2d at 299. The court quoted the provision's legislative history:

> The best efforts test is *specifically made applicable to recordkeeping and reporting requirements in both Title 2 and Title 26*. The test of whether a committee has complied with the statutory requirements is whether its treasurer has exercised his or her best efforts to obtain, maintain, and submit the information required by the Act. If the treasurer has exercised his or her best efforts, the committee is in compliance. Accordingly, *the application of the best efforts test is central to the enforcement of the recordkeeping and reporting provisions of the Act*. It is the opinion of the Committee that the Commission has not adequately incorporated the best efforts test into its administration procedures, such as the systematic review of reports.

Id. (emphasis added) (quoting H.R. Rep. No. 96–422, at 14 (1979), *reprinted in* 1979 U.S.C.C.A.N. 2860, 2873).

After remand of the *Lovely* case, the Commission acknowledged in its Statement of Reasons that ''[t]he Court held that FECA's 'best efforts' provision . . . requires the Commission to consider whether a committee's treasurer exercised best efforts to submit timely disclosure reports.'' *Statement of Reasons in Administrative Fines Case #549* at 1 (Oct. 4, 2005), available at *http://www.fec.gov/law/law_rulemakings.shtml* under the heading ''Best Efforts in Administrative Fine Challenges.'' (''*Lovely Statement of Reasons*''). Upon further review, the Commission determined that the committee's treasurer had not made best efforts in filing the report in question and assessed a civil money penalty. *Id.* at 5.

C. Proposed Policy Statement

The Commission sought public comment on a Proposed Statement of Policy that would clarify the Commission's current enforcement practice to consider whether the treasurer and committee made best efforts to obtain, maintain or submit the required information under 11 CFR 104.7(a). *See Proposed Statement of Policy Regarding Treasurer's Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 71 FR 71084 (Dec. 8, 2006). The Commission received two comments, which are available at *http://www.fec.gov/law/policy.shtml* under the heading ''Best Efforts.'' One comment made several recommendations as to how the Commission could further clarify the best efforts defense by incorporating the business management concept of ''best practices'' regarding corporate operation, financial controls, risk prevention and risk assessment. The comment also suggested that the Policy Statement provide guidance to political committees and treasurers regarding what conduct would qualify under the best efforts defense, and not rely solely on examples of conduct that would not qualify under the defense. The other comment was not relevant to this Policy Statement.

II. Policy Regarding the Best Efforts Defense

Although the court decision in *Lovely* only concerned permissible defenses within the AFP, the Commission has decided to adopt the court's interpretation of the best efforts defense with regard to other enforcement matters. While the Commission's enforcement practices formerly reflected the view that the best efforts defense was limited to obtaining certain contributor identification information (*see* note 2 above) the Commission recognizes that this narrow application of the defense in previous enforcement matters derives from a single example of the defense's application in its 1979 legislative history.[3] In light of these considerations, the Commission hereby notifies the public and the regulated community through this Policy Statement that henceforth it intends to apply the best efforts defense of 2 U.S.C. 432(i), as promulgated at 11 CFR 104.7, not only to efforts made to obtain contributor information as currently set forth in section 104.7(b),[4] but also to

[1] The U.S. Court of Appeals for the District of Columbia Circuit referred to 11 CFR 104.7(b) as a ''Commission regulation interpreting what political committees must do under [FECA] to demonstrate that they have exercised their 'best efforts' to encourage donors to disclose certain personally identifying information.'' *Republican Nat'l Comm.* v. *FEC*, 76 F.3d 400, 403 (D.C. Cir. 1996).

[2] In 1980, the Commission explained that ''[i]n determining whether or not a committee has exercised 'best efforts,' the Commission's primary focus will be on the system established by the committee for *obtaining* disclosure information.'' *Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress*, 45 FR 15080, 15086 (Mar. 7, 1980) (emphasis added). In 1993, the Commission referred to ''the requirement of [FECA] that treasurers of political committees exercise best efforts to obtain, maintain and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year.'' *Final Rule on Recordkeeping and Reporting by Political Committees: Best Efforts*, 58 FR 57725, 57725 (Oct. 27, 1993). And in 1997, the Commission stated that ''[t]reasurers of political committees must be able to show they have exercised their best efforts to obtain, maintain and report [contributor identification information].'' *Final Rule on Recordkeeping and Reporting by Political Committees: Best Efforts*, 62 FR 23335, 23335 (Apr. 30, 1997). In 2003, the Commission asserted in the *Lovely* litigation: ''the Commission has long interpreted the best efforts provision as creating a limited safe harbor regarding committees' obligations to report substantive information that may be beyond their ability to obtain.'' FEC Supplemental Brief at 1, *Lovely* (Civil Action No. 02–12496–PBS). Furthermore, ''when Congress originally enacted the 'best efforts' provision, it could not have been more clear that it was creating a limited defense regarding the inability to obtain specific information that was supposed to be disclosed, not the failure to file reports on time.'' *Id.* at 12–13. The *Lovely* court summarized the Commission's argument: ''The FEC in its briefing claims that it limits the reach of the best efforts statute to best efforts to 'obtain' contributor information.'' *Lovely*, 307 F. Supp. 2d at 300.

[3] A respondent's assertion in an enforcement matter that best efforts were made to maintain and/or submit required information was formerly considered by the Commission to be a mitigating factor, but not an outright defense to an alleged violation of the recordkeeping and reporting requirements.

[4] As stated above, the standards for determining whether the best efforts defense is applicable in the context of obtaining specific contributor information are set forth at current 11 CFR 104.7(b). This Policy Statement does not affect or modify those standards.

efforts made to obtain other information, to maintain all information required by the statute, and to submit required information on disclosure reports.

This Policy Statement does not affect the Commission's AFP, but applies only to matters in the Commission's traditional enforcement and audit programs, and in the Alternative Dispute Resolution program (''ADR''). The Commission recently completed a rulemaking adding a best efforts defense to the enumerated defenses available in the AFP. *See Final Rules for Best Efforts in Administrative Fines Challenges*, 72 FR 14662 (Mar. 29, 2007). In that rulemaking, the Commission incorporated the statutory best efforts standard, while taking into account the unique streamlined nature of the AFP. *See id.* at 14666.

The Commission considers best efforts to be ''a standard that has diligence as its essence.'' E. Allan Farnsworth, *On Trying to Keep One's Promises: The Duty of Best Efforts in Contract Law*, 46 U. Pitt. L. Rev. 1, 8 (1984). As the Commission explained in its *Lovely Statement of Reasons* at 2:

> Section 432(i) creates a safe harbor for treasurers who ''show[] that best efforts'' have been made to report the information required to be reported by the Act. ''Best'' is an adjective of the superlative degree. ''Best efforts'' must therefore require more than ''some'' or ''good'' efforts. Congress's choice of a ''best efforts'' standard, rather than a ''good faith'' standard, suggests that a treasurer cannot rely upon his or her earnestness or state of mind to gain the shelter of Section 432(i)'s safe harbor. Rather, a treasurer has the burden of showing that the actions taken—the efforts he or she made to comply with applicable reporting deadlines—meet the statute's demanding benchmark.

With respect to 11 CFR 104.7(a), the Commission intends to consider a committee's affirmative steps to keep adequate records and make accurate reports, as well as the reasons for its failure to obtain, maintain, or submit information properly. The Commission generally intends to consider the following: (1) The actions taken, or systems implemented, by the committee to ensure that required information is obtained, maintained, and submitted; (2) the cause of the failure to obtain, maintain, or submit the information or reports at issue; and (3) the specific efforts of the committee to obtain, maintain, and submit the information or reports at issue. This general policy does not modify other guidance and policy standards issued by the Commission addressing specific circumstances, such as the *Internal Controls for Political Committees,* and *Policy Statement Regarding Safe Harbor for Misreporting Due to Embezzlement,* 72 FR 16695 (Apr. 5, 2007), both available at *http://www.fec.gov/law/policy.shtml*.

The Commission will generally conclude that a committee has shown best efforts if the committee establishes the following:

- At the time of its failure, the committee took relevant precautions such as double checking recordkeeping entries, regular reconciliation of committee records with bank statements, and regular backup of all electronic files;
- The committee had trained staff responsible for obtaining, maintaining, and submitting campaign finance information in the requirements of the Act as well as the committee's procedures, recordkeeping systems, and filing systems;
- The failure was a result of reasonably unforeseen circumstances beyond the control of the committee, such as a failure of Commission computers or Commission-provided software; severe weather or other disaster-related incidents; a widespread disruption of information transmission over the Internet not caused by any failure of the committee's computer systems or Internet service provider; or delivery failures caused by mail/courier services such as U.S. Postal Service or Federal Express; and
- Upon discovering the failure, the committee promptly took all reasonable additional steps to expeditiously file any unfiled reports and correct any inaccurate reports.

In contrast, the Commission will generally conclude that a committee has not met the best efforts standard if the committee's failure to obtain, maintain, or submit information or reports is due to any of the following:

- Unavailability, inexperience, illness, negligence or error of committee staff, agents, counsel or connected organization(s);
- The failure of a committee's computer system;
- Delays caused by committee vendors or contractors;
- A committee's failure to know or understand the recordkeeping and filing requirements of the Act, or the Act's filing dates; or
- A committee's failure to use Commission-or vendor-provided software properly.

Under this policy, the Commission intends to consider the best efforts of a committee under section 432(i) when reviewing all violations of the recordkeeping and reporting requirements of FECA, whether arising in its traditional enforcement docket (Matters Under Review), audits, or the ADR Program. The best efforts standard is an affirmative defense and the burden rests with the political committee and its treasurer to present evidence sufficient to demonstrate that best efforts were made. The Commission does not intend to consider the best efforts defense in any enforcement or ADR matter, or in an audit unless a respondent or audited committee asserts the facts that form the basis of that defense.

Effective as of this date, the Commission intends to apply the best efforts standard to all matters currently before the Commission in which a respondent has already asserted such a defense, and any matters in the future involving treasurers' and political committees' obligation to obtain, maintain, and submit information or reports. When treasurers make a sufficient showing of best efforts, the treasurers or committees shall be considered in compliance with FECA.

The above provides general guidance concerning the applicability of the Commission's best efforts defense and announces the general course of action that the Commission intends to follow. This Policy Statement sets forth the Commission's intentions concerning the exercise of its discretion in its enforcement and audit programs. However, the Commission retains that discretion and will exercise it as appropriate with respect to the facts and circumstances of each matter or audit it considers. Consequently, this Policy Statement does not bind the Commission or any member of the general public. As such, it does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act (''APA''). The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: June 1, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

FR Doc. E7–10997 Filed 6–6–07; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket ID: OCC–2007–0011]

RIN 1557–AD03

Special Lending Limits for Residential Real Estate Loans, Small Business Loans, and Small Farm Loans

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule, request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending Part 32 to permanently incorporate special lending limits for 1–4 family residential real estate loans, small business loans, and small farm loans or extensions of credit. These special lending limits have, since 2001, been available to certain eligible national banks through a lending limits pilot program (pilot program). Under the pilot program, an eligible national bank with a main office located in a state that has a lending limit for residential real estate, small business, or small farm loans that is higher than the current Federal limit may apply to take part in the pilot program and make use of the higher limit. The OCC has found that banks in the pilot program, and loans made under the program, have operated in a safe and sound manner since 2001. Accordingly, this interim rule amends Part 32 to make permanent the special limits set forth in the pilot program. This interim rule removes the expiration date for the pilot program and makes one change to the special lending limits available under the pilot program. The OCC also seeks comment on any other changes that should be considered for the final rule. As in the past, only eligible banks can use the special limits. Those banks already approved to participate in the pilot program may continue to use the special lending limits and need not submit a new application to do so.

DATES: *Effective Date:* June 7, 2007. Comments must be received by July 9, 2007.

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

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0011'' to submit or view public comments and to view supporting and related materials for this interim rule. The ''User Tips'' link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *E-mail: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2007–0011'' in your comment. In general, OCC will enter all comments received into the docket and publish them on Regulations.gov without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2007–0011'' to view public comments for this interim rule.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090, or Terry Howard, National Bank Examiner, Commercial Credit Risk, (303) 293–1866.

SUPPLEMENTARY INFORMATION:

Background

The percentage of capital and surplus that a bank may loan to any one borrower is limited by 12 U.S.C. 84. Section 84 and the OCC's implementing regulations, 12 CFR part 32, permit a national bank to make loans in an amount up to 15 percent of its unimpaired capital and surplus to a single borrower. A national bank may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by ''readily marketable collateral.'' [1] Part 32 refers to these lending limits as the ''combined general limit.'' The statute and regulation also provide exceptions to, and exemptions from, the combined general limit for various types of loans and extensions of credit.

Section 84 authorizes the OCC to establish lending limits ''for particular classes or categories of loans or extensions of credit'' that are different from those expressly provided by the statute's terms.[2] Effective September 10, 2001, the OCC added to Part 32 a new § 32.7, which established a three-year pilot program with special lending limits for certain residential real estate loans and small business loans or extensions of credit.[3] The OCC extended the pilot program in 2004 for an additional three years and, at the same time, expanded the scope of the program to include certain small farm loans.[4] The aim of the program is to enable community national banks to utilize a higher lending limit for certain residential real estate, small business loans, and small farm loans, where the bank is located in a state that allows state-chartered banks to apply a higher lending limit, subject to the national bank's compliance with certain conditions designed to ensure that lending under the higher limits is consistent with safety and soundness.

For purposes of the special limits, a residential real estate loan is a loan secured by a perfected first-lien security interest in 1–4 family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan is made. A small business loan is a loan ''secured by nonfarm, nonresidential properties'' or a ''commercial and industrial loan'' as those terms are described in the current

[1] *See* 12 CFR 32.2(n) (defining ''readily marketable collateral'').

[2] 12 U.S.C. 84(d).

[3] 66 FR 31114 (June 11, 2001); 12 CFR 32.7.

[4] 69 FR 51355 (August 19, 2004).

version of the instructions for preparation of the Consolidated Report of Condition and Income (Call Report), Schedule RC–C, part I, item nos. 1.e and 4 (FFIEC 031 and 041) (Loans and Lease Financing Receivables). A ''small farm loan or extension of credit'' is a loan described in the current version of the instructions for preparation of the Call Report, Schedule RC–C, part I, item nos. 1.b and 3, as ''loans secured by farmland'' and ''loans to finance agricultural production and other loans to farmers.'' [5]

The pilot program authorizes an eligible national bank to apply for approval to make residential real estate, small business, and small farm loans to a single borrower in addition to amounts that they may already lend to that borrower under the existing combined general limit in 12 CFR 32.3(a) and the limits for the particular categories of loans enumerated in 12 CFR 32.3(b). A bank is eligible for the pilot program only if it is well capitalized, as defined in 12 CFR 6.4(b)(1),[6] and has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS), with at least a rating of 2 for asset quality and for management. These criteria ensure that the program is available only to banks in good financial condition with a demonstrated record of making sound loans.

Under the pilot program, an eligible national bank may make residential loans, small business loans, and small farm loans in an additional amount up to the lesser of 10 percent of its capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available (in the state where the main office of the bank is located) for residential loans, small business loans, and small farm loans, or for unsecured loans.

The pilot program contains a number of safeguards that apply to a bank using its special lending limits. For example, the amount that a bank may lend under the pilot program's special limits is subject to an individual borrower cap and an aggregate borrower cap expressed as percentages of the bank's capital and surplus. Under the individual borrower cap, the total outstanding amount of a bank's loans to one borrower under §§ 32.3(a) and (b), together with loans made to that borrower under the special limits authorized by § 32.7, may not exceed 25 percent of the bank's capital and surplus. The aggregate cap provides that the total outstanding amount of loans made by a bank to all of its borrowers under the special limits authorized by § 32.7 may not exceed 100 percent of the bank's capital and surplus. Finally, for each loan category covered by § 32.7, a bank may not lend more than $10 million to a single borrower under the special limit.

A bank must apply and obtain the OCC's approval before it may use the special lending limits. The application includes: a certification that the bank is well capitalized and has the requisite ratings; citations to relevant state laws or regulations on lending limits; a copy of a written resolution by a majority of the bank's board of directors approving the use of the new lending authority; and a description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

The OCC stated in the preamble to its 2001 and 2004 final rules that, prior to the conclusion of the pilot program, the OCC would evaluate the performance of the program and determine whether, and under what circumstances, to extend the program or adopt it permanently.

A. Supervisory Experience, 2001–2004

As of the end of February 2004, 169 national banks headquartered in 23 states had received approval to participate in the program. At that time, the OCC compared the performance of 129 banks that participated in the program to that of comparable state-chartered banks and national banks that did not participate in the program focusing on: (1) Loan portfolio composition; (2) asset quality; (3) liquidity and capital; and (4) differences in interest expense, non-interest expense and profitability indicators between participating banks and their peers. The OCC could not attribute any statistical differences in this comparison group directly to participation in the pilot program and concluded that the program had operated in a safe and sound manner since its inception in 2001.[7] On this basis, the OCC extended the pilot program for three years, from 2004 until 2007, to collect additional data and assess whether to integrate the special lending limits provided by the program into Part 32 on a long-term or permanent basis.

B. Supervisory Experience, 2004 to 2007

As of February, 2007, the OCC had approved more than 288 national banks to participate in the pilot program, representing nearly 15% of national community banks. Banks that participate in the pilot program are headquartered in twenty-four states in the U.S. The OCC gathered supervisory data during the second phase of the pilot program to assess the performance of participating banks. The data focused on: (1) Adherence to the capital and surplus limits; (2) adherence to the $10 million cap on loans to one borrower; (3) whether loans made under the pilot program were subject to supervisory criticism and, if so, the amount of such loans and the category of supervisory criticism; (4) whether loans made under the pilot program were past due and, if so, the amount of such loans; (5) whether banks had adequate internal controls and monitoring systems to provide oversight of loans made under the pilot program; and (6) whether loans made under the pilot program were in compliance with the resolutions issued by the bank's board governing the program.

The OCC's supervisory experience between 2004 and 2007 shows that the expanded lending limits capacity has had a neutral impact on the asset quality and overall safety and soundness of participating institutions. This experience confirms our earlier observation that authorization to use higher lending limits has been consistent with the safety and soundness of participating institutions. National banks that have made use of the program have indicated to the OCC that the special lending limits allowed those banks to better serve their customers and communities.

[5] For reporting purposes, the current version of the instructions for Schedule RC–C part II of the Call Report, provides that ''loans to small farms'' should be included on that schedule only if the loans are for original amounts of $500,000 or less. This $500,000 limit is not part of the regulation's definition of ''loans to small farms.'' Therefore, it does not apply to or condition the lending authority granted under the pilot program. Similarly, the current version of the instructions for Schedule RC–C, part II of the Call Report, provides that loans ''secured by nonfarm residential property'' and ''commercial and industrial'' loans should be included on that schedule only if they are loans for original amounts of $1,000,000 or less. This $1,000,000 limit is not part of the regulation's definition of loans ''secured by nonfarm residential property'' and ''commercial and industrial'' loans. Therefore, the $1,000,000 limit does not apply to or condition the lending authority granted under the pilot program.

[6] A ''well capitalized'' bank under 12 CFR 6.4(b)(1) is one that: (i) Has a total risk-based capital ratio of 10.0 percent or greater; (ii) has a Tier 1 risk-based capital ratio of 6.0 percent or greater; (iii) has a leverage ratio of 5.0 percent or greater; and (iv) is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the Federal Deposit Insurance Act (FDI Act), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

[7] 69 FR 21978, 21980 (April 23, 2004).

Description of the Interim Rule

The interim rule incorporates the special lending limits currently authorized by the pilot program into Part 32 with one change, makes technical changes to remove references to the ''pilot program,'' and eliminates the provision in Part 32 that limits the duration, to September 10, 2007, of approvals given by the OCC to banks to lend under the program's special limits. The interim rule removes the $10 million cap on loans to one borrower for loans in each loan category covered by the interim rule. In view of the other limits and safeguards in the interim rule, and the OCC's experience with the pilot program, the OCC does not believe this restriction is necessary.

Under the interim rule, an eligible national bank will continue to be required to apply to, and receive approval by, the OCC before using the special lending limits. A newly chartered national bank may apply to use the special limits once it meets the criteria for an eligible bank. The authority given by the OCC to national banks under the special limits will not expire, but will continue to be subject to discretionary termination by the OCC based on supervisory concerns about credit quality, undue concentrations in the bank's portfolio of residential real estate, small business, or small farm loans, or concerns about the bank's overall credit risk management systems and controls. The effect of this interim rule is to make the pilot program permanent with the change noted above.

The OCC also requests comment on the interim rule and on ways in which the special lending limits could be expanded or enhanced, consistent with safety and soundness.

Administrative Procedure Act/Effective Date

The OCC finds that there is good cause to dispense with prior notice and public comment on this interim rule and with the 30-day delay of effective date generally prescribed by the Administrative Procedure Act (APA). 5 U.S.C. 553. Under section 553(b) of the APA, the OCC is not required to provide notice and an opportunity for public comment on a rule if we find, for good cause, that notice and comment are ''impracticable, unnecessary or contrary to the public interest.'' The OCC finds that notice and public comment before the interim rule takes effect are unnecessary. The OCC has previously provided the opportunity for comment on all aspects of the pilot program, in 2001 and 2004. The one change made to the program by the interim rule relieves the restriction imposed by a cap that the OCC has concluded is unnecessary based on its experience supervising institutions that have participated in the program thus far. In addition, by issuing the rule on an interim final basis, the OCC will avoid any unnecessary disruption in the operation of the program and its special limits during the pendancy of the comment period.

Under section 553(d) of the APA, the OCC must generally provide a 30-day delayed effective date for final rules. The OCC may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' The OCC finds that there is good cause to dispense with the effective date requirement because the interim rule recognizes an exemption and will prevent unnecessary disruption in the operation of the lending limits program in its current form. In addition, the purpose of the delayed effective date provision is to afford affected persons a reasonable time to comply with rule changes. The interim rule imposes no further restrictions on the substance of the existing lending limits pilot program. As such, there is no need for banks to make adjustments to their current lending under the program.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, section 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires an agency to use plain language in all proposed and final rules published. The OCC believes that the interim rule is presented in a clear and straightforward manner. We invite your comments on how to make this interim rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Solicitation of Comments on Impact on Community Banks

The OCC adopted the pilot program following a review of our regulations that focused on ways to change the regulations to respond to community bank needs. 66 FR 31114, 31115 (June 11, 2001). The purpose of the review was to explore ways in which our regulations could be modified, consistent with safety and soundness, to reflect the fact that community banks operate with more limited resources, and often different risk profiles, than larger institutions. Our goal was to identify alternative regulatory approaches to minimize the burden on community banks and promote their competitiveness.

The special lending limits in the interim rule are substantively identical to those authorized by the pilot program. The OCC seeks comments on how community banks assess the interim rule and on the impact of the proposal on community banks' current resources and available personnel with requisite expertise. The OCC also seeks comments on whether the goals of the interim rule could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the OCC has determined that it is unnecessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104–4, 109 Stat. 48, applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking, 2 U.S.C. 1532. As noted previously, the OCC has determined, for good cause, that notice and comment is unnecessary for this interim rule. Accordingly, the UMA does not require a budgetary impact analysis.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The interim rule does not change the information collection previously approved under control number 1557–0221 nor does it establish any new information collections.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, Part 32 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for Part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

■ 2. In § 32.7:
■ a. Remove the last sentence in paragraphs (a)(1), (a)(2), and (a)(3);
■ b. Revise the section heading;
■ c. Revise paragraph (c); and
■ d. Remove paragraph (e) and redesignate existing paragraph (f) as paragraph (e).

The revisions read as follows:

§ 32.7 Residential real estate loans, small business loans, and small farm loans.

* * * * *

(c) *Duration of approval.* Except as provided in § 32.7(d), a bank that has received OCC approval may continue to make loans and extensions of credit under the special lending limits in paragraphs (a)(1), (2), and (3) of this section, provided the bank remains an ''eligible bank.''

* * * * *

Dated: May 24, 2007.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E7–11014 Filed 6–6–07; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE269, Special Condition 23–209–SC]

Special Conditions; Op Technologies, Inc.; Cirrus Design Corporation Model SR22; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Op Technologies, Inc.; 15236 NW., Greenbrier Parkway, Beaverton, OR 97006 for a Supplemental Type Certificate for the Cirrus Design Corporation Model SR22 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays Model Pegasus Primary Flight Displays manufactured by Op Technologies for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is May 25, 2007. We must receive your comments on or before July 9, 2007.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE269, Room 506, 901 Locust, Kansas City, Missouri 64106. Mark all comments: Docket No. CE269. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Brady, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4132.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to take part in this rulemaking by sending such written data, views, or arguments. Identify the regulatory docket or notice number and submit two copies of comments to the address specified above. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all communications received on or before the closing date for comments, and we may change the special conditions in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE269.'' The postcard will be date stamped and returned to the commenter.

Background

On September 6, 2006, Op Technologies, Inc.; 15236 NW., Greenbrier Parkway; Beaverton, OR 97006 applied to the FAA for a new Supplemental Type Certificate for the Cirrus Design Corporation Model SR22 airplane. The Model SR22 is currently approved under TC No. A00009CH. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Op Technologies, Inc. must show that the Cirrus Design Corporation Model SR22 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Cirrus Design Corporation Model SR22: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–53, except as follows: § 23.301 through Amendment 47; §§ 23.855, 23.1326, 23.1359, not applicable. 14 CFR part 36 dated December 1, 1969, as amended by current amendment as of the date of type certification. Equivalent Levels of Safety finding (ACE–96–5) made per the

provisions of 14 CFR part 23, § 23.221; Refer to FAA ELOS letter dated June 10, 1998. Equivalent Levels of Safety finding (ACE–00–09) made per the provisions of 14 CFR part 23, §§ 23.1143(g) and 23.1147(b); Refer to FAA ELOS letter dated September 11, 2000, for model SR22. Special Condition (23–ACE–88) for ballistic parachute; 23–134–SC for protection of systems for High Intensity Radiated Fields (HIRF); and 23–163–SC for inflatable restraint system; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Op Technologies, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Op Technologies, Inc.; Cirrus Design Corporation Model SR22 airplane. Should Op Technologies, Inc. apply at

a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cirrus Design Corporation SR22 airplane modified by Op Technologies, Inc. to add an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions*: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on May 25, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11044 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE268; Special Conditions No. 23–208–SC]

Special Conditions: AmSafe, Incorporated; Quest Aircraft Company, LLC., Kodiak Model 100; Inflatable Four-Point Restraint Safety Belt With an Integrated Airbag Device

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the installation of an AmSafe, Inc., Inflatable Four-Point Restraint Safety Belt with an Integrated Airbag Device on Quest Aircraft Company, LLC, Kodiak Model 100. These airplanes, as modified by the installation of this Inflatable Safety Belt, will have novel and unusual design features associated with the upper-torso restraint portions of the four-point safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 25, 2007. Comments must be received on or before July 9, 2007.

ADDRESSES: Mail two copies of any comments to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE268, 901 Locust, Room 506, Kansas City, Missouri 64106. You may also deliver two copies of your comments to the Regional Counsel at the above address. Comments must be marked: Docket No. CE268. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4140, fax 816–329–4090, e-mail *Robert.Stegeman@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment is impractical because these procedures would significantly delay issuance of approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to take part in this rulemaking by sending written data, views, or comments. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of the preamble between 7:30 am and 4 pm, Monday through Friday, except Federal holidays.

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

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 6, 2000, Quest Aircraft Company, LLC applied for a type certificate, for the installation of a four-

point safety belt restraint system incorporating an inflatable airbag for the pilot, co-pilot, and passenger seats of the Quest Aircraft Company, LLC, Kodiak Model 100 airplane. The Quest Aircraft Company Kodiak Model 100 is a single engine, normal category airplane.

The inflatable restraint system is a four-point safety belt restraint system consisting of a lap belt and shoulder harnesses. An inflatable airbag is attached to one shoulder harness. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be available on the pilot, co-pilot, and passenger seats.

If an emergency landing occurs, the airbag will inflate and provide a protective cushion between the occupant's head and the structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner similar to an automotive airbag; however, in this case, the airbag is integrated into the shoulder harness. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable four-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety as the conventional certification basis airplane occupant restraint systems. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. Quest Aircraft Company, LLC, must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. The potential for inadvertent deployment may increase as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. The effect of this cumulative damage means a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AmSafe, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Quest Aircraft Company, LLC, Kodiak Model 100 occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection for an emergency landing. If an inadvertent deployment occurs, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under an emergency landing condition. The seats of the Kodiak Model 100 are certificated to the structural requirements of 14 CFR part 23, § 23.562; therefore, the test emergency landing pulses identified in § 23.562 must be used to satisfy this requirement.

A wide range of occupants may use the inflatable restraint; therefore, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. Quest Aircraft Company, LLC, may establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. Quest Aircraft Company, LLC may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Quest model airplane identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate if the airbag deploys. When deployment occurs, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire to avoid creating an additional

hazard by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Quest Aircraft Company, LLC must show that the Kodiak Model 100 continues to meet the applicable provisions of the applicable regulations in effect on the date of application for the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The following model is covered by this special condition:

Quest Aircraft Company, LLC, Kodiak Model 100

For the model listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator determines that the applicable airworthiness regulations (i.e., part 23 as amended) do not contain adequate or appropriate safety standards for the AmSafe, Inc., inflatable restraint as installed on this Quest Aircraft Company model because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR part 21, § 21.16.

The FAA issues special conditions, as appropriate, as defined in 14 CFR part 11, § 11.19, under 14 CFR part 11, § 11.38, and they become part of the type certification basis under 14 CFR part 21, § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of 14 CFR part 21, § 21.101.

Novel or Unusual Design Features

The Quest Aircraft Company, LLC, Kodiak Model 100 will incorporate the following novel or unusual design feature:

The AmSafe, Inc., Four-Point Safety Belt Restraint System incorporating an inflatable airbag for the pilot, co-pilot, and passenger seats. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the shoulder harness, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure, which will provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations (14 CFR) part 23 states performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of 14 CFR part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the Quest Aircraft Company, LLC, Kodiak Model 100 equipped with the AmSafe, Inc., four-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Quest Aircraft Company, LLC, Kodiak Model 100 equipped with the AmSafe, Inc., four-point inflatable restraint system.

Conclusion

This action affects only certain novel or unusual design features on the previously identified Quest model. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the delivery of the airplane(s), the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the Quest Aircraft Company, LLC, Kodiak Model 100 occupant restraint system. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for this model.

Inflatable Four-Point Restraint Safety Belt with an Integrated Airbag Device on the Pilot, Co-pilot, and Passenger Seats of the Quest Aircraft Company, LLC, Kodiak Model 100.

1. It must be shown that the inflatable restraint will deploy and provide protection under emergency landing conditions. Compliance will be demonstrated using the dynamic test condition specified in 14 CFR part 23, § 23.562(b)(2). It is not necessary to account for floor warpage, as required by § 23.562(b)(3), or vertical dynamic loads, as required by § 23.562(b)(1). The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not

properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) certificated belt and shoulder harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. To comply with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri on May 25, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11018 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–1998–4521; Amendment No. 121–332]

RIN 2120–AF07

Drug and Alcohol Testing Requirements; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: The FAA is correcting a technical amendment to its drug and alcohol testing requirements published on March 15, 2007 (72 FR 12082). The purpose of the technical amendment was to conform those requirements to the National Air Tour Safety Standards. In one paragraph of the regulation, we inadvertently referred to an ''antidrug program,'' when we should have referred to an ''Alcohol Misuse Prevention Program.''

DATES: Effective June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Deputy Division Manager, Drug Abatement Division, Office of Aerospace Medicine, 800 Independence Ave., SW., Washington, DC, 20591. (202) 267–3123; e-mail: *patrice.kelly@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2007 (72 FR 12082), we published a technical amendment that updated several references in the FAA's drug and alcohol testing regulations in title 14 of the Code of Federal Regulations (14 CFR), part 121, appendices I and J. The technical amendment was necessary because amendments in the National Air Tour Safety Standards final rule (72 FR 6884; Feb. 13, 2007) redefined terms used in the drug and alcohol testing regulations.

In the technical amendment, we changed the language in several charts in part 121, appendix J. When we changed the language in section VII.B.3.b., we inadvertently referred to an ''antidrug program,'' when we should have referred to an ''Alcohol Misuse Prevention Program.'' Appendix J applies to alcohol testing programs, not drug testing programs.

■ Accordingly, 14 CFR part 121 is corrected by making the following correcting amendment:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

Appendix J—[Amended]

■ 2. Amend Appendix J to Part 121, Section VII.B.3.b., by removing the words ''antidrug program'' and adding in their place the words ''Alcohol Misuse Prevention Program.''

Issued in Washington, DC, on June 1, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–10973 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 136

[Docket No. FAA–1998–4521; Amendment No. 136–1]

RIN 2120–AF07

National Air Tour Safety Standards; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendments.

SUMMARY: The FAA is correcting references in its Commercial Air Tours and National Parks Air Tour Management regulations to conform to amendments made by the National Air Tour Safety Standards final rule published on February 13, 2007 (72 FR 6884). In addition, the FAA is removing a sentence from the preamble that referred to aircraft certificated as ''Experimental Category'' and clarifying the applicability of the rule to the ''Young Eagles'' program.

DATES: Effective June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591;

telephone: (202) 267–8166; e-mail: *alberta.brown@faa.gov.*

For legal information, contact: Bruce Glendening, Operations Law Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8011; facsimile: (202) 267–7971; e-mail: *bruce.glendening@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

A. Correction to Section References in Part 136 Subpart B

On February 13, 2007, the FAA published the ''National Air Tour Safety Standards'' final rule (72 FR 6884) in which we designated the existing sections in part 136, consisting of §§ 136.1 through 136.11, as subpart B, consisting of §§ 136.31 through 136.49. The FAA inadvertently did not update the section references in the text of those sections to reflect the new numbering. This document corrects that oversight.

B. Comments Against Part 135 Certification

In the preamble to the February 13, 2007, final rule, on pages 6891–6892, the FAA discussed comments that opposed our proposal to require commercial air tour operators to conduct their operations under part 135. We explained the regulatory basis for our final decision and, in the second full paragraph of column 1 on page 6892, we described the regulations pertaining to the carriage of passengers under different categories of airworthiness certification. Upon review, we have determined that the first sentence of that paragraph was correct; however, the second sentence was not correct because we inadvertently omitted the words ''for compensation or hire'' when describing operations carrying passengers in aircraft with an ''Experimental Category'' airworthiness certificate. We therefore correct the preamble of the final rule on page 6892, column 1, the second full paragraph, by removing the sentence that reads, ''An 'Experimental Category' certificate does not allow passengers at all.''

C. EAA Young Eagles Program

During development of the ''National Air Tour Safety Standards'' final rule, we believed that the Experimental Aircraft Association (EAA) used its FAA-issued exemptions for all flights conducted under its Young Eagles program. Since publication of the final rule, however, we have learned that EAA uses its exemptions only for those few Young Eagles flights that are flown for compensation or hire. We therefore clarify that the final rule applies to only Young Eagles flights that are flown for compensation or hire, but the rule does not apply to other Young Eagles flights.

List of Subjects in 14 CFR Part 136

Air transportation, Aircraft, Airplanes, Air tours, Air safety, Aviation safety, Commercial air tours, Helicopters, National Parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

■ Accordingly, 14 CFR part 136 is corrected by making the following correcting amendments:

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 1. The authority citation for part 136 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

§ 136.33 [Amended]

■ 2. Amend § 136.33—

■ A. In paragraph (d)(1)(iii) by removing the reference ''§ 136.5'' and adding in its place the reference ''§ 136.35.''

■ B. In paragraph (d)(3) by removing the reference ''§ 136.5'' and adding in its place the reference ''§ 136.35.''

§ 136.37 [Amended]

■ 3. Amend § 136.37—

■ A. In paragraph (d) by removing the reference ''§ 136.9'' and adding in its place the reference ''§ 136.39.''

■ B. In paragraph (h) by removing the reference ''§ 136.11'' and adding in its place the reference ''§ 136.41.''

Issued in Washington, DC, on June 1, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–10972 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 070426098–7100–01]

RIN 0694–AE03

Additional Corrections to the Rule That Implemented the New Formula for Calculating Computer Performance: Adjusted Peak Performance (APP) in Weighted TeraFLOPS

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: This rule makes changes to regulations implementing the new formula for calculating computer Adjusted Peak Performance in Weighted TeraFLOPS. This rule corrects the availability of the license exception for technology and software under restriction for specified ''software'' and ''technology'' for computers. These additional changes are intended to correct the scope of the license exception in certain Export Control Classification Numbers that were unintentionally narrowed by the rule published on March 22, 2007. In addition, this rule corrects a reference to a nonexistent Export Control Classification Number found in specified ''technology'' for computers.

DATES: This rule is effective June 7, 2007.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov,* fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE03 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Joseph Young, Information Technology Controls Division, by telephone at 202–482–4197 or by e-mail at *jyoung@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) published a final rule on April 24, 2006 (71 FR 20876) that implemented the new formula for calculating computer Adjusted Peak Performance (APP) in Weighted TeraFLOPS (WT). Subsequently, BIS published a final rule on March 22, 2007 (72 FR 13440) that corrected the April 24, 2006 final rule, by removing certain references to Missile Technology controls and adjusting the scope of controls and license exceptions in certain Export Control Classification Numbers (ECCNs).

In adjusting the scope and license exceptions in certain ECCNs, the March 22, 2007 final rule unintentionally narrowed the scope of the license exception for technology and software under restriction (License Exception TSR) for ECCNs 4D001 (specified ''software'') and 4E001 (specified

''technology''). That correction rule inserted language in ECCN 4D001 that limited the use of License Exception TSR to software described in 4D001.b that meets the requisite APP parameter. Likewise, that correction rule inserted language in ECCN 4E001 that limited the use of License Exception TSR to technology described in 4E001.b that meets the requisite APP parameter.

To properly correct the scope of License Exception TSR, as intended by the original April 24, 2006 final rule, this rule changes the text of License Exception TSR for ECCN 4D001 to read: ''Yes, except for 'software' for the 'development' or 'production' of commodities with an 'Adjusted Peak Performance' ('APP') exceeding 0.1 WT.'' Similarly, this rule changes the text of License Exception TSR for ECCN 4E001 to read: ''Yes, except for 'technology' for the 'development' or 'production' of commodities with an 'Adjusted Peak Performance' ('APP') exceeding 0.1 WT.''

Moreover, this rule makes an additional correction to a reference made in the List of Items Controlled section for ECCN 4E001. Specifically, 4E001.a refers to ECCN 4A993. Currently, ECCN 4A993 does not exist in the Commerce Control List. Therefore, this rule removes the reference to ''4A993'' in 4E001.a.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under control number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. BIS expects that this rule will not change that burden hour estimate.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 1 to Part 774 [Amended]

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the License Exceptions section, to read as follows:

4D001 Specified ''Software'', See List of Items Controlled

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except for ''software'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 0.1 WT.

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria).

* * * * *

■ 3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001, is amended:

■ a. By revising the License Exceptions section as set forth below;

■ b. By revising paragraph (a) in the ''Items'' paragraph of the List of Items Controlled section, as follows:

4E001 Specified ''Technology'', See List of Items Controlled

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except for ''technology'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 0.1 WT.

APP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria).

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Technology'' according to the General Technology Note, for the ''development'', ''production'', or ''use'' of equipment or ''software'' controlled by 4A (except 4A980 or 4A994) or 4D (except 4D980, 4D993, 4D994).

* * * * *

Dated: June 1, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. E7–11016 Filed 6–6–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM06–16–000]

Mandatory Reliability Standards for the Bulk-Power System; Stay of Effective Date

May 31, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Stay of effective date.

SUMMARY: This document contains corrections to the preamble of the Commission's Final Rule, which was published in the **Federal Register** of Wednesday, April 4, 2007 (72 FR 16,416). The Final Rule established mandatory Reliability Standards for the Bulk-Power System. The Government Accountability Office has determined that, pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(3)(A), the effective date of the Final Rule is June 18, 2007, rather than June 4, 2007.

DATES: The rule published April 4, 2007 (72 FR 16416) is stayed until June 18, 2007.

FOR FURTHER INFORMATION CONTACT: Jonathan First (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8529.

SUPPLEMENTARY INFORMATION: On March 16, 2007, the Commission issued a Final Rule in the above-docketed proceeding, *Mandatory Reliability Standards for the Bulk Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. and Regs. ¶ 31,241 (2007). The Government Accountability Office has determined that, pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(3)(A), the effective date of the Final Rule is June 18, 2007, rather than June 4, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10831 Filed 6–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 5823]

Amendment of the International Traffic in Arms Regulations: United States Munitions List

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) by revising Note (1)(i) of U.S. Munitions List (USML) Category VIII(e) to add the term ''primary'' to references to a commercial standby instrument system. As a result, Category XII(d) and Category VIII(e) do not include quartz rate sensors if such items are integrated into and included as an integral part of a commercial primary or standby instrument system for use on civil aircraft prior to export or exported solely for integration into such systems. After this exclusion was instituted in 2004 for such standby systems, it became apparent that some primary systems also include the subject quartz rate sensors.

DATES: *Effective Date:* This rule is effective June 7, 2007.

ADDRESSES:

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

- *E-mail: DDTCResponseTeam@state.gov* with subject line Regulatory Change: Quartz Rate Sensors Change.
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, 12th Floor, SA–1, Washington, DC, 20522–0112.
- *Fax:* 202–261–8199.
- *Hand Delivery or Courier (regular work hours only):* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTENTION: Regulatory Change, SA–1, 12th Floor, 2401 E Street, NW., Washington, DC 20037.

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

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

SUPPLEMENTARY INFORMATION: In conjunction with requests for Commodity Jurisdiction, the Department of State has determined that certain quartz rate sensors otherwise controlled under the ITAR are not subject to the licensing jurisdiction of the Department of State when integrated into primary or backup inertial navigation systems for civil aircraft or exported solely for integration into such systems. The applicability of these determinations to a particular system will be made on a case-by-case basis in response to U.S. exporters' requests for Commodity Jurisdiction by the Directorate of Defense Trade Controls. These requests will be favorably considered only where the sensor is an integral part of the commercial system or is exported solely for integration into such a system and is important for the safe operation of the civil aircraft. In making these determinations, other factors also will be considered. Among them is the extent to which the sensors can be extracted without damage and used for a significant military application, the extent to which diversion of the sensors alone or in small quantities poses a threat to the national security or foreign policy interests of the United States, and the scope of controls that would be applicable to the commercial system if licensing jurisdiction were transferred to the Department of Commerce. Exports of quartz rate sensors determined by the State Department to not be subject to USML controls will be subject to the licensing jurisdiction of the Department of Commerce whether the sensors are being exported for integration abroad or being exported as an integral part of a commercial primary or standby inertial navigation system.

Regulatory Analysis And Notices

Administrative Procedure Act

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

Regulatory Flexibility Act

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

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Orders 12372 and 13132

It is determined that this rule does not have sufficient federalism implications

to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Executive Order 12866

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

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports, U.S. Munitions List.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Section 121.1 is amended in paragraph (c) by revising paragraph (e), Note (1)(i) and (ii) of Category VIII—Aircraft and Associated Equipment to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VIII—Aircraft and Associated Equipment

* * * * *

(e) * * *

Note: (1) * * *

(i) Are integrated into and included as an integral part of a commercial primary or commercial standby instrument system for use on civil aircraft prior to export or exported solely for integration into such a commercial primary or standby instrument system, and

(ii) When the exporter has been informed in writing by the Department of State that a specific quartz rate sensor integrated into a commercial primary or standby instrument system has been determined to be subject to the licensing jurisdiction of the Department of Commerce in accordance with this section.

* * * * *

Dated: March 26, 2007.

John C. Rood,

Assistant Secretary for International Security and Nonproliferation, Department of State.

[FR Doc. E7–11012 Filed 6–6–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Interpretation of OSHA's Standard for Process Safety Management of Highly Hazardous Chemicals

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Interpretation.

SUMMARY: This Notice constitutes the Occupational Safety and Health Administration's official interpretation and explanation of the phrase ''on site in one location'' in the ''Application'' section of OSHA's Process Safety Management of Highly Hazardous Chemicals standard. (''PSM'').

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

FOR FURTHER INFORMATION CONTACT: For general information contact: Kevin Ropp, Director, Office of Communications, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999; fax (202) 693–1635. For technical information contact: Mike Marshall, PSM Coordinator, Directorate of Enforcement Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3119, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1850; fax (202) 693–1681.

SUPPLEMENTARY INFORMATION: This **Federal Register** Notice addresses OSHA's interpretation of the term ''on site in one location'' in the scope and application section of the PSM standard. As set forth below, OSHA interprets this term to mean that the standard applies when a threshold quantity (TQ) of a highly hazardous chemical (HHC) exists within contiguous areas under the control of an employer, or group of affiliated employers, in any group of vessels that are interconnected, or in separate vessels that are located in such proximity that the HHC could be involved in a potential catastrophic release, as indicated in the regulatory definition of ''process.'' [1]

[1] The term ''contiguous'' has been found to mean either ''nearby'' or ''in actual contact'' in terms of the application of an OSHA standard. Empire Company, Inc., 17 BNA OSHC 1990 (Docket No. 93–1861, 1997), affirmed 136 F.3d 873 (1st Cir. 1998). See also 136 F.3d at 878, citing Black's Law Dictionary 320 (6th ed. 1990) (''In close proximity; neighboring * * *''). References to ''contiguous'' areas in this Notice carry the same meaning.

A. Introduction

The meaning of ''on site in one location'' was at issue in a recent case before the Occupational Safety and Health Review Commission. *Motiva Enterprises,* 21 BNA OSHC 1696 (OSHRC No. 02–2160, 2006). In that decision the Review Commission queried whether that language was meant to limit in some way the applicability of the standard to a highly-hazardous-chemical process. In the absence of an authoritative interpretation, the Review Commission decided it could not determine that the cited activities were ''on site'' and ''in one location,'' and it vacated the citations. Recognizing that OSHA is the policymaking actor under the Occupational Safety and Health Act, it left it to the agency to decide ''in the first instance * * * the meaning of these terms and offer an 'authoritative interpretation.' '' It also said that ''[a]ny such subsequent interpretation'' would be reviewed in a future case ''under 'standard deference principles.' ''

The PSM standard provides, in pertinent part:

(a) *Application.* (1) This section applies to the following:

(i) A process which involves a chemical at or above the specified threshold quantities listed in appendix A to this section;

(ii) A process which involves a flammable liquid or gas (as defined in § 1910.1200(c) of this part) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more * * *.,

29 CFR 1910.119(a).

The standard defines ''process'' to mean:

* * * any activity involving a highly hazardous chemical including any use, storage, manufacturing, handling, or the on-site movement of such chemicals, or combination of these activities. For purposes of this definition, any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.,

29 CFR 1910.119(b).

The standard defines ''highly hazardous chemical'' to mean:

* * *a substance possessing toxic, reactive, flammable, or explosive properties and specified by paragraph (a)(1) of this section.

Ibid.

The standard thus provides regulatory definitions for the application provision's key terms, ''process'' and ''highly hazardous chemical.'' It omits, however, any definition for the phrase ''on site in one location'' that is

included in subsection (a)(1)(ii) of the Application provision.

In providing this Notice's clarification of the intended coverage of the standard, OSHA has determined that, considering the history, language, structure and purposes of the PSM standard, it is abundantly clear that there is considerable overlap between the term ''on site in one location'' and the definition of ''process'' adopted in the final version of the standard. In addition, ''on site in one location'' serves the independent function of excluding coverage where the HHC threshold would be met only if all amounts in interconnected or proximate vessels or pipes were aggregated but some of the amounts needed to meet the threshold quantity are outside the perimeter of the employer's facility. For example, trucks and pipelines outside the boundaries of the employer's property, which may be regulated by the Department of Transportation in any event, are excluded.

B. The Regulatory History

1. Notice of Proposed Rulemaking, July 17, 1990 (NPRM)

In response to several major disasters in both the United States and abroad, OSHA began to develop a comprehensive standard addressing hazards related to releases of HHCs in the workplace. On July 17, 1990, OSHA published a Notice of Proposed Rulemaking (NPRM) at 55 FR 29150. Approximately four months later (November 15, 1990), Section 304 of the Clean Air Act Amendments (CAAA) of 1990, Public Law 101–549, required the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, to promulgate, pursuant to the Occupational Safety and Health Act of 1970, a chemical process safety standard to prevent accidental releases of hazardous chemicals that could pose a threat to employees. The Act also directed EPA to issue a rule addressing the hazards to the public of releases of such chemicals into the atmosphere and to coordinate the provisions with comparable OSHA requirements, (42 U.S.C. 7412(r)(7)).

The NPRM's scope and application section included the following statement of the standard's intended application:

> (b) *Application.* (1) This section applies to the following* * *
>
> (i) Processes* * *
>
> (ii) Processes which involve flammable liquids or gases (as defined in § 1910.1200(c) of this part) onsite in one location in quantities of 10,000 lbs or more* * *,

55 FR 29163.

Under the proposal the term ''process'' would be defined as:

> * * *any activity conducted by an employer that involves a highly hazardous chemical including any use, storage, manufacturing, handling, or movement of a highly hazardous chemical, or a combination of these activities.

Ibid.

Thus, the NPRM applied to processes in the plural, and the definition of ''process'' did not include any language indicating a geographic limit to what constituted a covered ''activity.'' The subsection on application to flammable liquids and gases included ''on site in one location,'' without explaining the phrase. The subsection on application to listed hazardous chemicals lacked any parallel language.

2. The Rulemaking Record and Hearing Process

In response to the NPRM, OSHA received over 175 written comments. OSHA's review of the comments revealed a significant issue of how TQs of HHCs were to be calculated. Because OSHA had used the plural term ''processes'' in the NPRM, which could suggest multiple processes in separate locations, some stakeholders expressed concern as to whether OSHA intended TQs be calculated by an aggregate of all HHC present at an employer's facility, or by the amount of an HHC present in one particular process. (*See e.g.*, Exs. 3–104, 109, 112, 119, 125, 126).[2]

Recognizing this confusion, OSHA, in a **Federal Register** notice of November 1, 1990,[3] clarified its intent that TQs would be calculated by process or location, and not on a facility-wide basis:

> OSHA did not intend that facilities aggregate quantities of covered chemicals. The important factor is the amount of a listed chemical in a plant that could be released at one point in time. If the total amount of a listed chemical in a plant exceeds its threshold quantity of 1000 pounds, for example, *but the chemical is used in small quantities around the plant and is not concentrated in one process or in one area,* OSHA believes that a catastrophic release of the entire material would be unlikely.

55 FR 46074, 46075) (emphasis added).

At hearings on the proposal held in Washington, DC and Houston, TX, and in additional written comments, stakeholders almost uniformly accepted OSHA's explanation of its intent that TQs of HHCs were to be calculated by individual process and not through aggregation of all processes present in a facility. Several major trade associations and refinery employers concurred with OSHA's conclusions, (Tr. 1113, 2591–92, 3038, 3419, 3192; Exs. 3–165, 3–170). Commenters urged that this aggregation principle should apply regardless of the type of HHC, (*e.g.*, Tr. 1113, 3038, 3192; Ex.–109).

In addition, during the rulemaking, commenters noted that HHCs concentrated in a single interconnected process should be subject to the requirements of the PSM standard, (Ex. 3–165, 3–166). The concept of interconnectedness was integral to American Petroleum Institute (API) 750, *Management of Process Hazards,* an industry consensus document on managing process hazards. This was one of the industry practices OSHA referenced when developing the PSM Standard, (55 FR 29159). Specifically, API 750 defined a ''facility'' and ''process'' as follows:

> 1.4.4 A *facility* comprises the buildings, containers, and equipment that could reasonably be expected to participate in a catastrophic release as a result of their being physically interconnected or of their proximity and in which dangerous chemicals are used, stored, manufactured, handled, or moved.
>
> 1.4.5 *Process* refers to the activities that constitute use, storage, manufacture, handling, or movement in all facilities that contain dangerous substances.

3. The Final Rule

On February 24, 1992, OSHA promulgated the final PSM standard, (57 FR 6356). With respect to TQ calculations, OSHA again reiterated its November 1, 1990 statement of intent, noting that it ''continues to believe that the potential of a catastrophic release exists when a highly hazardous chemical is concentrated in a process.'' OSHA also stated that it ''agrees with those commenters'' who argued that ''highly hazardous chemicals in less than threshold quantities distributed in several processes would not present as great a risk of catastrophe as the threshold quantity in a single process.'' (57 FR 6364).

To reflect its agreement with the commenters and API 750 on this point, OSHA modified the definition of ''process'' in the final rule. First, the ''Application'' provision was stated in terms of a ''process'' rather than ''processes.'' Next, as set forth above, the final standard augmented the NPRM's definition of ''process'' by adding language to clarify that ''interconnected and nearby vessels containing a highly hazardous chemical would be considered part of the single

[2] All citations to either exhibits or transcripts in this instruction are references to the PSM Standard's Rulemaking Docket, No. S026, available at *http://www.regulations.gov*.

[3] This **Federal Register** notice also announced additional hearings in Houston, TX.

process and the quantities of the chemical would be aggregated to determine if the threshold quantity of the chemical is exceeded''. *Id.,* at 6372 (emphasis added). OSHA also added the term ''on-site movement'' to the list of covered activities. Finally, OSHA specifically stated that the term ''process,'' when used in conjunction with the application section of the standard, establishes the intent of the standard, (57 FR 6372). As a result, OSHA intended that the term ''process'' be read in conjunction with the terms ''on site in one location'' when evaluating the applicability of PSM. There was no further preamble discussion, however, on what, if anything, ''on site in one location'' was meant to convey.

The regulatory history establishes several key points. First, OSHA intended ''process'' to be the central term elucidating the standard's coverage. Second, employers need not aggregate all amounts of a chemical in an entire facility to determine whether a threshold quantity is present. Instead, only amounts in a group of vessels that are interconnected, or in vessels that are separate but sufficiently close together that they could be involved in the same release, are to be aggregated. Finally, the agency intended no distinction in the application of these principles between listed chemicals subject to 29 CFR 1910.119(a)(i) and flammables subject to 29 CFR 1910.119(a)(ii).

4. The Environmental Protection Agency (EPA) Risk Management Program (RMP)

In addition to directing OSHA to develop the PSM standard, Congress directed EPA to address the hazards of catastrophic releases of highly hazardous chemicals to the atmosphere, (42 U.S.C. 7412(r)). EPA issued its rule on June 20, 1996, following promulgation of OSHA's PSM standard, (61 FR 31667). While the definition of ''process'' in the EPA-prescribed RMP is identical to the PSM definition, RMP does not use the term ''on site in one location''. Instead, RMP uses the term ''stationary source,'' which is defined, in relevant part, as ''any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.'' (40 CFR 68.3). This is the same definition used by Congress. (42 U.S.C.A 7412(r)(2)(c)).

C. The Regulatory Language and Structure

As noted above, the Secretary construes the phrase ''on site in one location'' to refer to contiguous areas under the control of an employer, or group of affiliated employers, and, within that area to a group of vessels that are interconnected, or separate but sufficiently near each other that they could be involved in a catastrophic release. This interpretation accords with the ordinary dictionary meanings of ''site'' and ''location'' and with the context of the entire application provision and the related regulatory definitions for ''process'' and ''highly hazardous chemical.'' In interpreting the phrase, moreover, the Secretary has concluded that to give meaning to all the words of the standard, a certain degree of redundancy is inevitable; and that it would not be faithful to the drafters' intent or the purposes of the standard to construe ''on site in one location'' as completely separate from the definition of ''process,'' since the result would be to read part of the ''process'' definition out of the standard altogether. In so concluding, the Secretary notes that the overlap of ''process'' with ''on site in one location'' parallels a similar overlap with ''highly hazardous chemical,'' as the latter term appears both in the ''process'' definition and in the language of the application provision and its definition includes a reference back to the application provision. Thus, the standard applies to a process, a process is an activity involving a highly hazardous chemical, and a highly hazardous chemical is, inter alia, a chemical that is specified by the standard's application provision, 29 CFR 1910.119(a), (b). But, despite this evident circularity, nobody has ever objected to that overlap. Similarly, there is unavoidable overlap between ''on site in one location'' and the portions of the process definition that refer to interconnection and location.

The interpretation provided here is consistent with the ordinary dictionary meaning of ''on site in one location.'' The dictionary defines ''site'' to mean, primarily, ''the position or location of a town, building, etc., esp. as to its environment.'' *Webster's Unabridged Dictionary 1128, 1788* (2d ed. 2001). It defines ''location'' to mean, primarily, ''a place or situation occupied.'' *See also American Heritage Dictionary* (*1976*), 1210 (defining ''site'' as ''the place or plot of land where something was or is to be located''), 765 (defining ''location'' to mean ''a place where something is or might be located; a site or situation''); *Black's Law Dictionary* (7th ed. 1999), at 1392 (''site'' means ''a place or location; esp., a piece of property set aside for a specific use''), at 951 (''location'' means ''the specific place or position of a person or thing''). That ''site'' and ''location'' are virtually synonyms provides further support for the conclusion that avoiding redundancy was not uppermost in the minds of the drafters. Read together, however, they reinforce the idea that OSHA intended to give ''highly hazardous chemical'' and ''process'' a rough geographical, as well as functional, limit.

This intent may be further discerned from consideration of relevant regulatory history. CAAA Section 304 directed the Secretary, in coordination with EPA, to promulgate a chemical process safety standard designed to protect employees from hazards associated with accidental releases of HHCs in the workplace. Although EPA's RMP Rule at 40 CFR part 68 *et seq.* does not contain an ''on site'' (or ''in one location'') limitation in its text, Congress's defining EPA coverage in terms of a ''stationary source'' accomplishes the same limitation. ''Stationary source'' is defined as any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur, (42 U.S.C.A § 7412(r)(2)(c)).[4] Because Congress mandated OSHA and EPA coordination in addressing the release of hazardous substances, the regulations of the two agencies are to be construed together. In other words, the boundaries of a covered facility under PSM will be similar to the boundaries of a stationary source under RMP, and ''on site in one location'' is given essentially the same meaning as the ''which are located on one or more contiguous properties'' component of the term ''stationary source,'' while the rest of the definition mirrors OSHA's definition of ''process.'' Just as that term encompasses most of the PSM ''process'' definition, this construction of ''on site in one location'' also encompasses the inclusion of the ''on-site movement'' of HHCs that was added to the definition of ''process'' in the final rule. Although neither the NPRM nor the preamble to the final rule provides any detailed explanation of this inclusion, it would be consistent with the statutory aims of the CAAA to

[4] This term was directly adopted into RMP at 40 CFR 68.3.

limit PSM coverage to facilities included in the ''stationary source'' definition. To that end, the Secretary also reads the limitation in ''stationary source'' to locations '' which are under the control of the same person (or persons under common control)'' as being implicit in the phrase ''on site in one location'' and, indeed, in the definition of ''process'' (since the former phrase only relates explicitly to flammable liquids and gases, and not to Appendix A toxic substances).

This construction also comports with the regulatory history on aggregating the TQs of HHCs. As noted in the comments of stakeholders, ''on site in one location'' could not be naturally read with the plural term ''processes'' in proposed § 1910.119(b)(1)(ii). A large facility can have separate processes at different locations within its boundaries, a point raised by Allied Signal in its comments (Ex. 3–17). The American Paper Institute similarly commented that ''a significant concern for us is that the proposed rule is unclear as to how an employer can determine when the rule would apply to a particular facility handling chemicals at different locations of that facility.'' (Tr. 1112).

Not only did the stakeholders point out that the NPRM's scope and application section was inconsistent with the proposed definition of ''process,'' OSHA itself recognized the issue and took the unusual step of clarifying its intent in an interim proposal document. By stating that a chemical used in small quantities around the plant and not concentrated in one process or in one area would be unlikely to cause a catastrophic release, OSHA clearly sought to limit coverage of the PSM standard to situations where a TQ of an HHC was concentrated in a single, including an interconnected, process. Despite the inexact use of the plural ''processes'' in the NPRM, it was never the agency's intent to cover HHCs sufficiently dispersed in various locations on a large site, and in more than one process, such that their release from any one process would not cause the type of catastrophic harm that this standard was aimed to prevent. The use of ''on site in one location'' in the provision regarding flammables was intended to signal that employers would not need to aggregate all sources of the chemical facility-wide, or those outside the bounds of the employers' facility, although the provision did not clearly describe the agency's intent regarding which sources should be aggregated.

The hearing transcripts and written comments confirm that members of the refinery industry, an industry with a particular interest in OSHA's regulation of flammable liquids and gases, understood and accepted OSHA's clarified position. For instance, Shell Oil Company testified that it ''strongly supports OSHA's position that owners should not aggregate quantities of chemicals at separate locations across a facility to determine if threshold quantities have been reached'', (Tr. 2591). BP testified that ''if flammables are over 10,000 pounds in process, the rule applies to that process'', (Tr. 3038). Amoco Corporation agreed that ''OSHA clarified that the threshold quantities of highly hazardous chemicals are determined on process basis, rather than by aggregating quantities of like chemicals for an entire facility'', (Ex. 3–165). Union Carbide similarly stated its understanding that ''all of the thresholds be calculated on a 'per process' basis'', (Ex. 3–109).

OSHA reiterated this position in the final rule, stating that it ''continues to believe that the potential hazard of a catastrophic release exists when the highly hazardous chemical is concentrated in a single process'', (57 FR 6364). This was in agreement with those stakeholders who argued that TQs should not be aggregated over an entire facility, (e.g., Tr. 2591, 3192; Exs. 3–163, 3–164). OSHA's final position was that PSM coverage could only be found if a TQ of an HHC exists in a single process.

To the extent ''on site in one location'' did not adequately convey that intent, the more precise revision of the definition of ''process'' as a result of the record comments did so by clarifying that the standard's scope was meant to apply to an area more confined than multiple processes, but more expansive than a single process point, where the process involves inter-connecting vessels or pipes, or vessels in close proximity such that the release of an HHC in one could trigger a chain reaction in the others. Accordingly, OSHA modified the definition of ''process'' to include the concepts of ''interconnection'' and ''co-location'' with addition of the language, ''any group of vessels which are interconnected or separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.'' 29 CFR 1910.119(b). OSHA stated in the final rule that this definition, when read in conjunction with the application section, establishes the standard's intended coverage, (57 FR 6372). Therefore, a ''single process'' containing a TQ of an HHC includes an ''interconnected'' or closely co-located process.

D. The Regulatory Purpose

Construing ''on site in one location'' in tandem with the final, expanded definition of ''process'' also serves OSHA's intended purposes. First, the full definition of ''process'' makes clear that it was not OSHA's intent that it would be required to prove that a release of an HHC in one component of an interconnected process could affect a release in other components of the same interconnected process in order for the PSM standard to apply. Rather, the intent of OSHA and the understanding of the stakeholders were to the contrary, as the rulemaking record indicates. For example, AT&T recommended that OSHA define threshold quantity as ''the maximum amount in pounds in a process (or connected processes)'', (Ex. 3–126). Asarco, in its comments, suggested that an interconnected process should be covered by the PSM standard. (Ex. 3–125). API, the leading trade organization of the refinery industry, included the concept of interconnection in its Recommended Practice 750. As described *supra,* API 750 applied to ''facilities'' that use, produce, process or store flammable or explosive substances that are present in such quantity and condition that a sudden, catastrophic release of more than five tons of gas or vapor can occur over a matter of minutes, based on credible failure scenarios and the properties of the materials involved, (API 750 1.3.1.1(a)).[5] The term ''facilities'', as used in API 750, includes buildings, containers, and equipment that are physically interconnected, (*see* API 750 1.4.4).

The presence of the word ''or'' between interconnected and co-located vessels in the final rule demonstrates that two potential avenues exist to find a covered process when several aspects may be involved in the overall process. The plain language of the definition establishes two distinct burdens of proof when considering the applicability of PSM to an interconnected or a co-located process. With respect to a co-located process, OSHA would be required to demonstrate as part of its *prima facie* case that unconnected but co-located processes are situated in a manner that a release from one process could contribute to the release of the other. In contrast, the definition of ''process'' contains no such requirement for an interconnected process. In other words, OSHA's intent is that the phrase ''which are located such that a highly

[5] In the final rule, OSHA rejected API's TQ of 5 tons of released flammable vapor as too complex, using instead the 10,000 pounds TQ. 57 FR at 6366–67.

hazardous chemical could be involved in a potential release'' modifies only the immediately-preceding ''separate vessels,'' making the entire phrase parallel to the free-standing phrase ''any group of vessels which are interconnected.'' Thus, there is no additional requirement on OSHA to show the potentiality of a release with respect to interconnected (as opposed to separate) vessels. Rather, the PSM standard presumes that all aspects of a physically connected process can be expected to participate in a catastrophic release.

Second, it is clear that, in revising the ''process'' definition to encompass the ''on-site movement'' of HHCs and the twin concepts of inter-connectedness and co-location, OSHA intended that definition to bear most of the weight of defining the scope of the standard. As originally drafted, the ''process'' definition not only did not have these clarifications, but ''onsite in one location'' appeared only in the subsection on flammable liquids and gases, and not in the subsection on Appendix A toxic substances. There is no obvious explanation why this was so. As noted, the phrase was intended to signal that it was not necessary to aggregate all sources of a chemical within, or beyond, the employer's facility. The final standard clarified and more precisely stated this intent and made clear that the same principles applied to both listed and flammable chemicals.

The phrase in the final standard continues to carry its original NPRM meaning of setting a geographic boundary (''on site'') and, within that boundary, a site-specific parameter (''in one location''). But after the definition of ''process'' was changed in the final rule to include explicit language clarifying that a ''single process'' includes ''any group of vessels which are interconnected or separate vessels which are located such that a highly hazardous chemical could be involved in a potential release,'' the limitation placed on application of the standard to flammable liquids and gases denoted by the related phrase ''on site in one location'' no longer carries the independent weight it had before OSHA clarified the intended meaning of ''process.'' As previously stated, however, it continues to serve a separate purpose by operating to exclude coverage where the HHC threshold would be met only if all amounts in interconnected or co-located vessels were aggregated but some of the amounts needed to meet the threshold quantity are outside of the perimeter of the employer's facility.

E. The Response to the Motiva Decision

In the Motiva decision, the Review Commission appropriately left to the Secretary the task of interpreting ''on site in one location'' as it appears in the PSM standard, rather than doing so as an initial matter on its own. This Notice accomplishes that function. The interpretation set forth here is supported by the language, history and purposes of the standard and is consistent with the position adopted by EPA. In the absence of an agency interpretation, the Review Commission had focused on another guide to regulatory intent, the canon of construction that says that all the words of a statute (or regulation) should be assumed to have their own meaning, and suggested that ''on site in one location'' therefore has a meaning wholly apart from process. Regardless of the strength of this canon, the Secretary has satisfied it here by interpreting ''on site in one location'' to limit coverage to vessels within contiguous areas controlled by an employer or group of affiliated employers.

More fundamentally, the Secretary agrees that canons of construction can be useful guides to regulatory intent. They are guides only, however, and should not be mechanically applied in the face of stronger indicia of intent. The flip side of the canon referred to above is the rule that the words of a standard (or regulation) should not be given meaning at the expense of rendering other words meaningless. Accordingly, the courts have put aside the general rule against redundancy in statutes if applying the rule would be counter to legislative intent. *See Gutierrez* v. *Ada,* 528 U.S. 250, 258 (2000) (''rule against redundancy does not necessarily have the strength to turn a tide of good cause to come out the other way''); *Morton* v. *United Parcel Service, Inc.,* 272 F.3d 1249, 1258 (9th Cir. 2001) (rule of redundancy not followed when intent of statute clear); *Mayer* v. *Spanel Intern. LTD.,* 51 F.3d 670, 674 (7th Cir. 1995) (every enacted word need not carry independent force absent strong evidence that at the time of enactment the words were understood as equivalents). In this case, the general statutory canon against redundancy cannot be given controlling weight given the clear intent of OSHA, in the final rule, and the stakeholders, through their comments, during the regulatory process. To do otherwise, in the Secretary's judgment, would render meaningless the most important revision affecting coverage that came out of the rulemaking process, namely the explicit inclusion of the twin concepts of interconnection and co-location in the definition of ''process'' and the clear intent that those concepts would determine coverage under the standard.

Moreover, it is simply linguistically inescapable that there is overlap and redundancy among the terms of the standard. *Motiva* involved the interplay between ''on site in one location'' and the ''interconnected'' prong of the definition of ''process,'' but the other prong of that definition refers to vessels that are so ''located'' to create a risk of catastrophic release. Similarly, the appearance of ''highly hazardous chemical'' in the definition of ''process'' and in the application provision, and the reference back to the application section in the HHC definition, creates an unavoidable redundancy. So too here, the Secretary cannot reasonably interpret ''on site in one location'' in a way that has no overlap with ''process.'' Instead, consistent with how courts generally apply the canons of construction, she has settled on an interpretation of the term ''on site in one location'' that conforms as much as possible to the ordinary meaning of the words and to the standard's overall language, history, and purposes.

Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of June, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–10918 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0386; FRL–8321–7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the Texas State Implementation Plan Regarding a Negative Declaration for the Synthetic Organic Chemical Manufacturing Industry Batch Processing Source Category in El Paso County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Section 172(c)(1) of the Clean Air Act (CAA) requires areas that are not

attaining a National Ambient Air Quality Standard (NAAQS) to reduce emissions from existing sources by adopting, at a minimum, reasonably available control technology (RACT). EPA has established source categories for which RACT must be implemented. If no major sources of volatile organic compound (VOC) emissions in a particular source category exist in a nonattainment area, a State may submit a negative declaration for that category. Texas submitted a State Implementation Plan (SIP) revision which included negative declarations for certain source categories in the El Paso 1-hour ozone standard nonattainment area. EPA previously approved the State's declaration that no major sources existed for 9 source categories in the El Paso area. In the approval EPA neglected to approve the negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) batch processing category in the El Paso area. EPA is approving this negative declaration for the El Paso 1-hour ozone standard nonattainment area.

DATES: This rule is effective on August 6, 2007 without further notice, unless EPA receives relevant adverse comment by July 9, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0386, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Carl Young at *young.carl@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Carl Young, Acting Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Carl Young, Acting Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Carl Young, Acting 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 except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0386. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the 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 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 15 cent per page fee 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 at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'', or ''our'' is used, we mean the EPA.

Outline

I. What is the Background for this Action?
II. What Action is EPA Taking?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What is the Background for this Action?

Section 172(c)(1) of the CAA requires SIPs for areas that are not attaining a NAAQS to provide, at a minimum, for such reductions in air emissions from existing sources in the areas as may be obtained through the adoption of reasonably available control measures including RACT. In our September 17, 1979 **Federal Register** notice (44 FR 53761) we define RACT as: ''The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economical feasibility.''

Under CAA section 182(b)(2) State SIPs must require RACT for major stationary sources of VOC emissions in ozone NAAQS nonattainment areas classified as moderate or higher. VOC emissions can react with sunlight and nitrogen oxides to form ground-level ozone. If no major sources of VOC emissions exist in a particular source category in an ozone nonattainment area, the State may submit a negative declaration for that category.

The El Paso area, consisting of El Paso County, Texas, was classified as a moderate nonattainment area for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694). On January 10, 1996 Texas submitted a SIP revision

that included negative declarations for certain source categories in the El Paso 1-hour ozone standard nonattainment area. The area consists of El Paso County. We approved the State's declaration that no major sources existed for 9 source categories in the El Paso area on October 30, 1996 (61 FR 55894). In our approval we neglected to approve the negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) batch processing category in the El Paso area. We reviewed data from the Texas Point Source Emissions Inventory to confirm that there were no major sources of VOC emissions from SOCMI batch processing facilities in El Paso County. Our approval of the State's negative declaration will correct our earlier failure to take action on the negative declaration submitted by Texas.

II. What Action is EPA Taking?

We are taking direct final action to approve a negative declaration submitted by Texas concerning the SOCMI batch processing category in the El Paso 1-hour ozone standard nonattainment area. Texas submitted the negative declaration on January 10, 1996. It states that in the El Paso area there are no major stationary sources of VOC emissions for the SOCMI batch processing category. We have evaluated the State's submittal and have determined that it meets the applicable requirements of the CAA and EPA air quality regulations. We are approving the negative declaration pursuant to section 110 and part D of the CAA.

We are also making ministerial corrections to the table in 40 CFR 52.2270(e) to reflect our earlier approval of negative declarations submitted by Texas.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on August 6, 2007 without further notice unless we receive relevant adverse comment by July 9, 2007. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

We are approving a SIP revision submitted by Texas which states that there are no major stationary sources of VOC emissions for the SOCMI batch processing category in the El Paso 1-hour ozone standard nonattainment area. Texas submitted this negative declaration on January 10, 1996. We are also making ministerial corrections to the table in 40 CFR 52.2270(e) to reflect our earlier approval of negative declarations submitted by Texas.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 6, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 21, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

■ 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 SS—Texas

■ 2. The second table in paragraph (e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding entries for ''VOC RACT Negative Declarations'' and ''VOC RACT Negative Declaration for SOCMI Batch Processing Source Category'' immediately after the entry ''Revision to Permitting Regulations and Board Orders No. 85–07, 87–09, 87–17, 88–08, 89–06, 90–05, 91–10, 92–06, 92–18, and 93–17'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
VOC RACT Negative Declarations	Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, Houston/Galveston.	1/10/96	10/30/96, 61 FR 55894.	Ref 52.2299(c)(103).
VOC RACT Negative Declaration for SOCMI Batch Processing Source Category.	El Paso	1/10/96	6/7/07 [Insert *FR* page number where document begins].	
* *	* *	*	*	*

* * * * *

[FR Doc. E7–10764 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7703]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule; removal.

SUMMARY: The Federal Emergency Management Agency (FEMA) removes the interim change in flood elevation determination published at 72 FR 271 on January 4, 2007 for the Unincorporated areas of Frederick County, Maryland, Case No. 06–03–B384P, Community Number 240027.

EFFECTIVE DATE: This rule is effective June 7, 2007.

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

SUPPLEMENTARY INFORMATION: On October 19, 2006, FEMA issued a Letter of Map Revision (LOMR) revising the Unincorporated areas of Frederick County, Maryland Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM), Case No. 06–03–B384P. In addition, the October 19, 2006 LOMR proposed base flood elevations along Ballenger Creek and Tributary No. 117 through a statutory 90-day appeal period and established an effective date of February 15, 2007. During the 90-day appeal period, FEMA received an appeal submitted by a property owner located within the revised area. After further investigation, it was found that the aforementioned flooding sources had been revised for the countywide map revision for Frederick County, Maryland, currently scheduled to go into effect in September 2007. When comparing the LOMR modeling to the countywide restudy, it was determined that the modeling for the countrywide restudy more accurately represented existing conditions. Therefore, the LOMR has been rescinded to eliminate the potential of incorrect flood insurance determinations along the revised flooding sources.

Accordingly, the interim change in flood elevation determination published at 72 FR 271 on January 4, 2007 for the Unincorporated areas of Frederick County, Maryland, Case No. 06–03–B384P, Community No. 240027, is hereby removed.

This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA voluntarily publishes flood elevation determinations for notice and comment, however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA. If APA applicability is contested, however, FEMA asserts, for the reasons stated above, that it has good cause to issue this removal immediately, and

without prior notice and opportunity to comment, because delaying implementation of this action to await public notice and comment is unnecessary, impracticable, and contrary to the public interest.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

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

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

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

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

List of Subjects in 44 CFR Part 65

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

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

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The table published at 72 FR 271 on January 4, 2007 under the authority of § 65.4 is amended to remove the following:

The interim change in flood elevation determination published at 72 FR 271 on January 4, 2007 for the Unincorporated areas of Frederick County, Maryland, Case No. 06–03–B384P, Community No. 240027.

Dated: May 24, 2007.

David I. Maurstad,

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

[FR Doc. E7–10951 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Benton (FEMA Docket No.: B–7712).	City of Rogers (07–06–0169P).	January 24, 2007; January 31, 2007; *Arkansas Democrat Gazette*.	The Honorable Steve Womack, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	April 25, 2007	050013
California:					
Contra Costa (FEMA Docket No.: B–7712).	Unincorporated areas of Contra Costa County (06–09–B006P).	January 18, 2007; January 25, 2007; *Contra Costa Times*.	The Honorable Brian Swisher, Mayor, City of Brentwood, 708 Third Street, Brentwood, CA 94513.	April 26, 2007	060439
Riverside (FEMA Docket No.: B–7712).	City of Murrieta (06–09–BD71P).	January 18, 2007; January 25, 2007; *The Californian*.	The Honorable Kelly Seyarto, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, CA 92562.	April 26, 2007	060751
Santa Barbara (FEMA Docket No.: B–7712).	Unincorporated areas of Santa Barbara County (07–09–0251X).	January 18, 2007; January 25, 2007; *Santa Barbara News Press*.	The Honorable Joni L. Gray, Chairperson, Santa Barbara County, 511 East Lakeside Parkway, Suite 126, Santa Maria, CA 93455.	February 2, 2007	060331
Colorado: Summit (FEMA Docket No.: B–7712).	Town of Breckenridge (06–08–B667P).	January 12, 2007; January 19, 2007; *Summit County Journal*.	The Honorable Ernie Blake, Mayor, Town of Breckenridge, P.O. Box 168, Breckenridge, CO 80424.	December 7, 2006	080172
Idaho: Boise (FEMA Docket No.: B–7712).	Unincorporated areas of Boise County (06–10–B184P).	January 4, 2007; January 11, 2007; *The Idaho Statesman*.	The Honorable Roger B. Jackson, Chairman, Boise County, Board of Commissioners, 420 Main Street, Idaho City, ID 83631.	April 12, 2007	160205
Ohio: Lake (FEMA Docket No.: B–7712).	City of Mentor (06–05–BY78P).	January 12, 2007; January 19, 2007; *The News-Herald*.	The Honorable Ray Kirchner, Mayor, City of Mentor, 8500 Civic Center Boulevard, Mentor, OH 44060.	January 2, 2007	390317
Oklahoma:					
Oklahoma (FEMA Docket No.: B–7712).	City of Oklahoma City (06–06–B396P).	January 11, 2007; January 18, 2007; *The Oklahoman*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Street, Third Floor, Oklahoma City, OK 73102.	April 19, 2007	405378
Tulsa (FEMA Docket No.: B–7712).	City of Broken Arrow (06–06–BJ56P).	January 18, 2007; January 25, 2007; *Tulsa World*.	The Honorable Richard Carter, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, OK 74012.	January 29, 2007	400236
Pennsylvania: Delaware (FEMA Docket No.: B–7712).	Township of Thornbury (07–03–0012P).	January 11, 2007; January 18, 2007; *Delaware County Daily Times*.	The Honorable Lou Gagliardi, Chairman, Thornbury Township Board of Supervisors, 8 Township Drive, Cheyney, PA 19319.	December 18, 2006	425390
South Carolina:					
Richland (FEMA Docket No.: B–7712).	Unincorporated areas of Richland County (06–04–BX98P).	January 19, 2007; January 26, 2007; *The Columbia Star*.	Mr. J. Milton Pope, Interim County Administrator, Richland County P.O. Box 192, Columbia, SC 29202.	April 27, 2007	450170
Richland (FEMA Docket No.: B–7712).	Unincorporated areas of Richland County (06–04–BX99P).	January 19, 2007; January 26, 2007; *The Columbia Star*.	The Honorable Anthony G. Mizzell, Chair, Richland County Council, 106 Wembley Street, Columbia, SC 29209.	April 27, 2007	450170
Richland (FEMA Docket No.: B–7712).	Town of Blythewood (06–04–C394P).	January 18, 2007; January 25, 2007; *Country Chronicle*.	The Honorable Pete Amoth, Mayor, Town of Blythewood, P.O. Box 1004, Blythewood, SC 29016.	April 26, 2007	450258
Texas:					
Bexar (FEMA Docket No.: B–7712).	City of San Antonio (06–06–BH85P).	January 11, 2007; January 18, 2007; *Daily Commercial Recorder*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	January 29, 2007	480045
Bexar (FEMA Docket No.: B–7712).	Unincorporated areas of Bexar County (05–06–A499P).	January 11, 2007; January 18, 2007; *Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, Suite 1.20, San Antonio, TX 78205.	April 19, 2007	480035
Dallas (FEMA Docket No.: B–7712).	City of Dallas (06–06–BF15P).	January 11, 2007; January 18, 2007; *Daily Commercial Record*.	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Drive, Dallas, TX 75201.	April 19, 2007	480171
Wisconsin: Washington (FEMA Docket No.: B–7712).	Village of Germantown (06–05–BH45P).	January 18, 2007; January 25, 2007; *West Bend Daily News*.	The Honorable Charles J. Hargan, President, Village of Germantown, Board of Trustees, P.O. Box 337, Germantown, WI 53022.	April 26, 2007	550472

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 24, 2007.

David I. Maurstad,

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

[FR Doc. E7–10965 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7717]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

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

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Elmore	Unincorporated areas of Elmore County (07–04–0063P).	March 21, 2007; March 28, 2007; *The Wetumpka Herald.*	The Honorable Joe Faulk, Chairman, Elmore County Board of Commissioners 100 East Commerce Street, Wetumpka, AL 36092.	June 27, 2007	010406
Houston	City of Ashford (07–04–1348P).	March 15, 2007; March 22, 2007; *The Dothan Eagle.*	The Honorable Bryan Alloway, Mayor, City of Ashford, P.O. Box 428, Ashford, AL 36312.	February 26, 2007	010099
Arizona:					
Coconino	City of Williams (07–09–0126P).	February 22, 2007; March 1, 2007; *Arizona Daily Sun.*	The Honorable Ken Edes, Mayor, City of Williams, 113 South First Street, Williams, AZ 86046.	May 31, 2007	040027
Coconino	Unincorporated areas of Coconino County (07–09–0126P).	February 22, 2007; March 1, 2007; *Arizona Daily Sun.*	The Honorable Matt Ryan, Chairman, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, AZ 86001.	May 31, 2007	040019

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Town of Buckeye (07–09–0135P).	March 22, 2007; March 29, 2007; *Arizona Business Gazette*.	The Honorable Bobby Bryant, Mayor, Town of Buckeye, 100 North Apache Road, Suite A, Goodyear, AZ 85326.	June 28, 2007	040039
Maricopa	City of Peoria (07–09–0452P).	March 29, 2007; April 5, 2007; *Arizona Business Gazette*.	The Honorable John C. Keegan, Mayor, City of Peoria, City of Peoria Municipal Complex, 8401 West Monroe Street, Peoria, AZ 85345.	March 9, 2007	040050
Maricopa	Unincorporated areas of Maricopa County (07–09–0135P).	March 22, 2007; March 29, 2007; *Arizona Business Gazette*.	The Honorable Max Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	June 28, 2007	040037
Mohave	City of Bullhead City (06–09–B164P).	April 6, 2007; April 13, 2007; *Bullhead City Bee*.	The Honorable Norm Hicks, Mayor, City of Bullhead City, 1255 Marina Boulevard, Bullhead City, AZ 86442.	July 11, 2007	040125
Pima	Town of Oro Valley (07–09–0603P).	April 5, 2007; April 12, 2007; *The Daily Territorial*.	The Honorable Paul H. Loomis, Town of Oro Valley, 11000 North La Canada Drive, Oro Valley, AZ 85737.	March 21, 2007	040109
Yavapai	City of Chino Valley (07–09–0415P).	March 15, 2007; March 22, 2007; *Prescott Daily Courier*.	The Honorable Karen Fann, Mayor, Town of Chino Valley, P.O. Box 406, Chino Valley, AZ 86323.	February 27, 2007	040094
Arkansas:					
Benton	City of Bentonville (06–06–B031P).	March 22, 2007; March 29, 2007; *Benton County Daily Record*.	The Honorable Bob McCaslin, Mayor, City of Bentonville, City Hall, 117 West Central, Bentonville, AR 72712.	June 28, 2007	050012
Benton	City of Springdale (06–06–BI15P).	March 22, 2007; March 29, 2007; *Benton County Daily Record*.	The Honorable Jerre M. Van Hoose, Mayor, City of Springdale, 201 Spring Street, Springdale, AR 72764.	June 28, 2007	050219
Benton	Unincorporated areas of Benton County (06–06–BI15P).	March 22, 2007; March 29, 2007; *Benton County Daily Record*.	The Honorable Gary D. Black, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	June 28, 2007	050419
California:					
Riverside	City of Corona (06–09–BB68P).	February 15, 2007; February 22, 2007; *The Press-Enterprise*.	The Honorable Eugene Montenez, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882.	January 30, 2007	060250
Riverside	Unincorporated areas of Riverside County (06–09–BD43P).	January 11, 2007; January 18, 2007; *The Press-Enterprise*.	The Honorable Bob Buster, Chairman, Riverside County, Board of Supervisors, 4080 Lemon Street, Fifth Floor, Riverside, CA 92501.	April 19, 2007	060245
San Diego	City of San Marcos (06–09–BE72P).	March 8, 2007; March 15, 2007; *San Diego Transcript*.	The Honorable James Desmond, Mayor, City of San Marcos, One Civic Center Drive, San Marcos, CA 92069.	February 23, 2007	060296
Shasta	City of Redding (05–09–0728P).	March 22, 2007; March 29, 2007; *Record Searchlight*.	The Honorable Ken Murray, Mayor, City of Redding, 777 Cypress Avenue, Redding, CA 96001.	June 28, 2007	060360
Shasta	Unincorporated areas of Shasta County (05–09–0728P).	March 22, 2007; March 29, 2007; *Record Searchlight*.	The Honorable Trish Clarke, Chairman, Shasta County Board of Supervisors, 1450 Court Street, Redding, CA 96001.	June 28, 2007	060358
Florida:					
Lake	Unincorporated areas of Lake County (07–04–0194P).	March 16, 2007; March 23, 2007; *The Daily Commerical*.	The Honorable Welton G. Cadwell, Chairman, Lake County Board of Commissioners, P.O. Box 7800, Tavares, FL 32778–7800.	June 22, 2007	120421
Miami-Dade	City of Miami (07–04–1922P).	February 22, 2007; March 1, 2007; *Miami New Times*.	The Honorable Manuel A. Diaz, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	February 7, 2007	120650
Polk	City of Lakeland (06–04–C505P).	March 19, 2007; March 26, 2007; *The Polk County Democrat*.	The Honorable Ralph L. Fletcher, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, FL 33801.	February 26, 2007	120267
Polk	Unincorporated areas of Polk County (07–04–1702P).	March 19, 2007; March 26, 2007; *The Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	February 28, 2007	120261
Georgia:					
Columbia	Unincorporated areas of Columbia County (07–04–1276P).	March 21, 2007; March 28, 2007; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	June 27, 2007	130059
Gwinnett	City of Duluth (06–04–BO22P).	March 22, 2007; March 29, 2007; *Gwinnett Daily Post*.	The Honorable Shirley Fanning-Lasseter, Mayor, City of Duluth, 3578 West Lawrenceville Street, Duluth, GA 30096.	February 28, 2007	130098
Jackson	Unincorporated areas of Jackson County (06–04–BY83P).	March 21, 2007; March 28, 2007; *The Jackson Herald*.	The Honorable Pat Bell, Chairman, Jackson County Board of Commissioners, 67 Athens Street, Jefferson, GA 30549.	June 27, 2007	130345
Lamar	City of Barnesville (06–04–BZ31P).	January 16, 2007; January 23, 2007; *The Herald-Gazette*.	The Honorable Dewaine T. Bell, Mayor, City of Barnesville, 109 Forsyth Street, Barnesville, GA 30204.	April 24, 2007	130207

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Idaho: Blaine	Unincorporated areas of Blaine County (06–10–B204P).	March 21, 2007; March 28, 2007; *Wood River Journal*.	The Honorable Tom Bowman, Chairman, Blaine County Board of Commissioners, 206 First Avenue South, Hailey, ID 83333.	March 27, 2007	165167
Illinois:					
Peoria	City of Peoria (06–05–BA71P).	March 22, 2007; March 29, 2007; *Peoria Journal Star*.	The Honorable Jim Ardis, Mayor, City of Peoria, 6141 North Evergreen Circle, Peoria, IL 61614.	February 28, 2007	17053677
Peoria	Unincorporated areas of Peoria County (06–05–BA71P).	March 22, 2007; March 29, 2007; *Peoria Journal Star*.	The Honorable David Williams, Chairman, Peoria County Board, County Courthouse, 324 Main Street, Peoria, IL 61602.	February 28, 2007	170533
Iowa:					
Bremer	City of Denver (06–07–B991P).	February 22, 2007; March 1, 2007; *The Waverly Democrat*.	The Honorable Mike Isaacson, Mayor, City of Denver, 100 Washington Street, Denver, IA 50622.	May 31, 2007	190026
Bremer	Unincorporated areas of Bremer County (06–07–B991P).	February 22, 2007; March 1, 2007; *The Waverly Democrat*.	The Honorable Steven Reuter, Head, Bremer County Board of Supervisors, 415 East Bremer Avenue, Waverly, IA 50677.	May 31, 2007	190847
Michigan: Wayne	City of Taylor (07–05–0263P).	March 21, 2007; March 28, 2007; *The News Herald*.	The Honorable Cameron G. Priebe, Mayor, City of Taylor, Taylor City Hall, 23555 Goddard Road, Taylor, MI 48180.	March 28, 2007	260728
Missouri:					
Greene	City of Springfield (05–07–0451P).	February 15, 2007; February 22, 2007; *Springfield News-Leader*.	The Honorable Thomas J. Carlson, Mayor, City of Springfield, 840 Boonville Avenue, Springfield, MO 65802.	May 24, 2007	290149
Greene	Unincorporated areas of Greene County (05–07–0451P).	February 15, 2007; February 22, 2007; *Springfield News-Leader*.	The Honorable David Coonrod, Presiding Commissioner, Greene County Commission, 933 North Robberson, Springfield, MO 65802.	May 24, 2007	290782
St. Louis	City of Sunset Hills (06–07–BB03P).	March 22, 2007; March 29, 2007; *The St. Louis Daily Record*.	The Honorable Kenneth Vogel, Mayor, City of Sunset Hills, 3939 South Lindbergh Boulevard, Sunset Hills, MO 63127.	June 28, 2007	290387
Nevada: Washoe	Unincorporated areas of Washoe County (06–09–BG15P).	March 22, 2007; March 29, 2007; *Reno Gazette-Journal*.	The Honorable Robert Larkin, Chair, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	June 28, 2007	320019
New Mexico: Bernalillo.	City of Albuquerque (06–06–BG87P).	April 5, 2007; April 12, 2007; *The Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	March 21, 2007	350002
Ohio:					
Butler	Unincorporated areas of Butler County (06–05–B014P).	January 11, 2007; January 18, 2007; *The Middletown Journal*.	The Honorable Gregory V. Jolivette, President, Butler County Board of Commissioners, 315 High Street, Sixth Floor, Hamilton, OH 45011.	April 19, 2007	390037
Cuyahoga	City of Shaker Heights (05–05–A485P).	March 1, 2007; March 8, 2007; *Bedford Times*.	The Honorable Judith H. Rawson, Mayor, City of Shaker Heights, 3400 Lee Road, Shaker Heights, OH 44120.	June 7, 2007	390129
Oklahoma:					
Muskogee	City of Muskogee (07–06–0707P).	March 22, 2007; March 29, 2007; *Muskogee Phoenix*.	The Honorable Wren Stratton, Mayor, City of Muskogee, P.O. Box 1927, Muskogee, OK 74401.	June 28, 2007	400125
Muskogee	Unincorporated areas of Muskogee County (07–06–0707P).	March 22, 2007; March 29, 2007; *Muskogee Phoenix*.	The Honorable Gene Wallace, Chair, Muskogee County Board of Commissioners, 124 South Fourth Street, Muskogee, OK 74401.	June 28, 2007	400491
Osage	City of Bartlesville (07–06–0393P).	April 5, 2007; April 12, 2007; *Examiner-Enterprise*.	The Honorable Julie Daniels, Mayor, City of Bartlesville, 401 South Johnstone Avenue, Bartlesville, OK 74003.	July 12, 2007	400220
Osage	Unincorporated areas of Osage County (07–06–0393P).	April 5, 2007; April 12, 2007; *Examiner-Enterprise*.	The Honorable Scott Hilton, Osage County Commissioner, P.O. Box 87, Pawhuska, OK 74056–0087.	July 12, 2007	400146
South Dakota: Lawrence.	City of Spearfish (07–08–0282P).	March 22, 2007; March 29, 2007; *Black Hills Pioneer*.	The Honorable Jerry Krambeck, Mayor, City of Spearfish, 625 Fifth Street, Spearfish, SD 57783.	February 28, 2007	460046
Texas:					
Collin	City of Frisco (07–06–0542P).	March 16, 2007; March 23, 2007; *Frisco Enterprise*.	The Honorable Michael Simpson, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	June 22, 2007	480134
Denton	City of Lewisville (07–06–0243P).	March 21, 2007; March 28, 2007; *Lewisville Leader*.	The Honorable Gene Carey, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	June 27, 2007	480195
Montgomery	City of Montgomery (06–06–B395P).	March 14, 2007; March 21, 2007; *Montgomery County News*.	The Honorable Edith Moore, Mayor, City of Montgomery, P.O. Box 708, Montgomery, TX 77256.	June 20, 2007	481483

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montgomery	Unincorporated areas of Montgomery County (06–06–B395P).	March 14, 2007; March 21, 2007; *Montgomery County News*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, TX 77301.	June 20, 2007	480483
Tarrant	City of Fort Worth (07–06–0091P).	February 15, 2007; February 22, 2007; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	May 24, 2007	480596
Tarrant	City of Fort Worth (07–06–0585P).	March 15, 2007; March 22, 2007; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	June 21, 2007	480596
Virginia:					
Fauquier	Unincorporated areas of Fauquier County (06–03–B824P).	March 28, 2007; April 4, 2007; *Fauquier Times-Democrat*.	The Honorable Harry Atherton, Chairman, Fauquier County Board of Supervisors, Warren Green Building, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	July 5, 2007	510055
Fauquier	Unincorporated areas of Fauquier County (06–03–B867P).	February 28, 2007; March 7, 2007; *Fauquier Times-Democrat*.	The Honorable Ray Graham, Chairman, Fauquier County Board of Supervisors, Warren Green Building, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	June 6, 2007	510055
Independent City	City of Virginia Beach (06–03–B810P).	March 22, 2007; March 29, 2007; *The Virginian-Pilot*.	The Honorable Meyera E. Oberndorf, Mayor, City of Virginia Beach, City Hall, Suite 1, 2401 Courthouse Drive, Virginia Beach, VA 23456.	February 28, 2007	515531
Washington:					
King	City of Issaquah (06–10–B001P).	March 7, 2007; March 14, 2007; *The Issaquah Press*.	The Honorable Ava Frisinger, Mayor, City of Issaquah, P.O. Box 1307, Issaquah, WA 98027.	June 13, 2007	530079
King	City of Issaquah (06–10–B407P).	March 14, 2007; March 21, 2007; *The Issaquah Press*.	The Honorable Ava Frisinger, Mayor, City of Issaquah, P.O. Box 1307, Issaquah, WA 98027.	March 26, 2007	530079
Kitsap	Unincorporated areas of Kitsap County (06–10–B516P).	March 21, 2007; March 28, 2007; *Port Orchard Independent*.	The Honorable Chris Endresen, Chairman, Kitsap County Board of Commissioners, Commissioners' Office, MS–4, 614 Division Street, Port Orchard, WA 98366.	March 27, 2007	530092

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 24, 2007.

David I. Maurstad,

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

[FR Doc. E7–10968 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7716]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

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

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Shelby	City of Pelham (07–04–1305P).	February 14, 2007; February 21, 2007; *Shelby County Reporter.*	The Honorable Bobby Hayes, Mayor, City of Pelham, P.O. Box 1419, Pelham, AL 35124.	May 23, 2007	010193
Tuscaloosa	City of Northport (06–04–C176P).	February 14, 2007; February 21, 2007; *The Northport Gazette.*	The Honorable Harvey Fretwell, Mayor, City of Newport, Northport City Hall, 3500 McFarland Boulevard, Northport, AL 35476.	March 1, 2007	010202
Alaska: Anchorage	Municipality of Anchorage (06–10–B606P).	December 21, 2006; December 28, 2006; *Anchorage Daily News.*	The Honorable Mark Begich, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, AK 99519–6650.	November 29, 2006	020005
Arizona:					
Pima	City of Tucson (06–09–BA36P).	February 15, 2007; February 22, 2007; *The Daily Territorial.*	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, AZ 85726.	January 26, 2007	040076
Pima	City of Tucson (06–09–BG63P).	December 14, 2006; December 21, 2006; *The Daily Territorial.*	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, AZ 85726.	November 22, 2006	040076
Pima	City of Tucson (07–09–0551P).	March 15, 2007; March 22, 2007; *The Daily Territorial.*	The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda Street, Tucson, AZ 85701.	February 28, 2007	040076
Arkansas:					
Benton	City of Bentonville (07–06–0537P).	February 9, 2007; February 15, 2007; *Arkansas Democrat Gazette.*	The Honorable Terry L. Coberly, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	May 17, 2007	050012
Benton	City of Lowell (07–06–0172P).	February 8, 2007; February 15, 2007; *Arkansas Democrat Gazette.*	The Honorable Perry Long, Mayor, City of Lowell, P.O. Box 979, Lowell, AR 72745.	May 10, 2007	050342
Pulaski	Unincorporated areas of Pulaski County (06–06–BF55P).	February 8, 2007; February 15, 2007; *Arkansas Democrat Gazette.*	The Honorable Floyd G. Villines, County Judge, Pulaski County Courthouse, 201 South Broadway, Little Rock, AR 72201.	May 17, 2007	050179
Sebastian	City of Fort Smith (05–06–1080P).	February 8, 2007; February 15, 2007; *Times Record.*	The Honorable C. Ray Baker, Jr., Mayor, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	March 8, 2007	055013
Sebastian	City of Fort Smith (05–06–1081P).	February 9, 2007; February 16, 2007; *Times Record.*	The Honorable C. Ray Baker, Jr., Mayor, City of Fort Smith, 623 Garrison Avenue, Fort Smith, AR 72901.	March 8, 2007	055013
California:					
Orange	City of Orange (07–09–0201P).	February 22, 2007; March 1, 2007; *The Orange County Register.*	The Honorable Carolyn V. Cavecche, Mayor, City of Orange, 300 East Chapman Avenue, Orange, CA 92866.	May 31, 2007	060228
Orange	City of Tustin (07–09–0201P).	February 22, 2007; March 1, 2007; *The Orange County Register.*	The Honorable Lou Bone, Mayor, City of Tustin, 300 Centennial Way, Tustin, CA 92780.	May 31, 2007	060235
Orange	Unincorporated areas of Orange County (07–09–0201P).	February 22, 2007; March 1, 2007; *The Orange County Register.*	The Honorable Chris Norby, Chairman, Orange County, Board of Supervisors, 333 West Santa Ana Boulevard, Santa Ana, CA 92701.	May 31, 2007	060212
San Diego	City of Poway (06–09–BE88P).	January 11, 2007; January 18, 2007; *San Diego Transcript.*	The Honorable Robert C. Emergy, Mayor, City of Poway, P.O. Box 789, Poway, CA 92074–0789.	April 19, 2007	060702
Yuba	Unincorporated areas of Yuba County (06–09–B119P).	January 18, 2007; January 25, 2007; *The Appeal-Democrat.*	Mr. Robert Bendorf, Yuba County Administrator, 915 Eighth Street, Suite 115, Marysville, CA 95901.	January 29, 2007	060427

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: El Paso	City of Colorado Springs (05–08–0638P).	February 14, 2007; February 21, 2007; *El Paso County Advertiser and News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	April 18, 2007	080060
Colorado: El Paso	City of Fountain (06–08–B110P).	January 3, 2007; January 10, 2007; *El Paso County Advertiser and News*.	The Honorable Jeri Howells, Mayor, City of Fountain, 116 South Main Street, Fountain, CO 80817.	January 18, 2007	080061
Colorado: El Paso	Unincorported areas of El Paso County (05–08–0638P).	February 14, 2007; February 21, 2007; *El Paso County Advertiser and News*.	The Honorable Sallie Clark, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903.	April 18, 2007	080059
Colorado: El Paso	Unincorporated areas of El Paso County (06–08–B110P).	January 3, 2007; January 10, 2007; *El Paso County Advertiser and News*.	The Honorable Sallie Clark, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903.	January 18, 2007	080059
Colorado: Jefferson	City of Lakewood (06–08–B627P).	January 4, 2007; January 11, 2007; *The Golden Transcript*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	December 11, 2006	085075
Colorado: Jefferson	Unincorporated areas of Jefferson County (07–08–0130P).	March 15, 2007; March 22, 2007; *The Golden Transcript*.	The Honorable J. Kevin McCasky, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419–5550.	January 22, 2007	080087
Colorado: Larimer	City of Fort Collins (06–08–B336P).	January 18, 2007; January 25, 2007; *Fort Collins Coloradoan*.	The Honorable Doug Hutchinson, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522–0580.	April 19, 2007	080102
Colorado: Larimer	Unincorporated areas of Larimer County (06–08–B336P).	January 18, 2007; January 25, 2007; *Fort Collins Coloradoan*.	The Honorable Glenn Gibson, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522–1190.	April 19, 2007	080101
Florida: Charlotte	City of Punta Gorda (07–04–1137P).	February 22, 2007; March 1, 2007; *Charlotte Sun*.	The Honorable Larry Friedman, Mayor, City of Punta Gorda, 326 West Marion Avenue, Punta Gorda, FL 33950.	January 29, 2007	120062
Florida: Charlotte	Unincorporated areas of Charlotte County (07–04–1701P).	March 15, 2007; March 22, 2007; *Charlotte Sun*.	The Honorable Bruce Loucks, County Administrator, Charlotte County, 18500 Murdock Circle, Port Charlotte, FL 33948.	February 21, 2007	120061
Florida: Collier	City of Naples (06–04–BH21P).	February 8, 2007; February 15, 2007; *Naples Daily News*.	The Honorable Bill Barnett, Mayor, City of Naples, 735 Eight Street South, Naples, FL 34102.	January 16, 2007	125130
Florida: Martin	Unincorporated areas of Martin County (06–04–C015P).	February 22, 2007; March 1, 2007; *The Stuart News*.	Mr. Duncan Ballantyne, County Administrator, Martin County, 2401 Southeast Monterey Road, Stuart, FL 34996.	May 31, 2007	120161
Florida: Pasco	Unincorporated areas of Pasco County (05–04–0987P).	February 8, 2007; February 15, 2007; *Pasco Times*.	The Honorable Ann Hildebrand, Chairman, Pasco County Board of Commissioners, 7530 Little Road, New Port Richey, FL 34654.	May 17, 2007	120230
Florida: Polk	City of Haines City (06–04–BI19P).	February 1, 2007; February 8, 2007; *The Polk County Democrat*.	The Honorable Horace West, Mayor, City of Haines City, P.O. Box 1507, Haines City, FL 33845.	January 22, 2007	120266
Florida: Walton	City of Freeport (06–04–BC49P).	January 30, 2007; February 7, 2007; *Northwest Florida Daily News*.	The Honorable J. M. Marse, Mayor, City of Freeport, P. O. Box 339, Freeport, FL 32439.	December 20, 2006	120319
Georgia: Columbia	Unincorporated areas of Columbia County (06–04–B133P).	February 21, 2007; February 28, 2007; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County, Board of Commissioners, P.O. Box 498, Evans, GA 30809.	May 30, 2007	130059
Fulton	City of Atlanta (06–04–C646P).	February 22, 2007; March 1, 2007; *Fulton County Daily Report*.	The Honorable Shirley Franklin, Mayor, City of Atlanta, 55 Trinity Avenue, Atlanta, GA 30303.	January 31, 2007	135157
Fulton	City of East Point (06–04–C646P).	February 22, 2007; March 1, 2007; *Fulton County Daily Report*.	The Honorable Joseph L. Macon, Mayor, City of East Point, 2777 East Point Street, East Point, GA 30344.	January 31, 2007	130087
Hawaii: Maui	Unincorporated areas of Maui County (05–09–A226P).	February 15, 2007; February 22, 2007; *Maui News*.	The Honorable Charmaine Tavares, Mayor, Maui County, 200 South High Street, Ninth Floor, Wailuku, Maui, HI 96793.	May 24, 2007	150003
Illinois: Cook	Village of South Barrington (06–05–BT49P).	March 1, 2007; March 8, 2007; *Daily Herald*.	Mr. Frank J. Munao, Jr., President, Village of South Barrington, Village Hall, 30 South Barrington Road, Barrington, IL 60010.	June 7, 2007	170161
Kankakee	Village of Bradley (06–05–BJ19P).	January 18, 2007; January 25, 2007; *Kankakee Daily Journal*.	The Honorable Gael K. Kent, Mayor, Village of Bradley, 147 South Michigan, Bradley, IL 60915.	December 22, 2006	170338
Kankakee	Unincorporated areas of Kankakee County (06–05–BJ19P).	January 18, 2007; January 25, 2007; *Kankakee Daily Journal*.	The Honorable Karl Kruse, Chairman, Kankakee County Board, 189 East Court Street, Fifth Floor, Kankakee, IL 60901.	December 22, 2006	170336
Lake	Village of Lake Villa (06–05–BU68P).	February 22, 2007; March 1, 2007; *The News Sun*.	The Honorable Frank M. Loffredo, Mayor, Village of Lake Villa, P.O. Box 519, Lake Villa, IL 60046.	May 31, 2007	170375

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Kansas: Sedgwick	City of Wichita (06–07–B210P).	February 15, 2007; February 22, 2007; *The Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, KS 67202.	May 24, 2007	200328
Maine: Cumberland	Town of Gorham (07–01–0160P).	January 18, 2007; January 25, 2007; *Portland Press Herald*.	The Honorable Michael J. Phinney, Chairman, Gorham Town Council, Gorham Municipal Center, 75 South Street, Gorham, ME 04038.	April 26, 2007	230047
York	City of Biddeford (06–01–B015P).	January 11, 2007; January 18, 2007; *York County Coast Star*.	The Honorable Wallace H. Nutting, Mayor, City of Biddeford, 205 Main Street, Biddeford, ME 04005.	December 15, 2006	230145
Maryland: Carroll	Unincorporated areas of Carroll County (06–03–B843P).	March 1, 2007; March 8, 2007; *Carroll County Times*.	The Honorable Julia W. Gouge, President, Carroll County, Board of Commissioners, 225 North Center Street, Room 300, Westminster, MD 21157.	March 15, 2007	240015
Michigin: Washtenaw	City of Ann Arbor (07–05–0217P).	February 22, 2007; March 1, 2007; *The Ann Arbor News*.	The Honorable John Hieftje, Mayor, City of Ann Arbor, 100 North 5th Avenue, Ann Arbor, MI 48104.	January 23, 2007	260213
Minnesota: Anoka	City of Blaine (06–05–BY83P).	February 23, 2007; March 2, 2007; *Blaine/Spring Lake Park Life*.	The Honorable Thomas Ryan, Mayor, City of Blaine, 10801 Town Square Drive NE, Blaine, MN 55449.	January 31, 2007	270007
Minnesota: Olmsted	City of Rochester (06–05–B433P).	March 8, 2007; March 15, 2007; *Post-Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, City Hall, 201 Fourth Street Southeast, Room 281, Rochester, MN 55904.	February 14, 2007	275246
Minnesota: Olmsted	Unincorporated areas of Olmsted County (06–05–B433P).	March 8, 2007; March 15, 2007; *Post-Bulletin*.	The Honorable Ken Brown, Commissioner, District 2, Olmsted County Board of Commissioners, 151 Fourth Street Southeast, Rochester, MN 55904.	February 14, 2007	270626
Minnesota: Polk	City of Crookston (07-05-1774P).	February 15, 2007; February 22, 2007; *The Crookston Daily Times*.	The Honorable Dave Genereaux, Mayor, City of Crookston, 124 North Broadway, Crookston, MN 56716.	February 26, 2007	270364
Mississippi: Rankin	Pearl River Valley Water Supply District (06–04–BN09P).	February 7, 2007; February 14, 2007; *Rankin County News*.	Mr. Benny French, P.E., PLS, General Manager, Pearl River Valley Water Supply District, P.O. Box 2180, Ridgeland, MS 39158.	February 12, 2007	280338
Mississippi: Rankin	Unincorporated areas of Rankin County (06–04–BN09P).	February 7, 2007; February 14, 2007; *Rankin County News*.	Mr. Norman McLeod, County Administrator, Rankin County, 211 East Government Street, Suite A, Brandon, MS 39042.	February 12, 2007	280142
Nevada: Clark	Unincorporated areas of Clark County (06–09–B934P).	December 14, 2006; December 21, 2006; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	March 22, 2007	320003
Nevada: Clark	City of North Las Vegas (06–09–BD79P).	December 21, 2006; December 28, 2006; *Las Vegas Review-Journal*.	The Honorable Michael L. Montandon, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, NV 89030.	November 30, 2006	320007
New Jersey: Bergen	Borough of Allendale (07–02–0297P).	February 23, 2007; March 2, 2007; *The Record*.	The Honorable Vince Barra, Mayor, Borough of Allendale, 500 West Crescent Avenue, Allendale, NJ 07401.	February 26, 2007	340019
New York: Westchester.	City of New Rochelle (06–02–B832P.	January 25, 2007; February 1, 2007; *The Journal News*.	The Honorable Noam Bramson, Mayor, City of New Rochelle, 515 North Avenue, New Rochelle, NY 10801.	July 5, 2007	360922
North Carolina: Lee	City of Sanford (06–04–BM79P).	January 18, 2007; January 25, 2007; *The Sanford Herald*.	The Honorable Cornelia Olive, Mayor, City of Sanford, P.O. Box 3729, Sanford, NC 27331.	December 21, 2006	370143
North Carolina: Mecklenburg.	City of Charlotte (06–04–BP55P).	January 18, 2007; January 25, 2007; *The Charlotte Observer*.	The Honorable Patrick McCrory, Mayor, City of Charlotte, 600 East Fourth Street, Charlotte, NC 28202.	September 29, 2006	370159
North Carolina: Orange.	Unincorporated areas of Orange County (06–04–BQ22P).	January 17, 2007; January 24, 2007; *The Chapel Hill News*.	The Honorable Barry Jacobs, Chairman, Orange County Board of Commissioners, 2105 Moorefields Road, Hillsborough, NC 27278.	February 3, 2007	370342
Ohio: Greene	Unincorporated areas of Greene County (06–05–BJ18P).	December 30, 2006; January 7, 2007; *Xenia Daily Gazette*.	The Honorable Ralph Harper, President, Greene County Board of Commissioners, 35 Greene Street, Xenia, OH 45385.	April 9, 2007	390193
Ohio: Montgomery	City of Kettering (06–05–BJ18P).	December 30, 2006; January 7, 2007; *Kettering-Oakwood Times*.	The Honorable Don Patterson, Mayor, City of Kettering, 3600 Shroyer Road, Kettering, OH 45429.	April 9, 2007	390412
Oklahoma: Rogers	Unincorporated areas of Rogers County (06–06–BD69P).	February 15, 2007; February 22, 2007; *Claremore Daily Progress*.	The Honorable Kenneth Crutchfield, County Commissioner, Rogers County, 219 South Missouri, Claremore, OK 74017.	May 24, 2007	405379
Oklahoma: Washington.	Unincorporated areas of Washington County (06–06–BD69P).	February 15, 2007; February 22, 2007; *Claremore Daily Progress*.	The Honorable Linda D. Herndon, County Commissioner, Washington County, Washington County Administration Office, 400 South Johnstone, Room 201, Bartlesville, OK 74003.	May 24, 2007	400459

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Tulsa	City of Tulsa (06–06–BH35P).	February 8, 2007; February 15, 2007; *Tulsa World*.	The Honorable Kathy Taylor, Mayor, City of Tulsa, 200 Civic Center, 11th Floor, Tulsa, OK 74103.	May 17, 2007	405381
Oregon: Multnomah	City of Fairview (06–10–B082P).	December 20, 2006; December 27, 2006; *The Gresham Outlook*.	The Honorable Mike Weatherby, Mayor, City of Fairview, 1300 Northeast Village Street, Fairview, OR 97024.	March 28, 2007	410180
Puerto Rico: Puerto Rico.	Commonwealth of Puerto Rico (07–02–0109P).	March 1, 2007; March 8, 2007; *El San Juan Star*.	The Honorable Anibal Acevedo-Vila, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, PR 00901.	June 7, 2007	720000
South Carolina: Charleston.	Town of Mount Pleasant (07–04–0382P).	February 14, 2007; February 21, 2007; *Moultrie News*.	The Honorable Harry M. Hallman, Jr., Mayor, Town of Mount Pleasant, Post Office Box 745, Mount Pleasant, SC 29465.	January 29, 2007	455417
South Carolina: Horry.	Unincorporated areas of Horry County (06–04–B279P).	January 18, 2007; January 25, 2007; *Horry Independent*.	The Honorable Elizabeth Gilland, Chairmain, Board of Commissioners Horry County, 1511 Elm Street, Conway, SC 29526.	April 26, 2007	450104
South Carolina: Lexington.	Unincorporated areas of Lexington County (06–04–BI42P).	February 22, 2007; March 1, 2007; *The Lexington County Chronicle*.	The Honorable M. Todd Cullum, Chairman, Lexington County Council, 212 South Lake Drive, Lexington, SC 29072.	January 31, 2007	450129
South Dakota: Lawrence.	City of Spearfish (06–08–B498P).	February 15, 2007; February 22, 2007; *Black Hills Pioneer*.	The Honorable Jerry Krambech, Mayor, City of Spearfish, 223 Vermont Street, Spearfish, SD 57783.	January 25, 2007	460046
South Dakota: Pennington.	Unincorporated areas of Pennington County (06–08–B381P).	January 18, 2007; January 25, 2007; *Rapid City Journal*.	The Honorable Ken Davis, Chairman, Pennington County Board of Commissioners, 315 Saint Joseph Street, Suite 156, Rapid City, SD 57701.	January 22, 2007	460064
Tennessee: Shelby	Unincorporated areas of Shelby County (04–04–A415P).	January 11, 2007; January 18, 2007; *The Daily News*.	The Honorable A. C. Wharton, Jr., Mayor, Shelby County, 160 North Main Street, Suite 850, Memphis, TN 38103.	April 19, 2007	470214
Texas: Collin	Town of Fairview (06–06–B959P).	January 11, 2007; January 18, 2007; *McKinney Courier Gazette*.	The Honorable Sim Israeloff, Mayor, Town of Fairview, 500 South Highway 5, Fairview, TX 75069.	April 19, 2007	481069
Texas: Collin	Unincorporated areas of Collin County (06–06–B959P).	January 11, 2007; January 18, 2007; *McKinney Courier Gazette*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, Suite 626, McKinney, TX 75069.	April 19, 2007	480130
Texas: Dallas	City of Irving (06–06–BD58P).	March 8, 2007; March 15, 2007; *Dallas Morning News*.	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 W. Irving Blvd., Irving, TX 75060.	June 14, 2007	480180
Texas: Denton	City of Denton (06–06–BH76P).	March 15, 2007; March 22, 2007; *Denton Record-Chronicle*.	The Honorable Perry McNeill, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	February 27, 2007	480194
Texas: Denton	City of Denton (06–06–BJ01P).	February 15, 2007; February 22, 2007; *Denton Record-Chronicle*.	The Honorable Perry McNeill, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	January 26, 2007	480194
Texas: Denton	Town of Shady Shores (06–06–BJ01P).	February 15, 2007; February 22, 2007; *Denton Record-Chronicle*.	The Honorable Olive Stephens, Mayor, Town of Shady Shores, P.O. Box 362, Lake Dallas, TX 75065.	January 26, 2007	481135
Texas: Erath	City of Stephenville (07–06–0505P).	January 25, 2007; February 1, 2007; *Stephenville Empire-Tribune*.	The Honorable Rusty Jergins, Mayor, City of Stephenville, 298 West Washington Street, Stephenville, TX 76401.	May 3, 2007	480220
Texas: Fort Bend, Harris and Waller.	City of Katy (06–06–B244P).	February 15, 2007; February 22, 2007; *Fort Bend Herald*.	The Honorable Doyle G. Callender, Mayor, City of Katy, P.O. Box 617, Katy, TX 77492.	February 26, 2007	480301
Texas: Fort Bend	Village of Pleak (06–06–BG61P).	February 22, 2007; March 1, 2007; *Fort Bend Herald*.	The Honorable Margie Krenek, Mayor, Village of Pleak, 6621 FM 2218 South, Richmond, TX 77469.	May 31, 2007	481615
Texas: Fort Bend	City of Rosenberg (06–06–BG61P).	February 22, 2007; March 1, 2007; *Fort Bend Herald*.	The Honorable Joe M. Gurecky, Mayor, City of Rosenberg, P.O. Box 32, Rosenberg, TX 77471.	May 31, 2007	480232
Texas: Fort Bend	Unincorporated areas of Fort Bend County (06–06–B244P).	February 15, 2007; February 22, 2007; *Fort Bend Herald*.	The Honorable Robert E. Hebert, Ph.D., Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	February 26, 2007	480228
Texas: Fort Bend	Unincorporated areas of Fort Bend County (06–06–BG61P).	February 22, 2007, March 1, 2007; *Fort Bend Herald*.	The Honorable Robert E. Hebert, Ph. D., Judge, Fort Bend County, 301 Jackson, Richmond, TX 77469.	May 31, 2007	480228
Texas: Harris	City of Houston (06–06–BJ02P).	February 15, 2007, February 22, 2007; *Houston Chronicle*.	The Honorable Bill White, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	January 25, 2007	480296
Texas: Harris	Unincorporated areas of Harris County (06–06–BJ02P).	February 15, 2007; February 22, 2007; *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	January 25, 2007	480287
Texas: Hays	City of San Marcos (06–06–B107P).	January 17, 2007; January 24, 2007; *The Free Press*.	The Honorable Susan Clifford-Narvaiz, Mayor, City of San Marcos, 630 East Hopkins, San Marcos, TX 78666.	January 22, 2007	485505

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Hays	Unincorporated areas of Hays County (06–06–B107P).	January 17, 2007; January 24, 2007; *The Free Press*.	The Honorable Jim Powers, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	January 22, 2007	480321
Texas: Hays	City of Granbury (06–06–BG36P).	February 14, 2007; February 21, 2007; *Hood County News*.	The Honorable David Southern, Mayor, City of Granbury, 116 West Bridge Street, Granbury, TX 76048.	January 23, 2007	480357
Texas: Johnson	City of Burleson (05–06–0645P).	January 10, 2007; January 17, 2007; *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	January 19, 2007	485459
Texas: Jones and Taylor.	City of Abilene (06–06–BD70P).	January 18, 2007; January 25, 2007; *Abilene Reporter-News*.	The Honorable Norm Archibald, Mayor, City of Abilene, 717 Byrd Drive, Abilene, TX 79601.	April 19, 2007	485450
Texas: Kendall	Unincorporated areas of Kendall County (06–06–B858P).	January 19, 2007; January 26, 2007; *The Boerne Star*.	The Honorable Eddie John Vogt, Kendall County Judge, Kendall County Courthouse, 201 East San Antonio Street, Boerne, TX 78006.	April 27, 2007	480417
Texas: Lubbock	City of Lubbock (06–06–BD46P).	March 8, 2007; March 15, 2007; *Lubbock Avalanche-Journal*.	The Honorable David Miller, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457.	June 14, 2007	480452
Texas: Tarrant	City of Fort Worth (06–06–B718P).	November 30, 2006; December 7, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 8, 2007	480596
Texas: Tarrant	City of Fort Worth (06–06–BG38P).	October 26, 2006; November 2, 2006; *North West Tarrant County Times-Record*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 1, 2007	480596
Texas: Tarrant	City of Fort Worth (06–06–BH34P).	February 8, 2007; February 15, 2007; *Denton Record-Chronicle*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	May 17, 2007	480596
Texas: Tarrant	City of Fort Worth (06–06–BK38P).	March 1, 2007; March 8, 2007; *Fort Worth Star-Telegram*.	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	June 7, 2007	480596
Texas: Tarrant	City of Fort Worth (07–06–0103P).	November 30, 2006; December 7, 2006; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 8, 2007	480596
Texas: Tarrant	City of Saginaw (06–06–BG38P).	October 26, 2006; November 2, 2006; *North West Tarrant County Times-Record*.	The Honorable Gary Brinkley, Mayor, City of Saginaw, 333 West McLeroy Boulevard, Saginaw, TX 76179.	February 1, 2007	480610
Texas: Tarrant	Unincorporated areas of Tarrant County (06–06–B718P).	November 30, 2006; December 7, 2006; *Fort Worth Star-Telegram*.	The Honorable Tom Vandergriff, County Judge, Tarrant County, 100 East Weatherford Street, Suite 502A, Fort Worth, TX 76196.	March 8, 2007	480582
Texas: Travis	City of Austin (06–06–B467P).	January 18, 2007; January 25, 2007; *Austin American-Statesman*.	The Honorable Will Wynn, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	December 29, 2006	480264
Texas: Williamson	City of Cedar Park (06–06–BI70P).	February 21, 2007; February 28, 2007; *Hill County News*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, City Hall, 600 North Bell Boulevard, Cedar Park, TX 78613.	May 30, 2007	481282
Virginia: Fauquier	Unincorporated areas of Fauquier County (06–03–B895P).	February 7, 2007; February 14, 2007; *Fauquier Times*.	The Honorable Ray Graham, Chairman, Fauquier County Board of Supervisors, Warren Green Building, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	January 18, 2007	510055

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 15, 2007.

David I. Maurstad,

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

[FR Doc. E7–10969 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2091; MB Docket No. 03–120; RM–10839]

Radio Broadcasting Services; Chattanooga, Halls Crossroads, Harrogate, and Lake City, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: The staff approves the withdrawal of a petition for reconsideration in this FM allotment rulemaking proceeding and finds no reason for further consideration of the matters raised therein. See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 03–120, adopted May 16, 2007, and released May 18, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete

text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The *Report and Order* in this proceeding granted a counterproposal filed by JBD Incorporated and dismissed a rulemaking petition filed by Ronald C. Meredith. The *Report and Order* substitued Channel 244A for Channel 243A at Harrogate, Tennessee, reallotted Channel 244A to Halls Crossroads, Tennessee, and modified the license for Station WMYL(FM), accordingly. The withdrawal of the petition for reconsideration complies with Section 1.420(j) of the Commission's rules because Reynolds Technical Associates, LLC has documented that neither it nor its principals have or will receive any consideration in exchange for the withdrawal of its petition. *See* 69 FR 34114 (June 18, 2004).

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the petition for reconsideration was dismissed).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 07–2818 Filed 6–6–07; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XA68

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

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 4, 2007, through 1200 hrs, A.l.t., July 1, 2007.

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

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

The second seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 100 metric tons as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007), for the period 1200 hrs, A.l.t., April 1, 2007, through 1200 hrs, A.l.t., July 1, 2007.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2007 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.'' This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 31, 2007.

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

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

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

Dated: June 1, 2007.

James P. Burgess,

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

[FR Doc. 07–2834 Filed 6–4–07; 2:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 109
Thursday, June 7, 2007

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

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2007–14]

Federal Election Activity and Non-Federal Elections

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed revisions to the definition of the phrase ''in connection with an election in which a candidate for Federal office appears on the ballot.'' This phrase is part of the definition of ''Federal election activity'' (''FEA'') and is used to determine whether voter identification, get-out-the-vote activity, and generic campaign activities are FEA, subject to certain funding limits and prohibitions under the Federal Election Campaign Act of 1971 (''FECA''). The proposed rule would make permanent, with certain minor revisions, an Interim Final Rule that excluded from FEA certain voter identification and get-out-the-vote activities conducted exclusively for non-Federal elections. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before July 9, 2007.

ADDRESSES: All comments must be in writing, must be addressed to Mr. Ron B. Katwan, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to *fea.nonfederal@fec.gov*. If e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper copy comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Ron B. Katwan, Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (2002) (''BCRA''), amended FECA by adding a new term, ''Federal election activity,'' to describe certain activities that State, district, and local party committees must pay for with either Federal funds or a combination of Federal and Levin funds.[1] *See* 2 U.S.C. 431(20) and 441i(b)(1). The FEA requirements apply to all State, district, and local party committees and organizations, regardless of whether they are registered as political committees with the Commission. The term also affects fundraising on behalf of tax-exempt organizations.[2]

A. FEA Statutory and Regulatory Provisions

BCRA specifies that voter identification, get-out-the-vote activity (''GOTV activity''), and generic campaign activity (collectively ''Type II FEA'')[3] constitute FEA only when these activities are conducted ''in connection with an election in which a candidate for Federal office appears on the ballot.'' 2 U.S.C. 431(20)(A)(ii). Commission regulations define ''in connection with an election in which a candidate for Federal office appears on the ballot'' as the period of time beginning on the earliest filing deadline for access to the primary election ballot for Federal candidates in each particular State, and ending on the date of the general election, up to and including any runoff date. *See* 11 CFR 100.24(a)(1)(i). For States that do not hold primary elections, the period begins on January 1 of each even-numbered year. *Id.* For special elections in which Federal candidates are on the ballot, the period begins when the date of the special election is set and ends on the date of the special election. *See* 11 CFR 100.24(a)(1)(ii).

Certain activities by State, district and local parties are exempt from the definition of FEA by BCRA and Commission regulations. *See* 2 U.S.C. 431(20)(B); 11 CFR 100.24(c). One of these exceptions covers public communications that refer solely to State or local candidates and do not promote, support, attack or oppose a Federal candidate, as long as these communications do not constitute voter registration, voter identification or GOTV activity. *See* 2 U.S.C. 431(20)(B)(i); 11 CFR 100.24(c)(1). Costs of traditional ''grassroots campaign materials'' such as buttons, bumper stickers, yard signs and posters that name only State or local candidates are also excluded from the definition of FEA. *See* 2 U.S.C. 431(20)(B)(iv); 11 CFR 100.24(c)(4).

B. Interim Final Rule for Voter Identification and GOTV Activities Connected to Non-Federal Elections

One of the principal sponsors of BCRA described its FEA provisions as ''a balanced approach which addresses the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties,'' while ''not attempt[ing] to regulate State and local party spending where this danger is not present, and where State and local parties engage in purely non-Federal activities.'' 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (statement of Sen. McCain). Because Type II FEA is limited to activities in connection with an election

[1] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g). ''Levin funds'' are funds raised by State, district, and local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

[2] National, State, district, and local party committees are prohibited from soliciting or directing non-Federal funds to tax-exempt entities organized under 26 U.S.C. 501(c) that engage in FEA or make other disbursements or expenditures in connection with a Federal election. *See* 2 U.S.C. 441i(d)(1). Also, Federal candidates and officeholders may make only limited solicitations for funds on behalf of tax-exempt entities organized under 26 U.S.C. 501(c) whose principal purpose is to conduct certain types of FEA. *See* 2 U.S.C. 441i(e)(4).

[3] Commission regulations specifically define each kind of Type II FEA activity. *See* 11 CFR 100.24(a)(3) (GOTV activity), 100.24(a)(4) (voter identification), 100.25 (generic campaign activity).

in which a Federal candidate is on the ballot, the Commission interprets the FEA provisions of BCRA as not regulating voter identification and GOTV activities by State, district, and local political party committees and certain other groups that are exclusively in connection with non-Federal elections.

Some municipalities, counties, and States conduct entirely separate non-Federal elections in even-numbered years that fall within the Type II FEA time periods based on Federal elections held later that year.[4] The Type II FEA time period in some States begins almost a year before the general election, and the start date of this period is likely to extend even farther back into odd-numbered years as many States move up Presidential primaries into the first few months of the Presidential election year. Thus, the potential also exists for more activity by State, district and local parties connected to non-Federal elections held in odd-numbered years to be swept into the FEA restrictions based on the Type II FEA time periods.[5] The effects of the timing of the Type II FEA time period is compounded by recent revisions to the FEA definitions of ''GOTV activity'' and ''voter identification,'' which bring non-partisan associations of local candidates within the FEA funding requirements if their activity targets their local election and occurs within the Type II FEA time period. *See Final Rules on the Definition of Federal Election Activity,* 71 FR 8926, 8931 (Feb. 22, 2006) (''*2006 FEA Final Rules*'').[6]

In light of these considerations, the Commission published an Interim Final Rule on March 22, 2006 refining the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' to specify when activities and communications are in connection with a *non-Federal* election, instead of a Federal election, and are therefore not Type II FEA. *See Interim Final Rule Regarding Definition of Federal Election Activity,* 71 FR 14357 (Mar. 22, 2006) (''*Interim Final Rule*'').[7] The Interim Final Rule added new paragraph (a)(1)(iii) to 11 CFR 100.24 to ''ensure[] that the FEA requirements do not extend to activities that are solely in connection with these upcoming non-Federal elections and are therefore beyond the scope of FECA.'' *See Interim Final Rule,* 71 FR at 14357. New section 100.24(a)(1)(iii) exempts ''any activity or communication that is in connection with a non-Federal election that is held on a date separate from a date of any Federal election'' and that refers exclusively to: (1) Non-Federal candidates participating in the non-Federal election, provided the non-Federal candidates are not also Federal candidates; (2) ballot referenda or initiatives scheduled for the date of the non-Federal election; or (3) the date, polling hours and locations of the non-Federal election. *See* 11 CFR 100.24(a)(1)(iii)(A)(1)–(3); *Interim Final Rule,* 71 FR at 14359–60.

This rule was promulgated as an Interim Final Rule and expires on September 1, 2007. *See* 11 CFR 100.24(a)(1)(iii)(B); *Interim Final Rule*, 71 FR at 14358. The Commission sought public comment on the Interim Final Rule, and received two comments. The comments are available at *http://www.fec.gov/law/law_rulemakings.shtml* under the heading ''Definition of Federal Election Activity.''

II. Proposed Revisions to 11 CFR 100.24(a)(1)—Type II FEA Time Periods

The proposed rule would make permanent section 100.24(a)(1)(iii) as added by the Interim Final Rule (with some stylistic and technical changes explained below). The Commission seeks public comment on whether non-Federal candidates and State, district or local party committees conducted voter identification and GOTV activities under the exemption in the Interim Final Rule in the 2006 election cycle, and invites commenters to suggest modifications of the proposed rule based on their experience, if any, with the Interim Final Rule. Would such a rule exclude ''purely non-Federal'' voter identification and GOTV activities by State, district and local committees? Would such a rule be consistent with Congressional intent?

A. Proposed 11 CFR 100.24(a)(1)(iii)—Activities Solely in Connection With Certain Non-Federal Elections

First, the proposed rule provides that voter identification or GOTV activities that are ''*solely* in connection with a non-Federal election held on a date separate from any Federal election'' are exempt from Type II FEA. *See* proposed 11 CFR 100.24(a)(1)(iii) (emphasis added). For example, a GOTV program offering to transport voters to the polls on the day of an exclusively non-Federal election would be eligible for the proposed exemption. However, a voter identification program collecting information both about voters' preferences in a non-Federal election in March and a Federal primary election in April would not qualify. Thus, the proposed rule would not exclude all activities by State, district and local parties in the weeks (or months) between the start of the Type II FEA time period and a non-Federal election. The Commission seeks comment on this approach.

In addition, the proposed rule would only apply if the non-Federal election were held on a wholly separate date from any Federal election. *See* proposed 11 CFR 100.24(a)(1)(iii). This proposed rule is based on the premise that this voter identification and GOTV activity for non-Federal elections held on a different date from any Federal election will have no effect on previous or subsequent Federal elections. The Commission intends the proposed exemption to be narrowly tailored and not to apply to activities that are also in connection with a Federal election.[8] For example, if a GOTV communication provides the date of a non-Federal election and offers transportation to voters for such a non-Federal election, is it likely that such activity would have any effect on voter turnout for a Federal election held on a separate, and perhaps much later, date? The Commission seeks comments, especially in the form of empirical data, on whether voter identification and GOTV efforts in connection with a non-Federal election have a measurable effect on voter turnout in a subsequent Federal election, or otherwise confer benefits on

[4] *See, e.g., http://www.sbe.virginia.gov/cms/documents/06_10Calendar.pdf* (Virginia municipal elections); *http://www.state.tn.us/sos/election/2008%20ElectionScheduleevdatesandreg.pdf* (Tennessee county elections); *http://elections.state.wi.us/docview.asp?docid=2924&locid=47* (Wisconsin county and judicial elections); *http://www.lavote.net/VOTER/PDFS/SCHEDULED_ELECTIONS_2008.pdf* (LA County municipal elections).

[5] *See, e.g., http://www.sbe.virginia.gov/cms/documents/06_10Calendar.pdf* (Virginia state-wide election); *http://elect.ky.gov/NR/rdonlyres/F98ADBAA–79E2–4D25–AA35–A85ABB921BEC/0/electionschedule.pdf* (Kentucky state-wide officer election); *http://vote.nyc.ny.us/electioncalendar.html* (New York City election); *http://www.usmayors.org/uscm/elections/electioncitiesfall2007.pdf* (various municipal elections).

[6] The district court ruling in *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd,* 414 F.3d 76 (D.C. Cir. 2005), required certain changes to the rules defining GOTV activity and voter identification activity at 11 CFR 100.24(a)(3) and (a)(4).

[7] A proposed exception to the Type II FEA time periods for activity in the time period leading up to a municipal election was included in the proposed rules but was not adopted. *See Notice of Proposed Rulemaking on the Definition of Federal Election Activity,* 70 FR 23068, 23071–72 (May 4, 2005).

[8] The Interim Final Rule did not include the word ''solely,'' but explained that ''[a]ny activity that is also in connection with a Federal election renders the interim final rule inapplicable.'' *Interim Final Rule,* 71 FR at 14359–60.

Federal candidates. Are there any relevant data from the 2006 elections to indicate whether activities conducted under the interim rule had any effect on turnout in 2006 Federal elections?

Should the exemption take into account the proximity of the next Federal election? For example, should the rule distinguish between situations where the next Federal election is only six days later, as opposed to six months?

The proposed exemption would not extend to any activities conducted in connection with a non-Federal election held on the same date as a Federal election, even if the activity does not refer to any Federal candidates. Are there certain conditions under which an activity in connection with a non-Federal election held on the same date as a Federal election should also be exempted from the Type II FEA time periods? For example, should the proposed rule apply if both elections were held at the same polling sites but used separate ballots?

B. Proposed 11 CFR 100.24(a)(1)(iii)(A)–(C)—Content of Voter Identification and GOTV Communications

The final requirement to be eligible for the proposed exemption is that the voter identification or GOTV activity must involve a communication that refers exclusively to one or more of the following: (1) The non-Federal candidates on the non-Federal election ballot who are not also Federal candidates; (2) ballot initiatives or referenda included in the non-Federal election; or (3) the date, times, or polling locations of the non-Federal election.[9] *See* proposed 11 CFR 100.24(a)(1)(iii)(A)–(C). This proposed requirement implements proposed section 100.24(a)(1)(iii)'s general restriction that the voter identification or GOTV activity be solely in connection with the non-Federal election. The proposed rule's formulation is also consistent with statutory exclusions from the definition of FEA that are limited to certain types of activity that refer only to State or local candidates, as discussed above. *See* 2 U.S.C. 431(20)(B)(i) and (iv); 11 CFR 100.24(c)(1) and (4). Should the ballot initiative prong be limited to ballot issues that have no impact on Federal elections?

The Commission seeks comments on whether this proposed list of subjects in proposed section 100.24(a)(1)(iii)(A) through (C) should be expanded or narrowed. Should the Commission require that communications include a reference to the date of the non-Federal election for the proposed exemption to apply? Should the exception be expanded to include communications discussing specific issues that are exclusively a state or local concern? Should ''the date, polling hours, or polling locations of the non-Federal election'' be defined to include absentee ballot or vote-by-mail information?

With respect to candidate references, the proposed rule would specify that if a non-Federal candidate is also seeking Federal office and satisfies FECA's definition of ''candidate,'' then the proposed exemption would not apply. *See* proposed 11 CFR 100.24(a)(1)(iii)(A). The proposed rule would apply to communications containing specific references to non-Federal candidates by name, nickname, photograph or other likeness, as well as to general references to non-Federal candidates by party. For example, assuming that the non-Federal election is held on a date separate from a Federal election, a GOTV phone bank that urges voters to vote for ''Smith for Mayor'' and that also refers to ''the great Democratic team'' would qualify under the proposed rule. The proposed exemption would also apply to a communication that otherwise meets the definition of GOTV [10] if such a communication also includes language such as ''Vote Republican on May 5'' even though no individual non-Federal candidate is mentioned by name, because it refers exclusively to non-Federal candidates on the ballot on the date of the non-Federal election. The Commission seeks comment on this approach. Moreover, should the exception be limited to cover only references to clearly identified non-Federal candidates?

With regard to references to the date or the polling hours or the polling locations of the non-Federal election, this proposed rule would revise the Interim Final Rule to clarify that it is not necessary to include all three categories of information in order to qualify for the proposed exemption. For example, a GOTV communication that refers only the date of the non-Federal election without any information regarding polling hours or locations would satisfy this proposed requirement. The Commission seeks comment on this approach.

C. Type II FEA Activity Included in Proposed Rule

As discussed above, three kinds of activity are governed by the Type II FEA time periods in 11 CFR 100.24(a)(1): voter identification, GOTV, and generic campaign activity. *See* 2 U.S.C. 431(20)(A)(ii). The proposed rule would only apply to voter identification and GOTV activity in connection with non-Federal elections. *See* proposed 11 CFR 100.24(a)(1)(iii). The Commission seeks comment on this approach. These types of activities, such as identifying voter preferences for updating a voter list or phone calls reminding voters to vote for a particular candidate on Election Day, are usually for the purpose of promoting specific candidates and can be conducted solely in connection with a non-Federal election.

The proposed rule does not exempt generic campaign activity. Generic campaign activity is defined as ''a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.'' *See* 2 U.S.C. 431(21); 11 CFR 100.25. For example, ''Vote for the Democrats on May 4th'' could constitute generic campaign activity under this definition. The Commission notes that some generic campaign activity could be presumed to be in connection with both Federal and non-Federal elections. Should the Commission include generic campaign activity in the final rule? How could the Commission draft such a rule to ensure that only generic campaign activity affecting (and made solely in connection with) non-Federal elections is exempted? Does the inclusion of the phrase ''on May 4th'' in the above example serve to ensure that the communication will affect only the election held on May 4th? Alternatively, should generic campaign activity be excluded from the final rule?

Although voter identification is included in the proposed rule, initial acquisition or purchase of voter lists generally would not meet the requirements of the proposed rule because most State, district and local party committees and organizations will acquire voter lists for use in connection with more than one election. However, if a State, district, or local party committee or organization were able to show that it acquired a voter list to conduct GOTV activities and/or voter identification solely for a non-Federal election held on a date separate from

[9] Under Commission regulations, ''voter identification'' activity includes ''acquiring information about potential voters'' and creating or modifying voter lists with information regarding ''voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates.'' *See* 11 CFR 100.24(a)(4). GOTV activity includes contacting voters ''to assist them in engaging in the act of voting,'' such as providing information about date, times and locations of polling places and offering transport to polling places. *See* 11 CFR 100.24(a)(3).

[10] *See* 11 CFR 100.24(a)(3) (2006); *Final Rule: Definition of Federal Election Activity,* 71 FR 8926 (Feb. 22, 2006); Advisory Opinion 2006–19 (Los Angeles County Democratic Party Central Committee).

any Federal election, acquisition of the voter list could meet the requirements of the proposed rule.[11]

To qualify for the proposed exemption, the voter list must be the closest available to the list of eligible voters in the qualifying non-Federal election. For example, a county-wide voter list may not be the closest matching voter list for some non-Federal elections (*e.g.*, a municipal election), unless there were no more specific list available. Choosing a list of voters that goes beyond the voters participating in a municipal election would demonstrate that the voter identification program is not exclusively in connection with the municipal election. Accordingly, the costs of such a voter list would be treated as FEA. Are there situations in which this conclusion would not be warranted? For example, if the smaller voter list were significantly more expensive than the larger list, should acquisition of the larger list be permitted?

Similarly, if a list is acquired and used for a non-Federal election, but is then also used for any activity in connection with a subsequent Federal election, or for a non-Federal election held on the same date as a Federal election, the acquisition of the list would not meet the requirements of the proposed rule and the cost of the voter list would be treated as FEA. Should the party organization be permitted to allocate the cost of the list in proportion to its use in connection with non-Federal and Federal elections?

The Commission seeks comment on this approach to voter list acquisition under the proposed rule. Is it feasible for State, district and local parties to show that the acquisition of a voter list was solely in connection with a non-Federal election by tracking when a certain voter list is ''used'' in connection with certain elections? Section 100.24(a)(4) states that the date the list was purchased governs whether the costs of the voter list must be treated as FEA, regardless of the party's use of that list. However, the proposed exemption for voter identification would depend upon when and how the party uses a voter list. Is the proposed rule's approach to voter list acquisition inconsistent with the general definition of ''voter identification?''

How should the Commission apply the proposed rule to other types of voter identification activities, such as updating a voter list with revised contact information or voter preferences? Should a State, district or local party that expends time and resources to update and add voter information to a list in connection with a non-Federal election be barred from using updated information in subsequent Federal elections, or would the costs be allocated if the list is used in a subsequent Federal election? As an alternative, should the Commission eliminate voter list acquisition and maintenance, *i.e.* voter identification, from the proposed exemption?

D. Allocating the Costs for Activity Under the Proposed Exemption

Although voter identification and GOTV activities meeting the requirements of the proposed rule would not be considered FEA, a State, district or local party committee may be required to pay the costs of those activities using a ratio of Federal and non-Federal funds under the Commission's existing allocation rules at 11 CFR 106.7. State, district or local party committees that conduct activities in connection with non-Federal elections, but do not conduct any activity in connection with Federal elections, are not subject to the allocation rules in section 106.7. *See* 11 CFR 106.7(b). Under the proposed rule and section 106.7, those organizations may continue to pay for the activities described in the proposed rule entirely with non-Federal funds. However, State, district, and local political party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections during an election cycle are required to use an allocable mix of Federal and non-Federal funds to pay for certain expenses that are not FEA pursuant to 11 CFR 100.24. See 11 CFR 106.7(b) and (c).[12]

Section 106.7(c) lists five categories of costs which must be allocated between Federal and non-Federal funds according to specific ratios: (1) Certain salaries and wages; (2) administrative costs; (3) exempt party activities that are not FEA (such as slate cards and sample ballots); (4) certain fundraising costs; and (5) certain voter drive activities that are not FEA or party exempt activities. Some voter identification and GOTV activities that are eligible for the proposed exemption may also qualify as allocable voter drive activities under section 106.7(c)(5). Section 106.7(c)(5) requires allocation of certain voter identification, voter registration, GOTV activities, and any other activities that urge the general public to register or vote, or that promote or oppose a political party without promoting or opposing a Federal or non-Federal candidate. Thus, for example, a GOTV communication that exclusively refers to the date and polling location for a non-Federal election held on a date separate from any Federal election would be eligible for the proposed exemption under proposed section 100.24(a)(1)(iii)(C). This GOTV communication would, however, also be considered voter drive activity subject to allocation under section 106.7(c)(5) because it is not FEA or exempt party activity and it encourages the general public to vote without promoting or opposing any Federal or non-Federal candidates.

Thus, even under the proposed rule, use of non-Federal funds would be limited for those voter identification and GOTV activities that are conducted ''solely in connection with a non-Federal election,'' but also qualify as allocable voter drive activity. The Commission seeks comment on this application of the allocation rules to activities eligible for the proposed exemption.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by this proposed rule are State, district, and local political party committees, which are not ''small entities'' under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of ''small organization,'' which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally

[11] State, district and local party committees would also have to use the voter list for a communication that refers exclusively to one or more of the three topics listed in proposed section 100.24(a)(1)(iii) (A) through (C), as discussed above.

[12] Pursuant to 11 CFR 106.7(b), political party organizations that are not political committees under FECA may establish separate Federal and non-Federal accounts or use a ''reasonable accounting method approved by the Commission'' to allocate their voter drive expenses between Federal and non-Federal funds. As an alternative to allocating expenses, party committees may pay allocable expenses entirely with Federal funds. See 11 CFR 106.7(b)

considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered ''small organizations,'' the number affected by this proposed rule is not substantial. Finally, the proposed rule would operate to relieve funding restrictions, which reduces the economic impact on any affected entities.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. In § 100.24, paragraph (a)(1)(iii) would be revised to read as follows:

§ 100.24 Federal Election Activity (2 U.S.C. 431(20)).

(a) * * *

(1) * * *

(iii) Notwithstanding paragraphs (a)(1)(i) and (ii) of this section, in connection with an election in which a candidate for Federal office appears on the ballot does not include any voter identification or get-out-the-vote activity that is solely in connection with a non-Federal election held on a date separate from any Federal election, and that involves a communication that refers exclusively to:

(A) Non-Federal candidates participating in the non-Federal election, provided the non-Federal candidates are not also Federal candidates;

(B) Ballot referenda or initiatives scheduled for the date of the non-Federal election; or

(C) The date, polling hours or polling locations of the non-Federal election.

* * * * *

Dated: June 1, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–10994 Filed 6–6–07; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28134; Airspace Docket No. 07–ASW–1]

RIN 2120–AA66

Proposed Revision of Jet Routes J–29 and J–101; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Jet Routes J–29 and J–101 over the South Central United States in support of the Houston Area Air Traffic System Project. These actions would allow for more effective utilization of airspace and would enhance the management of aircraft operations over the Houston terminal area.

DATES: Comments must be received on or before July 23, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2007–28134 and Airspace Docket No. 07–ASW–1, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–28134 and Airspace Docket No. 07-ASW–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–28134 and Airspace Docket No. 07–ASW–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov,* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Central Service Center, 2601 Meacham Blvd. Fort Worth, TX 76137–4298.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

As part of the Houston Area Air Traffic System Project, a review of aircraft operations has identified a need to revise the jet route structure over the South Central United States by realigning jet airways J–29 and J–101. The FAA believes this action would

allow for more effective utilization of airspace and would enhance the management of aircraft operations over the Houston terminal area. Specifically, the action would segregate departure traffic and facilitate the development of additional departure procedures from the greater Houston terminal area, thereby increasing departure capacity.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revise J–29 and J–101 over the South Central United States. Specifically, this action proposes to revise J–29 between the Humble, TX, VORTAC and the El Dorado, AR, VORTAC, and revise J–101 between the Lufkin, TX, VORTAC and Little Rock, AR, VORTAC. This action would allow for more effective utilization of airspace and would enhance the management of aircraft operations over the Houston terminal area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9P, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Order.

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

Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–29 [Revised]

From the INT of the United States/Mexican Border and the Corpus Christi, TX, 229° radial via Corpus Christi; Palacios, TX; Humble, TX; El Dorado, AR; Memphis, TN; Pocket City, IN; INT Pocket City 051° and Rosewood, OH, 230° radials; Rosewood; DRYER, OH; Jamestown, NY; Syracuse, NY; Plattsburgh, NY; Bangor, ME; to Halifax, Canada; excluding the portions within Mexico and Canada.

* * * * *

J–101 [Revised]

From Humble, TX, Lufkin, TX; Little Rock, AR; St. Louis, MO; Spinner, IL; Pontiac, IL; Joliet, IL; Northbrook, IL; Badger, WI; Green Bay, WI; to Sault Ste Marie, MI.

* * * * *

Issued in Washington, DC, on May 29, 2007.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. E7–11046 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103842–07]

RIN 1545–BG33

Qualified Films Under Section 199

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations involving the deduction for income attributable to domestic production activities under section 199. The proposed amendments affect taxpayers who produce qualified films under section 199(c)(4)(A)(i)(II) and (c)(6) and taxpayers who are members of an expanded affiliated group under section 199(d)(4). This document also contains a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 5, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 2, 2007, must be received by September 11, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–103842–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–103842–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–103842–07). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.199–3(k) of the proposed regulations, David McDonnell, at (202) 622–3040; concerning § 1.199–7 of the proposed regulations, Ken Cohen (202) 622–7790; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to §§ 1.199–3(k) and 1.199–7 of the Income Tax Regulations (26 CFR Part 1). Section 1.199–3(k) relates to the definition of qualified film produced by the taxpayer under section 199(c)(4)(A)(i)(II) and (c)(6) of the Internal Revenue Code (Code) and § 1.199–7 involves expanded affiliated groups under section 199(d)(4). Section 199 was added to the Code by section 102 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418), and amended by section 403(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135, 119 Stat. 25), section 514 of the Tax Increase Prevention and

Reconciliation Act of 2005 (Public Law 109–222, 120 Stat. 345), and section 401 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432, 120 Stat. 2922).

General Overview

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of (A) The qualified production activities income (QPAI) of the taxpayer for the taxable year, or (B) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income).

Section 199(c)(1) defines QPAI for any taxable year as an amount equal to the excess (if any) of (A) The taxpayer's domestic production gross receipts (DPGR) for such taxable year, over (B) the sum of (i) The cost of goods sold (CGS) that are allocable to such receipts; and (ii) other expenses, losses, or deductions (other than the deduction under section 199) that are properly allocable to such receipts.

Section 199(c)(4)(A)(i) provides that the term DPGR means the taxpayer's gross receipts that are derived from any lease, rental, license, sale, exchange, or other disposition of (I) Qualifying production property (QPP) that was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States; (II) any qualified film produced by the taxpayer; or (III) electricity, natural gas, or potable water produced by the taxpayer in the United States.

Section 199(c)(6) defines a qualified film to mean any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to production of the property is compensation for services performed in the United States by actors, production personnel, directors, and producers. The term does not include property with respect to which records are required to be maintained under 18 U.S.C. 2257 (generally, films, videotapes, or other matter that depict actual sexually explicit conduct and are produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or are shipped or transported or are intended for shipment or transportation in interstate or foreign commerce).

Section 199(d)(4)(A) provides that all members of an expanded affiliated group (EAG) are treated as a single corporation for purposes of section 199. Under section 199(d)(4)(B), an EAG is an affiliated group as defined in section 1504(a), determined by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears and without regard to section 1504(b)(2) and (4).

Section 199(d)(8) authorizes the Secretary to prescribe such regulations as are necessary to carry out the purposes of section 199, including regulations that prevent more than one taxpayer from being allowed a deduction under section 199 with respect to any activity described in section 199(c)(4)(A)(i).

Explanation of Provisions

Qualified Film Produced by the Taxpayer

On June 1, 2006, final regulations (TD 9263) under section 199 were published in the **Federal Register** (71 FR 31268). Subsequent to the publication of the final regulations, the IRS and Treasury Department became aware that the definition of a qualified film produced by a taxpayer as outlined in the final regulations may not be consistent with the statute. Under section 199(c)(4)(A)(i)(II), a taxpayer's gross receipts qualify as DPGR if the receipts are derived from any lease, rental, license, sale, exchange, or other disposition of any qualified film (as defined in section 199(c)(6)) produced by the taxpayer. A film must be both a ''qualified film'' under section 199(c)(6) and ''produced by the taxpayer'' under section 199(c)(4)(A)(i)(II) in order for the gross receipts to qualify as DPGR. Section 1.199–3(k)(5) of the final regulations addresses these two requirements by adding ''by the taxpayer'' to the not-less-than-50-percent-of-the-total-compensation requirement under § 1.199–3(k)(1). However, under the test provided in § 1.199–3(k)(5) of the final regulations, a film that was produced entirely within the United States could fail to qualify for the section 199 deduction if less than 50 percent of the total compensation relating to production was paid ''by the taxpayer.''

The proposed regulations more closely follow the statutory language in section 199(c)(6) by revising the fraction in § 1.199–3(k)(5) for determining the not-less-than-50-percent-of-the-total-compensation requirement under § 1.199–3(k)(1). Under the fraction set forth in the proposed regulations, the numerator of the revised fraction is the compensation for services performed in the United States and the denominator is the total compensation for services regardless of where the production activities are performed. The revised fraction essentially compares (in the numerator) the sum of the compensation for services paid by the taxpayer for services performed in the United States and the compensation for services paid by others for services performed in the United States to (in the denominator) the sum of the total compensation for services paid by the taxpayer for services and the total compensation for services paid by others for services regardless of location. The proposed regulations also clarify in § 1.199–8(a) that, for purposes of §§ 1.199–1 through 1.199–9, use of terms such as ''payment,'' ''paid,'' ''incurred,'' or ''paid or incurred'' is not intended to provide any specific rule based upon the use of one term versus another. In general, the use of the term ''payment,'' ''paid,'' ''incurred,'' or ''paid or incurred'' is intended to convey the appropriate standard under the taxpayer's method of accounting.

Under § 1.199–3(k)(6) of the proposed regulations, a film that is a qualified film under § 1.199–3(k)(1) will be treated as ''produced by the taxpayer'' for purposes of section 199(c)(4)(A)(i)(II) if the production activity performed by the taxpayer is substantial in nature within the meaning of § 1.199–3(g)(2). The special rules of § 1.199–3(g)(4) regarding a contract with an unrelated person and aggregation apply in determining whether the taxpayer's production activity is substantial in nature. Section 1.199–3(g)(2) and (4) are applied by substituting the term ''qualified film'' for QPP and disregarding the requirement that the production activity must be within the United States. Thus, a qualified film will be treated as produced by the taxpayer if the production of the qualified film by the taxpayer is substantial in nature taking into account all of the facts and circumstances, including the relative value added by, and relative cost of, the taxpayer's production activity, the nature of the qualified film, and the nature of the production activity that the taxpayer performs.

The rules provided in § 1.199–3(k)(5) of the proposed regulations closely follow the statutory language in section 199(c)(6) by referencing all compensation for services related to the production as opposed to a more limited ''by the taxpayer'' compensation test. Commentators have expressed concern over the difficulty of obtaining information related to the compensation paid by others. In response to this concern, the IRS and Treasury Department have provided a safe harbor in § 1.199–3(k)(7) of the proposed regulations provides a safe harbor that will treat a film as a qualified film if not less than 50 percent of the total

compensation for services paid by the taxpayer is compensation for services performed in the United States. The safe harbor further provides that a qualified film will be treated as produced by the taxpayer if the taxpayer satisfies the safe harbor in § 1.199–3(g)(3) with respect to the qualified film, which requires that the direct labor and overhead costs incurred by the taxpayer to produce the qualified film within the United States account for 20 percent or more of the total costs of the film.

Similar to § 1.199–3(k)(6) of the proposed regulations, the special rules of § 1.199–3(g)(4) regarding a contract with an unrelated person and aggregation apply in determining whether the taxpayer satisfies § 1.199–3(g)(3). Section 1.199–3(g)(3) and (4) are applied by substituting the term ''qualified film'' for QPP but not disregarding the requirement that the direct labor and overhead of the taxpayer to produce the qualified film must be within the United States. Thus, a taxpayer will be treated as having produced a qualified film if, in connection with the qualified film, the direct labor and overhead of the taxpayer to produce the qualified film within the United States account for 20 percent or more of the taxpayer's CGS of the qualified film, or in a transaction without CGS (for example, a lease, rental, or license) account for 20 percent or more of the taxpayer's ''unadjusted depreciable basis'' (as defined in § 1.199–3(g)(3)(ii)) in the qualified film.

Expanded Affiliated Groups

After issuance of the final regulations, several commentators noted that § 1.199–7(e), *Example 10*, of the final regulations misapplies § 1.1502–13 of the consolidated return regulations. In *Example 10*, a member of a consolidated group sells QPP to another member of the consolidated group. Before the QPP is sold to an unrelated party, the purchasing corporation is disaffiliated from the consolidated group. *Example 10* provides that neither the selling corporation nor the purchasing corporation has DPGR. After further consideration, the IRS and Treasury Department have determined that *Example 10* does not properly apply § 1.1502–13 of the consolidated return regulations and that both the selling corporation and the purchasing corporation have DPGR in the facts described. Accordingly, the proposed regulations remove *Example 10* of the final regulations and replace it with a new *Example 10*, properly applying § 1.1502–13 of the consolidated return regulations.

In addition, the IRS and Treasury Department discovered a problem concerning the section 199 closing of the books method under § 1.199–7(f)(1)(ii) of the final regulations. A corporation that becomes or ceases to be a member of an EAG during its taxable year must allocate its taxable income or loss, QPAI, and W–2 wages between the portion of the taxable year that it is a member of the EAG and the portion of the taxable year that it is not a member of the EAG. In general, this allocation is made by using the pro rata allocation method described in § 1.199–7(f)(1)(i) of the final regulations. Section 1.199–7(f)(1)(ii) provides that in lieu of the pro rata allocation method, a corporation may elect to apply the section 199 closing of the books method under which a corporation treats its taxable year as two separate taxable years, the first of which ends at the close of the day on which the corporation's status as a member of the EAG changes and the second of which begins at the beginning of the day after the corporation's status as a member of the EAG changes.

In certain situations, the section 199 closing of the books method can create a larger section 199 deduction than is warranted. The facts of the *Example* in § 1.199–7(g)(3) of the final regulations demonstrate such a situation. In the *Example,* Corporations X and Y, calendar year corporations, are members of the same EAG for the entire 2007 taxable year. Corporation Z, also a calendar year corporation, is a member of the EAG of which X and Y are members for the first half of 2007 and not a member of any EAG for the second half of 2007. During the 2007 taxable year, Z does not join in the filing of a consolidated return. Z makes a section 199 closing of the books election. As a result, Z has $80 of taxable income and $100 of QPAI that is allocated to the first half of 2007 and a $150 taxable loss and ($200) of QPAI that is allocated to the second half of 2007. In addition to the facts presented in the *Example,* assume that X and Y each have $60 of taxable income and QPAI in 2007, Z has $170 of taxable income and QPAI in 2008, and that X, Y, and Z each have W–2 wages in excess of the section 199(b) wage limitation for all relevant periods. After applying the section 199 closing of the books method, the EAG has $200 of taxable income and $220 of QPAI in 2007. Accordingly, the EAG will have a section 199 deduction of $12 (6 percent of the lesser of the EAG's $200 of taxable income and $220 of QPAI). Z, as a stand-alone corporation for the second half of 2007, will have both negative taxable income and negative QPAI and therefore will have no section 199 deduction. In 2008, notwithstanding that Z made a section 199 closing of the books election pursuant to which Z is deemed to have a $150 taxable loss for the second half of 2007, for purposes of computing its taxable income in 2008, Z only has a $70 NOL carryover from 2007. Accordingly, Z will have taxable income of $100 in 2008 and will have a section 199 deduction of $6 (6 percent of the lesser of its $100 of taxable income and $170 of QPAI). Because X and Y had a total of $120 of taxable income and Z had total taxable income in 2007 and 2008 of $100, the maximum aggregate section 199 deduction should have been $13.20 (6 percent of the aggregate taxable income of X, Y, and Z of $220), instead of the aggregate $18 deduction derived in the above example because of the use of the section 199 closing of the books method. The section 199 closing of the books method effectively eliminated $80 of Z's losses from being used to offset taxable income for purposes of the section 199 deduction in either 2007 or 2008.

The proposed regulations remove the section 199 closing of the books method and revise the *Example* in § 1.199–7(g)(3) to apply the pro rata allocation method. However, the IRS and Treasury Department invite comments concerning the necessity for a section 199 closing of the books method and suggestions under which a section 199 closing of the books election would be allowable, provided that the election does not create an unwarranted section 199 deduction nor does it impose an undue burden on either taxpayers or the government.

Proposed Effective Date

Sections 1.199–3(k), 1.199–7(e), *Example 10*, and 1.199–7(f)(1) are proposed to be applicable to taxable years beginning on or after the date the final regulations are published in the **Federal Register**. Until the date the final regulations are published in the **Federal Register**, taxpayers may rely on § 1.199–3(k) and § 1.199–7(e), *Example 10*, of the proposed regulations for taxable years beginning after December 31, 2004. However, for taxable years beginning before June 1, 2006, a taxpayer may rely on § 1.199–3(k) of the proposed regulations only if the taxpayer does not apply Notice 2005–14 (2005–1 C.B. 498) (see § 601.601(d)(2)) or REG–105847–05 (2005–2 CB 987) (see § 601.601(d)(2)(ii)(*b*)) to the taxable year.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 2, 2007, at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by September 5, 2007 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 11, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Lauren Ross Taylor and David M. McDonnell, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Section 1.199–3 also issued under 26 U.S.C. 199(d). * * *

Section 1.199–7 also issued under 26 U.S.C. 199(d). * * *

Section 1.199–8 also issued under 26 U.S.C. 199(d). * * *

Par. 2. Section 1.199–3 is amended by:

1. Revising paragraphs (k)(1), (k)(4), and (k)(5).
2. Redesignating paragraph (k)(6) as (k)(9).
3. Redesignating paragraph (k)(7) as (k)(10).
4. Adding new paragraphs (k)(6), (k)(7), and (k)(8).
5. Revising *Example 6* of newly designated paragraph (k)(10).

The revisions and additions read as follows:

§ 1.199–3 Domestic production gross receipts.

* * * * *

(k) * * *

(1) *In general.* The term *qualified film* means any motion picture film or video tape under section 168(f)(3), or live or delayed television programming (film), if not less than 50 percent of the total compensation relating to the production of such film is compensation for services performed in the United States by actors, production personnel, directors, and producers. For purposes of this paragraph (k), the term *actors* includes players, newscasters, or any other persons who are compensated for their performance or appearance in a film. For purposes of this paragraph (k), the term *production personnel* includes writers, choreographers and composers who are compensated for providing services during the production of a film, as well as casting agents, camera operators, set designers, lighting technicians, make-up artists, and other persons who are compensated for providing services that are directly related to the production of the film. Except as provided in paragraph (k)(2) of this section, the definition of a qualified film does not include tangible personal property embodying the qualified film, such as DVDs or videocassettes.

* * * * *

(4) *Compensation for services.* For purposes of this paragraph (k), the term *compensation for services* means all payments for services performed by actors, production personnel, directors, and producers relating to the production of the film, including participations and residuals. Payments for services include all elements of compensation as provided for in § 1.263A–1(e)(2)(i)(B) and (3)(ii)(D). Compensation for services is not limited to W–2 wages and includes compensation paid to independent contractors. In the case of a taxpayer that uses the income forecast method of section 167(g) and capitalizes participations and residuals into the adjusted basis of the qualified film, the taxpayer must use the same estimate of participations and residuals in determining compensation for services. In the case of a taxpayer that excludes participations and residuals from the adjusted basis of the qualified film under section 167(g)(7)(D)(i), the taxpayer must use the amount expected to be paid as participations and residuals based on the total forecasted income used in determining income forecast depreciation in determining compensation for services.

(5) *Determination of 50 percent.* The not-less-than-50-percent-of-the-total-compensation requirement under paragraph (k)(1) of this section is calculated using a fraction. The numerator of the fraction is the compensation for services performed in the United States and the denominator is the total compensation for services regardless of where the production activities are performed. A taxpayer may use any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances, including all historic information available, to determine the compensation for services performed in the United States and the total compensation for services regardless of where the production activities are performed. Among the factors to be considered in determining whether a taxpayer's method of allocating compensation is reasonable is whether

the taxpayer uses that method consistently from one taxable year to another.

(6) *Produced by the taxpayer.* A qualified film will be treated as produced by the taxpayer for purposes of section 199(c)(4)(A)(i)(II) if the production activity performed by the taxpayer is substantial in nature within the meaning of paragraph (g)(2) of this section. The special rules of paragraph (g)(4) of this section regarding a contract with an unrelated person and aggregation apply in determining whether the taxpayer's production activity is substantial in nature. Paragraphs (g)(2) and (4) of this section are applied by substituting the term *qualified film* for QPP and disregarding the requirement that the production activity must be within the United States. The production activity of the taxpayer must consist of more than the minor or immaterial combination or assembly of two or more components of a film. For purposes of paragraph (g)(2) of this section, the relative value added by affixing trademarks or trade names as defined in § 1.197–2(b)(10)(i) will be treated as zero.

(7) *Qualified film produced by the taxpayer—safe harbor.* A film will be treated as a qualified film under paragraph (k)(1) of this section and produced by the taxpayer under paragraph (k)(6) of this section (qualified film produced by the taxpayer) if the taxpayer meets the requirements of paragraphs (k)(7)(i) and (ii) of this section. A taxpayer that chooses to use this safe harbor must apply all the provisions of this paragraph (k)(7).

(i) *Safe harbor.* A film will be treated as a qualified film produced by the taxpayer if not less than 50 percent of the total compensation for services paid by the taxpayer is compensation for services performed in the United States and the taxpayer satisfies the safe harbor in paragraph (g)(3) of this section. The special rules of paragraph (g)(4) of this section regarding a contract with an unrelated person and aggregation apply in determining whether the taxpayer satisfies paragraph (g)(3) of this section. Paragraphs (g)(3) and (4) of this section are applied by substituting the term *qualified film* for QPP but not disregarding the requirement that the direct labor and overhead of the taxpayer to produce the qualified film must be within the United States. Paragraph (g)(4)(ii)(A) of this section includes any election under section 181.

(ii) *Determination of 50 percent.* The not-less-than-50-percent-of-the-total-compensation requirement under paragraph (k)(7)(i) of this section is calculated using a fraction. The numerator of the fraction is the compensation for services paid by the taxpayer for services performed in the United States and the denominator is the total compensation for services paid by the taxpayer regardless of where the production activities are performed. For purposes of this paragraph (k)(7)(ii), the term *paid by the taxpayer* includes amounts that are treated as paid by the taxpayer under paragraph (g)(4) of this section. A taxpayer may use any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances, including all historic information available, to determine the compensation for services paid by the taxpayer for services performed in the United States and the total compensation for services paid by the taxpayer regardless of where the production activities are performed. Among the factors to be considered in determining whether a taxpayer's method of allocating compensation is reasonable is whether the taxpayer uses that method consistently from one taxable year to another.

(8) *Production pursuant to a contract.* With the exception of the rules applicable to an expanded affiliated group (EAG) under § 1.199–7 and EAG partnerships under § 1.199–3T(i)(8), only one taxpayer may claim the deduction under § 1.199–1(a) with respect to any activity related to the production of a qualified film performed in connection with the same qualified film. If one taxpayer performs a production activity pursuant to a contract with another party, then only the taxpayer that has the benefits and burdens of ownership of the qualified film under Federal income tax principles during the period in which the production activity occurs is treated as engaging in the production activity.

* * * * *

(10) * * *

Example 6. X creates a television program in the United States that includes scenes from films licensed by X from unrelated persons Y and Z. Assume that Y and Z produced the films licensed by X. The not-less-than-50-percent-of-the-total-compensation requirement under paragraph (k)(1) of this section is determined by reference to all compensation for services paid in the production of the television program, including the films licensed by X from Y and Z, and is calculated using a fraction as described in paragraph (k)(5) of this section. The numerator of the fraction is the compensation for services performed in the United States and the denominator is the total compensation for services regardless of where the production activities are performed. However, for purposes of calculating the denominator, in determining the total compensation paid by Y and Z, X need only include the total compensation paid by Y and Z to actors, production personnel, directors, and producers for the production of the scenes used by X in creating its television program.

Par. 3. Section 1.199–7 is amended by:

1. Revising *Example 10* of paragraph (e).

2. Revising paragraphs (f)(1) and (g)(3).

The revisions read as follows:

§ 1.199–7 Expanded affiliated groups.

* * * * *

(e) * * *

Example 10. (i) *Facts.* Corporation P owns all of the stock of Corporations S and B. P, S, and B file a consolidated Federal income tax return on a calendar year basis. P, S, and B each use the section 861 method for allocating and apportioning their deductions. In 2010, S MPGE QPP in the United States at a cost of $1,000. On November 30, 2010, S sells the QPP to B for $2,500. On February 28, 2011, P sells 60% of the stock of B to X, an unrelated person. On June 30, 2011, B sells the QPP to U, another unrelated person, for $3,000.

(ii) *Consolidated group's 2010 QPAI.* Because S and B are members of a consolidated group in 2010, pursuant to § 1.199–7(d)(1) and § 1.1502–13, neither S's $1,500 of gain on the sale of QPP to B nor S's $2,500 gross receipts from the sale are taken into account in 2010. Accordingly, neither S nor B has QPAI in 2010.

(iii) *Consolidated group's 2011 QPAI.* B becomes a nonmember of the consolidated group at the end of the day on February 28, 2011, the date on which P sells 60% of the B stock to X. Under § 1.199–7(d)(1) and § 1.1502–13(d), S takes the intercompany transaction into account immediately before B becomes a non-member of the consolidated group. Pursuant to § 1.1502–13(d)(1)(ii)(A)(*1*), because the QPP is owned by B, a nonmember of the consolidated group immediately after S's gain is taken into account, B is treated as selling the QPP to a nonmember for $2,500, B's adjusted basis in the property, immediately before B becomes a nonmember of the consolidated group. Accordingly, immediately before B becomes a nonmember of the consolidated group, S takes into account $1,500 of QPAI (S's $2,500 DPGR received from B–S's $1,000 cost of MPGE the QPP).

(iv) *B's 2011 QPAI.* Pursuant to § 1.1502–13(d)(2)(i)(B), the attributes of B's corresponding item, that is, its sale of the QPP to U, are determined as if the S division (but not the B division) were transferred by the P, S, and B consolidated group (treated as a single corporation) to an unrelated person. Thus, S's activities in MPGE the QPP before the intercompany sale of the QPP to B continue to affect the attributes of B's sale of the QPP. As such, B is treated as having MPGE the QPP. Accordingly, upon its sale of the QPP, B has $500 of QPAI (B's $3,000 DPGR received from U–B's $2,500 cost of MPGE the QPP).

* * * * *

(f) *Allocation of income and loss by a corporation that is a member of the expanded affiliated group for only a portion of the year*—(1) *In general.* A corporation that becomes or ceases to be a member of an EAG during its taxable year must allocate its taxable income or loss, QPAI, and W–2 wages between the portion of the taxable year that it is a member of the EAG and the portion of the taxable year that it is not a member of the EAG. This allocation of items is made by using the pro rata allocation method described in this paragraph (f)(1). Under the pro rata allocation method, an equal portion of a corporation's taxable income or loss, QPAI, and W–2 wages for the taxable year is assigned to each day of the corporation's taxable year. Those items assigned to those days that the corporation was a member of the EAG are then aggregated.

* * * * *

(g) * * *

(3) *Example.* The following example illustrates the application of paragraphs (f) and (g) of this section:

Example. (i) *Facts.* Corporations X and Y, calendar year corporations, are members of the same EAG for the entire 2010 taxable year. Corporation Z, also a calendar year corporation, is a member of the EAG of which X and Y are members for the first half of 2010 and not a member of any EAG for the second half of 2010. During the 2010 taxable year, neither X, Y, nor Z join in the filing of a consolidated Federal income tax return. Assume that X, Y, and Z each have W–2 wages in excess of the section 199(b) wage limitation for all relevant periods. In 2010, X has taxable income of $2,000 and QPAI of $600, Y has a taxable loss of $400 and QPAI of ($200), and Z has taxable income of $1,400 and QPAI of $2,400.

(ii) *Analysis.* Pursuant to the pro rata allocation method, $700 of Z's 2010 taxable income and $1,200 of Z's 2010 QPAI are allocated to the first half of the 2010 taxable year (the period in which Z is a member of the EAG) and $700 of Z's 2010 taxable income and $1,200 of Z's 2010 QPAI are allocated to the second half of the 2010 taxable year (the period in which Z is not a member of any EAG). Accordingly, in 2010, the EAG has taxable income of $2,300 (X's $2,000 + Y's ($400) + Z's $700) and QPAI of $1,600 (X's $600 + Y's ($200) + Z's $1,200). The EAG's section 199 deduction for 2010 is therefore $144 (9% of the lesser of the EAG's $2,300 of taxable income or $1,600 of QPAI). Pursuant to § 1.199–7(c)(1), this $144 deduction is allocated to X, Y, and Z in proportion to their respective QPAI. Accordingly, X is allocated $48 of the EAG's section 199 deduction, Y is allocated $0 of the EAG's section 199 deduction, and Z is allocated $96 of the deduction. For the second half of 2010, Z has taxable income of $700 and QPAI of $1,200. Therefore, for the second half of 2010, Z has a section 199 deduction of $63 (9% of the lesser of its $700 taxable income or $1,200 QPAI for the second half of 2010). Accordingly, X's 2010 section 199 deduction is $48, Y's 2010 section 199 deduction is $0, and Z's 2010 section 199 deduction is $159, the sum of the $96 section 199 deduction of the EAG allocated to Z for the first half of 2010 and Z's $63 section 199 deduction for the second half of 2010.

Par. 4. Section 1.199–8 is amended by:

1. Adding two sentences at the end of paragraph (a).

2. Adding new paragraphs (i)(8) and (i)(9).

The revisions and additions read as follows:

§ 1.199–8 Other rules.

(a) * * * For purposes of §§ 1.199–1 through 1.199–9, use of terms such as *payment, paid, incurred,* or *paid or incurred* is not intended to provide any specific rule based upon the use of one term versus another. In general, the use of the term *payment, paid, incurred,* or *paid or incurred* is intended to convey the appropriate standard under the taxpayer's method of accounting.

* * * * *

(i) * * *

(8) *Qualified film produced by the taxpayer.* Section 1.199–3(k) is proposed to be applicable to taxable years beginning on or after the date the final regulations are published in the **Federal Register**. Until the date the final regulations are published in the **Federal Register**, taxpayers may rely on § 1.199–3(k) of these proposed regulations for taxable years beginning after December 31, 2004. However, for taxable years beginning before June 1, 2006, a taxpayer may rely on § 1.199–3(k) of the proposed regulations only if the taxpayer does not apply Notice 2005–14 (2005–1 CB 498) (see § 601.601(d)(2)(ii)(*b*) of this chapter) or REG–105847–05 (2005–2 CB 987) (see § 601.601(d)(2)(ii)(*b*) of this chapter) to the taxable year.

(9) *Expanded affiliated groups.* Section 1.199–7(e), *Example 10,* and § 1.199–7(f)(1) are proposed to be applicable to taxable years beginning on or after the date the final regulations are published in the **Federal Register**. Until the date the final regulations are published in the **Federal Register,** taxpayers may rely on § 1.199–7(e), *Example 10,* of these proposed regulations for taxable years beginning after December 31, 2004.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–10821 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157711–02]

RIN 1545–BB61

Unified Rule for Loss on Subsidiary Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that were published in the **Federal Register** on Tuesday, January 23, 2007 (72 FR 2964). These regulations apply to corporations filing consolidated returns. The regulations implement aspects of the repeal of the *General Utilities* doctrine by redetermining members' bases in subsidiary stock and requiring certain reductions in subsidiary stock basis on a transfer of the stock. The regulations promote the clear reflection of income by redetermining members' bases in subsidiary's stock and reducing the subsidiary's attributes to prevent the duplication of loss, and they also, provide guidance limiting the application of section 362(e)(2) with respect to transactions between members of a consolidated group.

FOR FURTHER INFORMATION CONTACT: Theresa Abell (202) 622–7700 or Phoebe Bennett (202) 622–7770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–157711–02) that is the subject of these corrections are under sections 358, 362(e)(2) and 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–157711–02) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–157711–02), that is the subject of FR Doc. 07–187, is corrected as follows:

1. On page 2964, column 2, in the preamble, under the paragraph heading ''Paperwork Reduction Act'', eighth paragraph of the column, line 3, the language ''13(e)(4)(v) and 1.1502–36(d)(7). The'' is corrected to read ''13(e)(4)(v) and 1.1502–36(d)(6). The''.

2. On page 2964, column 3, in the preamble, under the paragraph heading ''Background'', second paragraph of the column, line 10, the language ''*v. United States,* 255 F.3d 1357 (2001),'' is corrected to read ''*v. United States,* 255 F.3d 1357 (Fed. Cir. 2001),''.

3. On page 2965, column 1, in the preamble, under the paragraph heading ''2. The Administrative Response to GU Repeal: § 1.1502–20.'', first paragraph, line 2 from bottom of the paragraph, the language ''determine adjustments to member's'' is corrected to read ''determine adjustments to members'' '.

4. On page 2972, column 1, in the preamble, under the paragraph heading ''2. Hybrid Tracing-Presumptive Model: Asset Tracing.'', first paragraph, line 3, the language ''presumption approach that would'' is corrected to read ''presumptive approach that would''.

5. On page 2972, column 2, in the preamble, the paragraph heading ''3. Presumption-Based Models'' is corrected to read ''3. Presumptive-Based Models.''.

6. On page 2975, column 1, in the preamble, under the paragraph heading ''d. *Netting of items from different tax periods.'',* first paragraph, line 6, the language, ''investments were not. The IRS and'' is corrected to read ''investment adjustments were not. The IRS and''.

7. On page 2975, column 1, in the preamble, under the paragraph heading ''d. *Netting of items from different tax periods.*'', second paragraph, line 8, the language, ''account by the group. Thus, IRS and'' is corrected to read ''account by the group. Thus, the IRS and''.

8. On page 2975, column 2, in the preamble under the paragraph heading ''e. *Summary and conclusions.*'', second paragraph, line 12 from the bottom of the paragraph, the language ''administrative and other concerns'' is corrected to read ''administrative burden and other concerns''.

9. On page 2977, column 1, in the preamble, under the paragraph heading ''*E. Noneconomic and Duplicated Loss From Investment Adjustment System.*'', first paragraph, line 2, the language ''preamble, IRS and Treasury Department'' is corrected to read ''preamble, the IRS and Treasury Department''.

10. On page 2978, column 3, under paragraph heading ''1. Overview.'', third paragraph of the column, line 4 from the bottom of the paragraph, the language ''implement a loss limitation approach'' is correct to read ''implements a loss limitation approach''.

11. On page 2980, column 1, under paragraph heading ''4. The Attribute Reduction Rule.'', second paragraph, lines 16 and 17, the language ''the value of all of the S shares. Net the inside attributes generally has the same'' is corrected to read ''the value of all the S shares. The term net inside attributes generally has the same''.

12. On page 2980, column 1, under paragraph heading ''4. The Attribute Reduction Rule.'', third paragraph, last line of the column, the language ''stock loss for a later recognition (for'' is corrected to read ''stock loss for later recognition (for''.

13. On page 2980, column 2, under paragraph heading ''4. The Attribute Reduction Rule.'', second paragraph of the column, lines 1 and 2 from bottom of the paragraph, the language ''attributes are reduced reflects this principle.'' is corrected to read ''attributes are reduced reflects these principles.''.

14. On page 2980, column 3, under subparagraph heading ''a. *Special rules applicable when S holds stock of lower-tier subsidiary.*'', second paragraph, line 16, the language ''inside attributes. For example, if P owns'' is corrected to read ''inside attributes. For example, assume P owns''.

15. On page 2981, column 3, under subparagraph heading ''b. *Election to reduce stock basis and/or reattribute loss.*'', first paragraph of the column, line 22 from bottom of the paragraph, the language ''transaction. Proposed regulations under'' is corrected to read ''transaction.''

16. On page 2981, column 3, under subparagraph heading ''b. *Election to reduce stock basis and/or reattribute loss.*'', second paragraph, line 21 from bottom of the paragraph, the language ''§ 1.1502–32 treat the reattributed'' is corrected and added with new paragraph to read ''Proposed regulations under § 1.1502–32 treat the reattributed''.

17. On page 2982, column 1, under subparagraph heading ''6. Special Rules for Section 362(e)(2) Transaction.'', second paragraph, lines 1 and 2 from bottom of the column, the language ''under section 362(e)(2)(C) been made Similarly, to adjust for distortions'' is corrected to read ''under section 362(e)(2)(C) been made. Similarly, to adjust for distortions''.

18. On page 2982, column 2, under subparagraph heading ''6. Special Rules for Section 362(e)(2) Transaction.'', second paragraph of the column, line 9 from the bottom of the paragraph, the language, ''stock basis and net inside attributes that'' is corrected to read ''stock basis, net inside attributes, and value that''.

19. On page 2983, column 2, under subparagraph heading ''2. Suspension of Section 362(e)(2) for Intercompany Transactions.'', last paragraph of the column, line 2 from bottom of the column, the language ''investment adjustment system has not'' is corrected to read ''investment adjustment system has not eliminated''.

20. On page 2984, column 2, under subparagraph heading ''4. Application of Section 362(e)(2) to Intercompany Transactions.'', first paragraph of the column, line 7 from the bottom of the paragraph, the language ''attributes is applied to proportionately'' is corrected to read ''attributes is applied proportionately''.

21. On page 2984, column 3, under subparagraph heading ''5. Special Allocations Under § 1.1502–32.'', line 7 of the paragraph, the language ''entirely to member's shares. In other'' is corrected to read ''entirely to members'' shares. In other''.

22. On page 2986, column 2, under subparagraph heading, ''8. Retention of, and Nonsubstantive Revisions to, § 1.1502–80(c).'', third paragraph of the column, line 8 of the paragraph, the language ''under the LDR and, since LDR no longer'' is corrected to read ''under the LDR and, since the LDR no longer''.

23. On page 2986, column 3, under subparagraph heading, ''8. Retention of, and Nonsubstantive Revisions to, § 1.1502–80(c).'', first paragraph of the column, line 2 of the column, the language ''deduction. See, *In re Prudential Lines,*'' is corrected to read ''deduction. See *In re Prudential Lines,*''.

§ 1.1502–13 [Corrected]

24. On page 2988, column 1, § 1.1502–13(e)(4)(ii)(C)(*2*), line 12 from bottom of the column, the language ''otherwise is eliminated (other than'' is corrected to read ''otherwise eliminated (other than''.

25. On page 2989, column 3, § 1.1502–13(e)(4)(vi), *Example 3.*(iv), line 18 of the paragraph, the language ''in § 1.1502–32(b)(3)(iii)(B), and will effect P's'' is corrected to read ''in § 1.1502–32(b)(3)(iii)(B), and will affect P's''.

§ 1.1502–32 [Corrected]

26. On page 2991, column 3, § 1.1502–32(b)(3)(iii)(C), line 3 from bottom of the paragraph, the language ''**Federal Register**, see 1.1502–'' is corrected to read ''**Federal Register**, see § 1.1502–''.

27. On page 2991, column 3, § 1.1502–32(b)(3)(iii)(D), line 3 from bottom of the paragraph, the language ''see 1.1502–32(b)(3)(iii)(D) as

contained'' is corrected to read ''see § 1.1502–32(b)(3)(iii)(D) as contained''.

28. On page 2991, column 3, § 1.1502–32(c)(1)(i), line 2 from bottom of the column, the language ''allocated to the shares of S's stock to'' is corrected to read ''allocated to the shares of S stock to''.

29. On page 2993, column 1, § 1.1502–32(c)(1)(ii)(A)(*2*) *Example.*(iv)(D), line 7 from bottom of the column, the language ''nondeductible basis recovery item if it is'' is corrected to read ''nondeductible basis recovery item if it were''.

30. On page 2994, column 1, § 1.1502–32(c)(2)(i), line 11, the language ''that member's excess loss accounts and'' is corrected to read ''that member's excess loss account and''.

31. On page 2994, column 2, § 1.1502–32(c)(4)(i), line 3 of the paragraph, the language ''share of S's preferred and common stock'' is corrected to read ''share of S preferred and common stock''.

32. On page 2994, column 2, § 1.1502–32(c)(4)(i), line 8 of the paragraph, the language ''made by reallocating S's adjustments'' is corrected to read ''made by reallocating S stock adjustments''.

33. On page 2994, column 2, § 1.1502–32(c)(4)(i), last line of the paragraph, the language ''of S's shares. * * *'' is corrected to read ''of the S shares. * * *''.

§ 1.1502–35 [Corrected]

34. On page 2994, column 3, § 1.1502–35(a), line 5 from bottom of the paragraph, the language ''of April 1, 2006. For transfers and'' is corrected to read ''of April 1, 2007. For transfers and''.

35. On page 2995, column 1, § 1.1502–35(b)(3)(iii), line 4, the language ''year of the group) is a noncapital,'' is corrected to read ''year of the selling group) is a noncapital,''.

§ 1.1502–36 [Corrected]

36. On page 2995, column 2, the language of the section heading ''§ 1.1502–36 Loss on subsidiary stock.'' is corrected to read ''§ 1.1502–36 Unified rule for loss on subsidiary stock.''.

37. On page 2996, column 2, § 1.1502–36(b)(1)(i), line 4 of the paragraph, the language ''(b) reduce the extent to which there is'' is corrected to read ''(b) reduce (but do not increase) the extent to which there is''.

38. On page 2997, column 1, § 1.1502–36(b)(2)(iii)(A), line 2 of the paragraph, the language '' Reallocations are made in a manner that'' is corrected to read ''All reallocations (both to and from members' shares of S stock) are made in a manner that''.

39. On page 2997, column 2, § 1.1502–36(b)(2)(iii)(B)(*2*)(*ii*) *Example.*(*iii*), line 6 from the bottom of the column, the language ''would have tiered up to the M share P sold,'' is corrected to read ''would have tiered up to the M share that P sold,''.

40. On page 2998, column 2, § 1.1502–36(b)(3) *Example 2.*(i), line 10 of the paragraph, the language ''Asset 1 for $100. On December 31, year 2, S'' is corrected to read ''Asset 1 for $100. On December 31, year 2, P''.

41. On page 2999, column 2, § 1.1502–36(b)(3) *Example 3.*(i), line 5 of the paragraph, the language ''preferred shares to reflect their entitlement to'' is corrected to read ''preferred shares to reflect its entitlement to''.

42. On page 2999, column 3, § 1.1502–36(b)(3) *Example 3.*(ii)(C), line 8 of the paragraph, the language ''Accordingly $25 of that amount is reallocated'' is corrected to read ''Accordingly, $25 of that amount is reallocated''.

43. On page 3000, column 2, § 1.1502–36(c)(6)(i), line 5 from the bottom of the paragraph, the language ''S1's investment adjustments increased'' is corrected to read ''S1's investment adjustments increase''.

44. On page 3000, column 3, § 1.1502–36(c)(6)(v) *Example.*(*ii*), line 3 from the bottom of the paragraph, the language ''the loss share stock of S1, the lowest-tier'' is corrected to read ''the loss share of S1 stock, the lowest-tier''.

45. On page 3000, column 3, § 1.1502–36(c)(6)(v) *Example.*(*iii*), line 3 from the bottom of the paragraph, the language ''recognized on the transfer of S3 tiers up to'' is corrected to read ''recognized on the transfer of S3 stock tiers up to''.

46. On page 3001, column 3, § 1.1502–36(c)(8) *Example 1.*(*i*)(C), line 13 of the paragraph, the language ''recognized on the sale of Asset 1. Thus the'' is corrected to read ''recognized on the sale of Asset 1. Thus, the''.

47. On page 3001, column 3, § 1.1502–36(c)(8) *Example 1.*(*ii*), line 5 from the bottom of the paragraph, the language ''Asset 1 to $0) Because the net positive'' is corrected to read ''Asset 1 to $0). Because the net positive''.

48. On page 3002, column 3, § 1.1502–36(c)(8) *Example 1.*(*iv*)(B), line 4 of the paragraph, the language ''there redetermination would change no'' is corrected to read ''redetermination would change no''.

49. On page 3003, column 2, § 1.1502–36(c)(8) *Example 4.*(*ii*), lines 4 through 10 of the column, the language ''Because the net positive adjustment includes items of income (and not just gain), the analysis of the application of this paragraph (c) is the same here as in paragraph (i)(C) of this *Example 4.* Furthermore, the analysis of the application of this paragraph (C) would also be the same if the $60 loss carryover were subject to a section 382 limitation from a prior ownership change, and if, instead, it would subject to the limitation in § 1.1502–'' is corrected to read ''The analysis of the application of this paragraph (c) is the same here as in paragraph (i)(C) of this *Example 4.* Furthermore, the analysis of the application of this paragraph (c) would also be the same if the $60 loss carryover were subject to a section 382 limitation from a prior ownership change, if, instead, it were subject to the limitation in § 1.1502–''.

50. On page 3003, column 2, § 1.1502–36(c)(8) *Example 5.*(*i*), lines 7 through 10 of the paragraph, the language ''December 31, year 1, P sells one of its shares, Share 1, for $20. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in its Share'' is corrected to read ''December 31, year 1, P sells one of its S shares, Share 1, for $20. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in Share''.

51. On page 3003, column 2, § 1.1502–36(c)(8) *Example 5.*(*iii*), line 6 from the bottom of the paragraph, the language ''($100 from the sale of the asset), and Share'' is corrected to read ''($100 from the sale of Asset), and Share''.

52. On page 3004, column 3, § 1.1502–36(c)(8) *Example 7.*(*i*), line 8 from the bottom of the paragraph, the language ''basis in S1 under § 1.1502–32 by $40 (to'' is corrected to read ''basis in the S1 share under § 1.1502–32 by $40 (to''.

53. On page 3006, column 2, § 1.1502–36(d)(5)(ii)(B)(*3*), line 3 from the bottom of the paragraph, the language ''extent necessary to reduce the bases of'' is corrected to read ''extent necessary to reduce the basis of''.

54. On page 3006, column 2, § 1.1502–36(d)(5)(ii)(B)(*4*), line 2 from the bottom of the paragraph, the language ''the basis of such shares without'' is corrected to read ''the bases of such shares without''.

55. On page 3007, column 1, § 1.1502–36(d)(6)(ii)(B), line 5 from the bottom of the paragraph, the language ''immediately tier up (under the'' is corrected to read ''immediately tiers up (under the''.

56. On page 3007, column 3, § 1.1502–36(d)(6)(iv), line 4 of the paragraph, the language ''all members' basis in loss shares of S'' is corrected to read ''all members' bases in loss shares of S''.

57. On page 3007, column 3, § 1.1502–36(d)(7) *Example 1.*(*i*)(B), line 3 of the paragraph, the language ''under paragraph (b) of this section either'' is corrected to read ''under paragraph (b) of this section because''.

58. On page 3008, column 1, § 1.1502–36(d)(7) *Example 1.*(*i*)(B), line 2 of the column, the language ''disparity in the basis of the shares). See'' is corrected to read ''disparity in the bases of the shares). See''.

59. On page 3009, column 2, § 1.1502–36(d)(7) *Example 4.*(*i*)(A), line 4 of the column, the language ''the $500 income earned). The sale is'' is corrected to read ''the $500 of income earned). The sale is''.

60. On page 3010, column 2, § 1.1502–36(d)(7) *Example 5.*(*i*)(C)(3), line 10 from the bottom of the paragraph, the language ''the transaction ($50) over the sum of'' is corrected to read ''the transaction ($50) over the sum of the''.

61. On page 3010, column 3, § 1.1502–36(d)(7) *Example 5.*(*ii*)(C)(*4*), lines 15 to 21 of the paragraph, the language ''reductions to share A and to share B under this paragraph (d) are reversed to restore the basis of each share to $12.50. Thus, $25 of the $27.50 attribute reduction applied to reduce the basis of share A and $25 of the $47.50 attribute reduction applied to reduce the basis of share B are reversed, restoring the'' is corrected to read ''reductions to Share A and to Share B under this paragraph (d) are reversed to restore the basis of each share to $12.50. Thus, $25 of the $27.50 attribute reduction applied to reduce the basis of Share A and $25 of the $47.50 attribute reduction applied to reduce the basis of Share B are reversed, restoring the''.

62. On page 3011, column 2, § 1.1502–36(d)(7) *Example 6.*(*ii*)(B), line 2 from the bottom of the column, the language ''basis in subsidiary stock under the principles'' is corrected to read ''bases in subsidiary stock under the principles''.

63. On page 3011, column 3, § 1.1502–36(d)(7) *Example 6.*(*ii*)(B), line 2 from the top of the column, the language ''the transaction the sale is not subject to'' is corrected to read ''the transaction, the sale is not subject to''.

64. On page 3011, column 3, § 1.1502–36(d)(7) *Example 6.*(*ii*)(C), line 3 of the paragraph, the language ''*this section*). The next highest tier transfer is'' is corrected to read ''*this section*). The next higher tier transfer is''.

65. On page 3011, column 3, § 1.1502–36(d)(7) *Example 6.*(*ii*)(C), line 8 from the bottom of the paragraph, the language ''of the transferred Share E minus the $20'' is corrected to read ''of the transferred share E minus the $20''.

66. On page 3011, column 3, § 1.1502–36(d)(7) *Example 6.*(*ii*)(D)(*1*), line 6 from the bottom of the paragraph, the language ''basis in its asset)) minus S's liability ($20).'' is corrected to read ''basis in its asset))) minus S's liability ($20).''.

67. On page 3011, column 3, § 1.1502–36(d)(7) *Example 6.*(*ii*)(D)(*2*), lines 5 to 6 from the bottom of the paragraph, the language ''applied to reduce the basis of share E because share E was transferred in a transaction in'' is corrected to read ''applied to reduce the basis of share E, because share E was transferred in a transfer in''.

68. On page 3011, column 3, § 1.1502–36(d)(7) *Example 6.*(*ii*)(D)(*3*), line 3 from the bottom of the column, the language ''apportioned to or applied to reduced the'' is corrected to read ''apportioned to or applied to reduce the''.

69. On page 3012, column 3, § 1.1502–36(d)(7) *Example 7.*(*iii*)(C)(*3*), line 16 of the paragraph, the language ''reducing the basis of both assets to $0.'' is corrected to read ''reducing the basis of each asset to $0.''.

70. On page 3012, column 3, § 1.1502–36(d)(7) *Example 7.*(*iii*)(C)(*3*), line 2 from the bottom of the paragraph, the language ''attribute reduction amount is disregarded has'' is corrected to read ''attribute reduction amount is disregarded and has''.

71. On page 3013, column 1, § 1.1502–36(d)(7) *Example 8.*(*i*)(E), line 5 of the paragraph, the language ''basis in the S shares by the full attribute'' is corrected to read ''bases in the S shares by the full attribute''.

72. On page 3013, column 2, § 1.1502–36(d)(7) *Example 8.*(*i*)(E), line 7 of the paragraph, the language ''transfer. The reduction of M's basis in the S'' is corrected to read ''transfer. The reduction of M's bases in the S''.

73. On page 3014, column 1, § 1.1502–36(d)(7) *Example 8.*(*ii*)(E), lines 2 through 5 of the paragraph, the language ''are the same as paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute'' is corrected to read ''are the same as in paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's bases in the S shares by the full attribute''.

74. On page 3014, column 1, § 1.1502–36(d)(7) *Example 8.*(*ii*)(F), is removed.

75. On page 3014, column 1, § 1.1502–36(d)(7) *Example 8.*(*ii*)(G), is the newly designated paragraph (F).

76. On page 3014, column 2, § 1.1502–36(d)(7) *Example 9.*(*i*), line 5 from the bottom of the column, the language ''to P1 (the common parent of a consolidated'' is corrected to read ''to P1 (the common parent of a different consolidated''.

77. On page 3014, column 3, § 1.1502–36(d)(7) *Example 9.*(*ii*), line 7 from the bottom of the column, the language ''computed and is applied to adjust the basis'' is corrected to read ''computed and is applied to adjust the bases''.

78. On page 3015, column 1, § 1.1502–36(d)(7) *Example 9.*(*iii*), line 1 of the paragraph, the language ''(iii) *Transfers in next highest tier (loss*'' is corrected to read ''(iii) *Transfers in next higher tier (loss*''.

79. On page 3015, column 3, § 1.1502–36(d)(7) *Example 9.*(*iv*)(B)(*2*), line 30 from the bottom of the paragraph, the language ''allocated amount is apportioned among other'' is corrected to read ''allocated amount is apportioned among the other''.

80. On page 3017, column 1, § 1.1502–36(e)(1), last line of the paragraph, the language ''the section.'' is corrected to read ''this section.''.

81. On page 3017, column 2, § 1.1502–36(e)(2)(iii), line 6 of the paragraph, the language ''allocable portion of S's attributes has'' is corrected to read ''allocable portion of S's net inside attributes has''.

82. On page 3017, column 2, § 1.1502–36(e)(2)(iv) *Example.*(*i*)(A), line 11 of the paragraph, the language ''basis of A1 would have been reduced by $80'' is corrected to read ''basis in Asset 1 would have been reduced by $80''.

83. On page 3017, column 2, § 1.1502–36(e)(2)(iv) *Example.*(*i*)(B), last line of the paragraph, the language ''to this paragraph (c).'' is corrected to read ''to paragraph (c) of this section.''.

84. On page 3018, column 1, § 1.1502–36(f)(2), line 6 of the column, the language ''dealers in securities) and 481'' is corrected to read ''dealers in securities) and section 481''.

85. On page 3018, column 1, § 1.1502–36(f)(4), lines 6 through 15 of the paragraph, the language ''basis of shares of S2 stock under § 1.1502–32 affect the investment adjustments made to the basis of the stock of S1. A subsidiary (S1) (and its shares of stock) is *lower tier* with respect to another subsidiary (S) (and its shares of stock)

if investment adjustments made to the basis of shares of S1 stock affect the investment adjustments made to the basis of shares of S stock. The'' is corrected to read ''bases of shares of S2 stock under § 1.1502–32 affect the investment adjustments made to the bases of shares of S1 stock. A subsidiary (S1) (and its shares of stock) is lower tier with respect to another subsidiary (S) (and its shares of stock) if investment adjustments made to the bases of shares of S1 stock affect the investment adjustments made to the bases of shares of S stock. The''.

86. On page 3019, column 1, § 1.1502–36(g)(2) *Example 3.*(*ii*), line 4 of the paragraph, the language ''there is no disparity in the basis of the'' is corrected to read ''there is no disparity in the bases of the''.

87. On page 3019, column 1, § 1.1502–36(g)(2) *Example 4.*(*i*), lines 5 through 6 from the bottom of the paragraph, the language ''equal basis that exceeds value. S owns Asset 1 with a basis that exceeds value and cash.'' is corrected to read ''equal basis that exceeds value. S owns Cash and Asset 1 with a basis that exceeds value.''.

88. On page 3019, column 1, § 1.1502–36(g)(2) *Example 4.*(*ii*), line 4 of the paragraph, the language ''there is no disparity in the basis of the'' is corrected to read ''there is no disparity in the bases of the''.

LaNita Van Dyke,

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

[FR Doc. E7–11057 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG–119097–05]

RIN 1545–BE52

Grantor Retained Interest Trusts—Application of Sections 2036 and 2039

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance on the portion of a trust properly includible in a grantor's gross estate under Internal Revenue Code (Code) sections 2036 and 2039 if the grantor has retained the use of property in a trust or the right to an annuity, unitrust, or other income payment from such trust for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 5, 2007. Outlines of topics to be discussed at the public hearing scheduled for September 26, 2007, must be received by September 5, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–119097–05), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to the Courier's Desk, Internal Revenue Service, Attn: CC:PA:LPD:PR (REG–119097–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–119097–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–119097–05). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa M. Melchiorre, (202) 622–7830; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers) or e-mail at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations provide guidance on what portion of a trust is includible in the deceased grantor's gross estate under section 2036 if the grantor retained the right to use property in the trust or the right to receive from that trust an annuity, unitrust, or other income payment for the grantor's life, for any period not ascertainable without reference to the grantor's death, or for any period that does not in fact end before the grantor's death. In addition, the proposed regulations provide guidance on the possible application of section 2039 to trusts in which the decedent has retained the use of property held in the trust or has retained an annuity, unitrust, or other income interest that is includible in the decedent's gross estate under section 2036. These trusts include without limitation certain charitable trusts (collectively CRTs) such as charitable remainder annuity trusts (CRATs) within the meaning of section 664(d)(1), charitable remainder unitrusts (CRUTs) within the meaning of section 664(d)(2) or (d)(3), and charitable remainder trusts that do not qualify under section 664, as well as other trusts established by a grantor (collectively GRTs) such as grantor retained annuity trusts (GRATs), grantor retained unitrusts (GRUTs), and various forms of grantor retained income trusts (GRITs), such as qualified personal residence trusts (QPRTs) and personal residence trusts (PRTs). A CRT is within the scope of these proposed regulations whether or not the CRT meets the qualifications of sections 664(d)(1), (2), or (3) and a GRT is within the scope of these proposed regulations whether or not the grantor's retained interest is a ''qualified interest'' as defined in section 2702(b). This guidance does not apply to trusts or other contractual arrangements arising by reason of a decedent's employment and generally does not apply to annuities purchased by the decedent, as these types of interests fall within the ambit of section 2039.

Under section 2036(a), a decedent's gross estate includes the value of any interest in property transferred by the decedent in which the decedent retained for the decedent's life, for any period not ascertainable without reference to the decedent's death, or for any period that does not in fact end before the decedent's death, either the possession or enjoyment of the property or a right to the income from the property, or the right (either alone or with another) to designate the persons who may possess or enjoy the property or its income. Section 20.2036–1(a) provides generally that, if the decedent retained or reserved an interest with respect to all of the property transferred by the decedent, the amount to be included in the gross estate under section 2036 is the value of the entire property on the date of death. If the decedent retained a right with respect to only part of the property transferred, the amount to be included in the decedent's gross estate under section 2036 is the corresponding proportionate amount of the corpus. Rev. Rul. 76–273, 1976–2 CB 268, and Rev. Rul. 82–105, 1982–1 CB 133 (See § 601.601(d)(2)), generally provide that the portion of the corpus of a CRUT and CRAT includible in the decedent's gross estate under section

2036 is that portion of the trust corpus necessary to generate a return sufficient to provide the decedent's retained annuity or unitrust payment.

Rev. Rul. 76–273 considers a situation where the decedent created an intervivos trust that provided for a stated unitrust percentage of 6 percent to be paid each year to the decedent during life. At the decedent's death, the remainder is to be paid to a charitable organization. The revenue ruling concludes that, for purposes of section 2036(a), the portion of the value of the trust corpus includible in the decedent's gross estate is the portion necessary to yield (at the then current interest rate specified under the applicable regulations) the amount of the annual unitrust payment in perpetuity. Based upon the valuation rules and interest rate assumptions specified in § 20.2031–10 (the regulations applicable at the time the ruling was issued), the revenue ruling provides the following formula to be used to determine this includible portion of the trust corpus: Equivalent income interest rate divided by the interest rate mandated by the applicable regulations at the date of death, where the equivalent income interest rate = adjusted payout rate/1 minus adjusted payout rate. The result, however, is limited to 100 percent of the trust corpus. (Since the issuance of this revenue ruling, the regulations (§ 20.2031–7(d)(1)) have been changed to instead require the use of the section 7520 interest rate in lieu of the rate specified in § 20.2031–10). The revenue ruling concludes that, because the equivalent income interest of the unitrust payment exceeds the equivalent income interest required to produce that unitrust payment, the grantor retained an interest in the entire corpus of the trust, and thus the entire trust corpus is includible in the deceased grantor's gross estate under section 2036.

Rev. Rul. 82–105 considers a situation where the decedent created an intervivos CRAT, pursuant to which the decedent retained the right to receive a fixed annuity for life. The ruling confirms that the decedent's retained annuity represents the retained right to receive all of the income from all or a specific portion of the trust for purposes of section 2036. That portion of the trust corpus with respect to which the decedent retained a right to receive all of the income is properly includible in the decedent's gross estate under section 2036(a)(1). Under the ruling, the amount of the corpus with respect to which the decedent retained the income is that amount of corpus that would be sufficient to yield the annual annuity based on the assumed rate of return prescribed by the regulations as of the applicable valuation date. The ruling prescribes the following formula for this determination: (Annual Annuity) / (Assumed Rate of Return) = Amount Includible. Assuming a rate of return of 6 percent, as specified under § 20.2031–10 (the regulation applicable at the time the ruling was issued), the ruling concludes that only a portion of the trust's corpus is includible in the deceased grantor's gross estate. (Since the issuance of this revenue ruling, the regulations (§ 20.2031–7(d)(1)) have been changed to instead require the use of the section 7520 interest rate in place of the rate specified in § 20.2031–10.) Rev. Rul. 82–105 expressly qualifies this conclusion by stating that the ruling does not consider the amount, if any, that may be includible in the gross estate under any other provisions of the Code.

Section 2039(a) provides that a decedent's gross estate includes the value of an annuity or other payment under any form of contract or agreement (other than an insurance policy on the decedent's life) receivable by any beneficiary by reason of surviving the decedent if, under the contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or other payment, for the decedent's life or for any period not ascertainable without reference to the decedent's death, or for any period that does not in fact end before the decedent's death.

Section 2039(b) provides, in part, that the amount includible in the decedent's gross estate is limited to that portion of the value of the annuity or other payment receivable under the contract or agreement as is proportionate to the portion of the purchase price of the contract or agreement that was contributed by the decedent. Section 20.2039–1(b)(1) provides, in part, that the term ''annuity or other payment,'' as used with respect to both the payment receivable by the decedent and by the beneficiary, has reference to one or more payments extending over any period of time, whether the payments are equal or unequal, conditional or unconditional, periodic or sporadic. The term ''contract or agreement'' includes any arrangement, understanding, or plan, or any combination of them, arising by reason of the decedent's employment. Section 20.2039–1(b)(1).

As is acknowledged in Rev. Rul. 82–105, section 2036 as well as other sections of the Code might apply to the same interest or trust for purposes of the Federal estate tax. Although either section 2036 or section 2039 may be applied to include at least some portion of a trust in the decedent's gross estate if the decedent transfers property during life to a trust and retains the right to use the trust's property or the right to an annuity, unitrust, or other payment from the trust, the amount includible may differ depending upon which section is applied for this purpose.

Explanation of Provisions

The proposed regulations amend § 20.2036–1 to incorporate the guidance provided in Rev. Rul. 76–273 and Rev. Rul. 82–105. The proposed regulations provide that, if a decedent transfers property during life to a trust and retains the right to an annuity, unitrust, or other income payment from, or retains the use of an asset in, the trust for the decedent's life, for a period that does not in fact end before the decedent's death, or for a period not ascertainable without reference to the decedent's death, the decedent has retained the right to income from all or a specific portion of the property transferred as described in section 2036. The portion of the trust corpus includible in the decedent's gross estate is that portion of the trust corpus, valued as of the decedent's death (or the alternate valuation date, if applicable) necessary to yield that annual payment (or use) using the appropriate section 7520 interest rate. In this regard, because the specific portion of corpus includible in the gross estate is properly determined as of the decedent's death, the appropriate section 7520 rate is the rate in effect on the decedent's date of death (or on the alternate valuation date, if applicable). The proposed regulations provide both rules and examples for calculating the amount of trust corpus to be included in a deceased grantor's gross estate under section 2036 in such a case.

The IRS and Treasury Department believe that in many cases both section 2036 and section 2039 may be applicable to these annuity and unitrust interests and to such other payments retained by a deceased grantor. Although the language of section 2039 is broad enough to include all or a portion of a trust's corpus if the grantor retains an annuity or unitrust interest in, or other payments from, a trust, the IRS and Treasury Department believe that, in the interest of ensuring similar tax treatment for similarly situated taxpayers, it is appropriate in this circumstance to provide regulatory rules under which only one of these two potentially applicable Code sections (section 2036 and section 2039) will be applied in the future. For the reasons mentioned below, the IRS and Treasury

Department have concluded that section 2036 (and therefore, when applicable, section 2035), rather than section 2039, will be applied in the future to these interests. First, section 2039 appears to have been intended to address annuities purchased by or on behalf of the decedent and annuities provided by the decedent's employer. Second, the interests retained by grantors in the types of trusts described in this guidance are more similar in most relevant respects to the interests addressed under section 2036 than those most clearly addressed under section 2039. Accordingly, the proposed regulations also amend § 20.2039–1(b)(1) by providing that section 2039 shall not be applied to an annuity, unitrust, or other payment retained by a deceased grantor in a CRT or GRT.

Although these proposed regulations provide guidance as to which section of the Code (specifically, section 2036 or section 2039) is to be used in certain circumstances when each of those sections applies to the same CRT or GRT, these proposed regulations should not be construed to imply that only one section of the Code may apply to a particular situation or interest. These proposed regulations are not intended to foreclose the possibility that any applicable section of the Code (sections 2035 through 2039, or any other section) properly may be applied in the future by the IRS in appropriate circumstances beyond those described in these proposed regulations. (For example, although section 2039 generally will apply to govern the includability of annuities purchased by or on behalf of the decedent and annuities provided by the decedent's employer in the decedent's gross estate, section 2036 may instead be applied if the facts and circumstances indicate that the annuity constituted a retained interest in the property exchanged for that annuity.)

Proposed Effective Date

The first, second, and fourth sentences in § 20.2039–1(a) and the provisions in § 20.2036–1(a)(1), (a)(2), and (c)(1)(i) are applicable to the estates of decedents dying after August 16, 1954. The fifth sentence of § 20.2039–1(a) is applicable to the estates of decedents dying on or after October 27, 1972, and to the estates of decedents for which the period for filing a claim for credit or refund of an estate tax overpayment ends on or after October 27, 1972. The provisions of § 20.2036–1(c)(1)(ii) and (2), § 20.2039–1(e), and the third, sixth, and seventh sentences of § 20.2039–1(a) apply to the estates of decedents for which the valuation date of the gross estate is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department also request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 26, 2007 in the auditorium Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (a signed original and eight (8) copies) or electronic comments by September 5, 2007 and an outline of the topics to be discussed and the time to be devoted to each topic by September 5, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office of Chief Counsel, IRS.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2036–1 is amended by:

1. Redesignating paragraphs (a)(i) and (a)(ii) as paragraphs (a)(1) and (a)(2), respectively.
2. Designating the undesignated text following newly-designated paragraph (a)(2) as paragraph (c)(1)(i) and adding new paragraph headings.
3. Adding paragraphs (c)(1)(ii), (c)(2), and (c)(3).

The additions read as follows:

§ 20.2036–1 Transfers with retained life estate.

* * * * *

(c) *Retained or reserved interest*—(1) *Amount included in gross estate*—(i) *In general.* * * *

(ii) *Example.* The application of paragraph (c)(1)(i) of this section is illustrated in the following example:

Example. In 2001, Decedent (D) creates an irrevocable intervivos trust. The terms of the trust provide that all of the trust's income is to be paid to D and E, D's spouse who is a U.S. citizen, in equal shares during their joint lives and, on the death of either of them, all of the income is to be paid to the survivor of them. On the death of the survivor of D and E, the remainder is to be paid to another individual, F. In 2006, D dies with E still surviving. A portion of the trust's corpus is includible in D's gross estate because D retained the right to receive a portion of the income from the trust for a period that does not in fact end before D's death. The portion of the trust's corpus includible in D's gross estate bears the same ratio to the entire corpus as D's income interest in the trust bears to the entire income interest in the trust. Therefore, in this case, because D and E share equally in the trust's income, 50 percent of the trust's corpus is includible in D's gross estate under section 2036. If instead

E had predeceased D, D would have died while entitled to all of the income from the trust, so that the entire trust corpus would have been includible in D's gross estate under section 2036.

(2) *Retained annuity and unitrust interests in trusts*—(i) *In general.* This paragraph (c)(2) applies to a grantor's retained use of an asset held in trust or a retained annuity, unitrust, or other income interest in any trust (other than a trust constituting an employee benefit) including without limitation the following (collectively referred to in this paragraph (c)(2) as ''trusts''): Certain charitable trusts (collectively CRTs) such as a charitable remainder annuity trust (CRAT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any charitable remainder trust that does not qualify under section 664(d), as well as other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT), a grantor retained unitrust (GRUT), and various other forms of grantor retained income trusts (GRITs), whether or not the grantor's retained interest is a qualified interest as defined in section 2702(b), including without limitation qualified personal residence trusts (QPRTs) and personal residence trusts (PRTs). If a decedent transferred property into such a trust, and retained or reserved the right to use such property or the right to an annuity, unitrust, other income interest in such trust with respect to the property so transferred by the decedent, or to determine the persons who may possess or enjoy the property or its income, for the decedent's life, for any period not ascertainable without reference to the decedent's death, or for a period that does not in fact end before the decedent's death, then the decedent's right to use the property or retained annuity, unitrust, or other income interest (or to designate the beneficiaries of the property) represents the retained right to receive all of the income from all or a specific portion of the trust for purposes of section 2036. The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to yield the decedent's retained use or retained annuity, unitrust, other income payment as determined in accordance with § 20.2031–7 (or § 20.2031–7A, if applicable).

(ii) *Examples.* The application of paragraph (c)(2)(i) of this section is illustrated in the following examples:

Example 1. (i) In 2000, Decedent (D) transferred $100,000 to a trust that qualifies as a CRAT under section 664(d)(1). The trust agreement provides for an annuity of $12,000 to be paid each year to D for D's life, then to D's child (C) for C's life, with the remainder to be distributed upon the survivor's death to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). The annuity is payable to D or C, as the case may be, annually on each December 31st. D died in 2006, survived by C who was then age 40. On D's death, the value of the trust assets was $300,000 and the section 7520 interest rate was 6 percent. D's executor did not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D. In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity/section 7520 interest rate = amount includible under section 2036. The amount of corpus necessary to yield the annual annuity is $12,000/.06 = $200,000. Therefore, $200,000 is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had irrevocably relinquished D's annuity interest no more than 3 years prior to D's death because of the application of section 2035.) D's estate is entitled to a charitable deduction under section 2055 for the present value of N's remainder interest in the CRAT. The applicable annuity factor (based on C's age on D's death and the section 7520 rate applicable on that date) is 14.1646. Therefore, the present value of the annuity is $169,975.20 (14.1646×$12,000). As a result, the allowable charitable deduction for D's estate is $30,024.80 ($200,000—$169,975.20). Under the facts presented, the Internal Revenue Service (IRS) will not seek (and the estate will not be permitted) to include under section 2039 any amount in D's gross estate by reason of this retained annuity. See § 20.2039–1(e).

Example 2. (i) D transferred $100,000 to a GRAT in which D's annuity is a qualified interest described in section 2702(b). The trust agreement provides for an annuity of $12,000 per year to be paid to D for a term of ten years or until D's earlier death. The annuity amount is payable at the end of each month in twelve equal installments. At the expiration of the term of years or on D's earlier death, the remainder is to be distributed to C, D's child. No additional contributions were made to the trust after D's transfer at the creation of the trust. D dies prior to the expiration of the ten-year term. On the date of D's death, the value of the trust assets was $300,000 and the section 7520 interest rate was 6 percent. D's executor did not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D. In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity (adjusted for monthly payments)/section 7520 interest rate = amount includible under section 2036. The Table K adjustment factor for monthly annuity payments in this case is 1.0272. Thus, the amount of corpus necessary to yield the annual annuity is ($12,000×1.0272)/.06 = $205,440. Therefore, $205,440 is includible in D's gross estate under section 2036(a)(1). Under the facts presented, the IRS will not seek (and the estate will not be permitted) to include under section 2039 any amount in D's gross estate by reason of this retained annuity. See § 20.2039–1(e).

Example 3. (i) In 2000, D created a CRUT within the meaning of section 664(d)(2). The trust instrument directs the trustee to hold, invest, and reinvest the corpus of the trust and to pay to D for D's life, and then to D's child (C) for C's life, in equal quarterly installments payable at the end of each calendar quarter, an amount equal to 6 percent of the fair market value of the trust as valued on December 15 of the prior taxable year of the trust. At the termination of the trust, the then corpus, together with any and all the accrued income, is to be distributed to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). D died in 2006, survived by C, who was then age 55. The value of the trust assets on D's death was $300,000 and D's executor did not elect to use the alternate valuation date.

(ii) The amount of the corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the unitrust payments. In this case, such amount of corpus is determined by dividing the trust's equivalent income interest rate by the section 7520 rate (which was 6 percent at the time of D's death). The equivalent income interest rate is determined by dividing the trust's adjusted payout rate by the excess of 1 over the adjusted payout rate. Based on § 1.664–4(e)(3) of the Income Tax Regulations, the appropriate adjusted payout rate for the trust at D's death is 5.786 percent (6 percent × .964365). Thus, the equivalent income interest rate is 6.141 percent (5.786 percent / (1—5.786 percent)). The ratio of the equivalent interest rate to the assumed interest rate under section 7520 is 102.35 percent (6.141 percent / 6 percent). Because this exceeds 100 percent, D's retained payout interest exceeds a full income interest in the trust, and D effectively retained the income from all the assets transferred to the trust. Accordingly, because D retained for life an interest at least equal to the right to the income from all the property transferred by D to the CRUT, the entire value of the corpus of the CRUT is includible in D's gross estate under section 2036(a)(1). D's estate is entitled to a charitable deduction under section 2055 for the present value of N's remainder interest in the CRAT. The remainder factor (based on C's age at D's death, the section 7520 rate in effect on D's death, and the timing and frequency of the payments) is 0.28253. Therefore, the charitable deduction allowable to D's estate is $84,759 ($300,000 x 0.28253). Under the facts presented, the IRS will not seek (and the estate will not be permitted) to include under section 2039 any amount in D's gross estate by reason of D's retained unitrust interest. See § 20.2039–1(e).

(iii) If instead D had retained the right to a unitrust amount having an adjusted payout for which the corresponding equivalent interest rate would be less than the 6 percent assumed interest rate of section 7520, then a correspondingly reduced proportion of the trust corpus would be includible in D's gross estate under section 2036(a)(1). Alternatively, if the interest retained by D was instead only one-half of the 6 percent unitrust interest, the computation of the portion of the trust includable in D's gross estate (set forth in *Example 3* (ii)) would be reduced by one-half. In each case, the amount of the estate's charitable deduction for the remainder interest in the trust also would be reduced. All of the results in this *Example 3* (except those relating to the charitable deduction) would be the same if the trust was a GRUT instead of a CRUT.

Example 4. During D's life, D established a 15-year GRIT for the benefit of individuals who are not members of D's family within the meaning of section 2704(c)(2). D retained the right to receive all of the net income from the GRIT, payable annually, during the GRIT's term. D died during the third year of the GRIT term. D's executor did not elect to use the alternate valuation date. In this case, the GRIT's corpus is includible in D's gross estate under section 2036 because D retained the right to receive all of the income from the GRIT for a period that did not in fact end before D's death. If instead, D had retained the right to receive 60 percent of the GRIT's net income, then 60 percent of the GRIT's corpus would have been includible in D's gross estate under section 2036.

Example 5. D transfered D's personal residence to a trust that met the requirements of a qualified personal residence trust (QPRT) as set forth in § 25.2702–5(c) of this chapter. Pursuant to the terms of the QPRT, D retained the right to use the residence for 10 years or until D's prior death. D died before the end of the term. D's executor did not elect to use the alternate valuation date. In this case, the fair market value of the QPRT's assets on the date of D's death are includible in D's gross estate under section 2036 because D retained the right to use the residence for a period that did not in fact end before D's death.

(3) *Effective dates.* Paragraphs (a)(1), (a)(2), and (c)(1)(i) of this section are applicable to the estates of decedents dying after August 16, 1954. Paragraphs (c)(1)(ii) and (c)(2) of this section apply to the estates of decedents for which the valuation date of the gross estate is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 20.2039–1 is amended by:

1. Revising paragraph (a).
2. Adding a new paragraph (e).

The revision and addition reads as follows:

§ 20.2039–1 Annuities.

(a) *In general.* A decedent's gross estate includes under section 2039(a) and (b) the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under certain agreements or plans to the extent that the value of the annuity or other payment is attributable to contributions made by the decedent or his employer. Section 2039(a) and (b), however, has no application to an amount which constitutes the proceeds of insurance under a policy on the decedent's life. Paragraph (b) of this section describes the agreements or plans to which section 2039(a) and (b) applies; paragraph (c) of this section provides rules for determining the amount includible in the decedent's gross estate; paragraph (d) of this section distinguishes proceeds of life insurance; and paragraph (e) of this section distinguishes annuity, unitrust, and other income interests retained by a decedent in certain trusts. The fact that an annuity or other payment is not includible in a decedent's gross estate under section 2039(a) and (b) does not mean that it is not includible under some other section of part III of subchapter A of chapter 11. However, see section 2039(c) and (d) and § 20.2039–2 for rules relating to the exclusion from a decedent's gross estate of annuities and other payments under certain ''qualified plans.'' Further, the fact that an annuity or other payment may be includible under section 2039(a) will not preclude the application of another section of chapter 11 with regard to that interest. For annuity interests in trust, see paragraph (e)(1) of this section.

* * * * *

(e)(1) *No application to certain trusts.* Section 2039 shall not be applied to include in a decedent's gross estate all or any portion of a trust (other than a trust constituting an employee benefit, but including those described in the following sentence) if the decedent retained a right to use property of the trust or retained an annuity, unitrust, or other income interest in the trust, in either case as described in section 2036. Such trusts include without limitation the following (collectively referred to in this paragraph (e)(1) as ''trusts''): certain charitable trusts (collectively CRTs) such as a charitable remainder annuity trust (CRAT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any other charitable remainder trust that does not qualify under section 664(d), as well as other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT), a grantor retained unitrust (GRUT), and various forms of grantor retained income trusts (GRITs), whether or not the grantor's retained interest is a qualified interest as defined in section 2702(b), including without limitation qualified personal residence trusts (QPRTs) and personal residence trusts (PRTs). For purposes of determining the extent to which a retained interest causes all or a portion of a trust to be included in a decedent's gross estate, see § 20.2036–1(c)(1), (2), and (3).

(2) *Effective date.* The first, second, and fourth sentences in paragraph (a) of this section are applicable to the estates of decedents dying after August 16, 1954. The fifth sentence of paragraph (a) of this section is applicable to the estates of decedents dying on or after October 27, 1972, and to the estates of decedents for which the period for filing a claim for credit or refund of an estate tax overpayment ends on or after October 27, 1972. The third, sixth, and seventh sentences of paragraph (a) of this section and this paragraph (e) are applicable to the estates of decedents for which the valuation date of the gross estate is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–11062 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2005–0163; FRL–8321–9]

RIN–2060–AN28

Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Emission Increases for Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The EPA is announcing a public hearing to be held on June 29, 2007 for the supplemental proposed rule on ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Emission Increases for Electric Generating Units.'' This rulemaking action was published in the **Federal Register** on May 8, 2007

and proposes options to change the emissions increase test used to determine if the NSR permitting program would apply when an existing power plant makes a physical or operational change. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed changes.

DATES: The public hearing will convene at 9 a.m. on June 29, 2007, and continue until 1 hour after the last registered speaker has spoken. People wishing to present oral testimony must pre-register by 5 p.m. on June 28, 2007. The EPA is willing to keep the public hearing open into the evening hours of June 29, 2007, if speakers are pre-registered by the registration deadline of 5 p.m. on June 28, 2007, and have registered to speak during evening hours. For updates and additional information on the public hearing, please check EPA's Web site for this rulemaking at *http://www.epa.gov.nsr/.*

ADDRESSES: The public hearing will be held at U.S. Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, North Carolina 27709, Building C, Auditorium. Because this hearing is being held at U.S. government facilities, everyone planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only used inside the classroom and outside of the building, and demonstrations will not be allowed on Federal property for security reasons. Directions to the EPA Campus are available on the Internet at *http://www.epa.gov/rtp/facilities/maindirections.htm*, along with a map showing the area designated for visitor parking. From there, walk toward the main facility and enter the center building (by the U.S. and EPA flags).

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing or have questions concerning the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, OAQPS, Air Quality Planning Division, (C504–03), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, e-mail address, *long.pam@epa.gov*.

Questions concerning the May 8, 2007, proposed rule should be addressed to Mr. David Svendsgaard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–2380, e-mail at *svendsgaard.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: The May 8, 2007, proposed rule is a supplemental notice to EPA's October 20, 2005 notice of proposed rulemaking. In the October 2005 notice, we proposed three options to revise the NSR emissions test for existing electric generating units: A maximum achievable hourly emissions test, a maximum achieved hourly emissions test, and an output-based hourly emissions test. The May 2007 notice recast the previously proposed options so that the output-based test becomes an alternative method to implement the maximum achieved or maximum achievable hourly tests, rather than a separate option. It also proposed a new option in which the hourly emissions increase test is added to the existing requirements for computing a significant increase and a significant net emissions increase on an annual basis. It also included proposed rule language and supplemental information for the October 2005 proposal, including an examination of the impacts on emissions and air quality.

Public hearing: The proposal for which EPA is holding the public hearing was published in the **Federal Register** on May 8, 2007, (72 FR 26202) and is available at: *http://www.access.gpo.gov/su_docs/fedreg/a070508c.html*. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the supplemental rule proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments on the proposed rule must be postmarked by July 9, 2007, which is the closing date for the comment period, as specified in the proposal for the rule. However, the record will remain open until July 30, 2007, to allow 30 days after the public hearing for submittal of additional information related to the hearing.

Commenters should notify Ms. Long if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail or CD) or in hard copy form.

The hearing schedule, including lists of speakers, will be posted on EPA's Web site *http://www.epa.gov/nsr/*. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the supplemental proposed rule entitled ''Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Emission Increases for Electric Generating Units'' under Docket ID No. EPA–HQ–OAR–2005–0163.

As stated previously, the proposed rule was published in the **Federal Register** on May 8, 2007 (72 FR 26202) and is available at *http://www.access.gpo.gov/su_docs/fedreg/a070508c.html.*

Dated: May 29, 2007.

Jenny Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–10855 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0386; FRL–8321–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the Texas State Implementation Plan Regarding a Negative Declaration for the Synthetic Organic Chemical Manufacturing Industry Batch Processing Source Category in El Paso County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 172(c)(1) of the Clean Air Act (CAA) requires areas that are not attaining a National Ambient Air Quality Standard (NAAQS) to reduce emissions from existing sources by adopting, at a minimum, reasonably

available control technology (RACT). EPA has established source categories for which RACT must be implemented. If no major sources of volatile organic compound (VOC) emissions in a particular source category exist in a nonattainment area, a State may submit a negative declaration for that category. Texas submitted a State Implementation Plan (SIP) revision which included negative declarations for certain source categories in the El Paso 1-hour ozone standard nonattainment area. EPA previously approved the State's declaration that no major sources existed for 9 source categories in the El Paso area. In the approval EPA neglected to approve the negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) batch processing category in the El Paso area. EPA is proposing to approve this negative declaration for the El Paso 1-hour ozone standard nonattainment area.

DATES: Written comments must be received by July 9, 2007.

ADDRESSES: Comments may be mailed to Mr. Carl Young, Acting Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: May 21, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E7–10766 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0200; FRL–8323–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to the Open Burning Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision pertains to the amendments of Virginia's open burning regulation. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before July 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0200 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: miller.linda@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0200, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0200. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 2007, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its State Implementation Plan (SIP) for Open Burning Regulation. The SIP

revision consists of regulation amendments to the April 26, 1996 submittal. The SIP revision expands the geographic applicability of the control measure to implement the open burning seasonal restrictions as part of its plans to reduce and maintain volatile organic compound (VOC) emissions in VOC emissions control areas in Virginia. The amendments include: 9 VAC 5–40–5600—Applicability; 9 VAC 5–40–5610—Definitions; 9 VAC 5–40–5620—Open Burning Prohibitions; and 9 VAC 5–40–5630—Permissible Open Burning.

II. Summary of SIP Revision

Virginia's Open Burning Regulation (9 VAC 5 Chapter 40) applies to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

A special incineration device is a pit incinerator, conical or teepee burner, or any other device specifically designed to provide combustion performance. Modifications of 9 VAC 5 Chapter 40 are made to ensure that the regulation is consistent with the existing incinerator regulations of the board and waste management regulations.

The provisions of this amended regulation are applicable only in the volatile organic emission control areas identified in 9 VAC 5–20–206 of the Virginia Regulations during the months of May, June, July, August and September. The volatile organic emission control areas applicable to this regulation include:

1. Western Virginia Emissions Control Area: Botetourt County, Frederick County, Roanoke County, Salem County and Winchester County.
2. Northern Virginia Emissions Control Area: Arlington County, Fairfax County, Loudon County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.
3. Hampton Roads Emissions Control Area: James City County, York County, Chesapeake City, Hampton City, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk County, Virginia Beach City and Williamsburg City.
4. Richmond Emissions Control Area: Charles City County, Chesterfield County, Hanover County, Henrico County, Colonial Heights City, Hopewell City and Richmond City.
5. Fredericksburg Emissions Control Area: Spotsylvania County and Fredericksburg City.

Definitions included in this SIP revision are: Air curtain incinerator, clean burning waste, clean lumber, clean wood, commercial waste, construction waste, debris waste, demolition waste, garbage, hazardous waste, household waste, industrial waste, landfill, local landfill, open burning, open pit incinerator, refuse, salvage operation, sanitary landfill, special incineration device, wood waste, and yard waste.

This SIP revision provides for the control of open burning and use of special incineration devices for destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities. This SIP revision also provides for the control of open burning and use of special incineration device for the destruction of hazardous waste or containers for such materials. In addition, this SIP revision provides for the control of open burning and use of special incineration device for the purpose of salvage operation or for the destruction of commercial/industrial waste.

Open burning or the use of special incineration devices is permitted on-site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or maintenance of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Such destruction is prohibited in the VOC emissions control areas (see 9 VAC 5–20–206) during May, June, July, August and September.

Open burning or the use of special incineration devices is also permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Such destruction is prohibited in the VOC emissions control areas (see 9 VAC 5–20–206) during May, June, July, August and September.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virgina

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege''' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be

afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

In implementing the open burning restrictions, this amended regulation (9 VAC 5 Chapter 40) will reduce and maintain VOC emissions in the volatile organic emission control areas identified in 9 VAC 5–20–206 of the Virginia regulations. EPA is proposing to approve the Virginia SIP revision for the Open Burning Regulation submitted on February 5, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule pertaining to the amendments of Virginia's Open Burning Regulation, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 31, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E7–11038 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0245; FRL–8322–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Altoona 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Altoona ozone nonattainment area (''Altoona Area'' or ''Area'') be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Area is comprised of Blair County, Pennsylvania. EPA is proposing to approve the ozone redesignation request for the Altoona Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Altoona Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Altoona Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Altoona Area has met the criteria for redesignation to

attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Pennsylvania has also submitted a 2002 base-year inventory for the Altoona Area, and EPA is proposing to approve that inventory for the Altoona Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Altoona Area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before July 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0245 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: miller.linda@epa.gov*

C. *Mail:* EPA–R03–OAR–2007–0245, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0245. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Are the Actions EPA Is Proposing To Take?

On February 8, 2007, the PADEP formally submitted a request to redesignate the Altoona Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for the Altoona Area as a SIP revision to ensure continued attainment in the Area over the next 11 years. PADEP also submitted a 2002 base-year inventory for the Altoona Area as a SIP revision. The Altoona Area is comprised of Blair County. It is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Altoona Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Altoona Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Altoona maintenance plan as a SIP revision for the Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the Altoona Area for the next 11 years. EPA is also proposing to approve the 2002 base-year inventory for the Altoona Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Altoona maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the Altoona Area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Altoona Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April

15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Altoona Area (as well as most other areas of the country), effective June 15, 2005. *See,* 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *See, South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) (hereafter ''*South Coast.*''). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. ''The Altoona Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,'' EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Altoona Area to attainment of the 8-hour ozone NAAQS.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Altoona Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Altoona Area is subject to the requirements of subpart 1 of part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Altoona Area has a design value of 0.077 ppm for the 3-year period of 2003–2005, using complete, quality-assured data. Additionally, certified 2006 ozone monitoring data indicates that the Altoona Area continues to attain the ozone NAAQS. Therefore, the ambient ozone data for the Altoona Area indicates no violations of the 8-hour ozone standard.

B. The Altoona Area

The Altoona Area consists of Blair County, Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, the Altoona Area was a marginal 1-hour ozone nonattainment Area, and therefore, was subject to requirements for marginal nonattainment areas pursuant to section 182(a) of the CAA. *See* 56 FR 56694 (November 6, 1991). EPA determined that the Altoona Area has attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995).

On February 8, 2007, the PADEP requested that the Altoona Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Altoona Area. The data satisfies the CAA requirements that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June, 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On February 8, 2007, the PADEP requested redesignation of the Altoona Area to attainment for the 8-hour ozone standard. On February 8, 2007, PADEP submitted a maintenance plan for the Altoona Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. PADEP also submitted a 2002 base-year inventory concurrently with its maintenance plan as a SIP revision. EPA has determined that the Altoona Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the Altoona Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Altoona Area for the next 11 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_X and VOC MVEBs for transportation conformity purposes for the years 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO_X
2009	4.2	6.5
2018	2.8	3.3

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the Altoona Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The following is a description of how the PADEP's February 8, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Altoona Area Has Attained the 8-Hour NAAQS

EPA is proposing to determine that the Altoona Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of Part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Altoona Area, there is one ozone monitor, located in Blair County that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2003–2005 for the Altoona Area. This data has been quality assured and is recorded in the AQS. The PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations, along with the three-year average are summarized in Table 2.

TABLE 2.—ALTOONA AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES, ALTOONA COUNTY MONITOR/AIRS ID 42–013–0801

Year	Annual 4th highest reading (ppm)
2003	0.083
2004	0.073
2005	0.077
2006	0.071

The average for the 3-year period 2003–2005 is 0.077 ppm.

The average for the 3-year period 2004–2006 is 0.074 ppm.

The air quality data for 2003–2005 show that the Altoona Area has attained the standard with a design value of 0.077 ppm. The data collected at the Altoona Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. EPA believes this conclusion remains valid after review of the certified 2006 data because the design value for 2004–2006 would be 0.074 ppm. The PADEP's request for redesignation for the Altoona Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the Area has attained the 8-hour ozone NAAQS.

B. The Altoona Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Altoona Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and

that it meets all applicable SIP requirements under part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Altoona Area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests To Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. *See also,* Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also,* 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which includes enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Altoona Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an'' 'applicable requirement' for purposes of section 110(1) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004). EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. As we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due for the Altoona Area prior to submission of the redesignation request

2. Part D Nonattainment Requirements Under the 8-Hour Standard

Pursuant to an April 30, 2004, final rule (69 FR 23951), the Altoona Area was designated a basic nonattainment area under subpart 1 for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. With respect to the 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under

subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Altoona Area was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also*, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. *See* 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking, *See*, *Sierra Club* v. *Whitman*, 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to 8-hour subpart 2 requirements, if the Altoona Area initially had been classified under subpart 2, the first two part D subpart 2 requirements applicable to the Altoona Area under section 182(a) of the CAA would be: A base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, the emissions statement requirement pursuant to section 182(a)(3)(B).

As stated previously, these requirements are not yet due for purposes of redesignation of the Altoona Area, but nevertheless, Pennsylvania already has in its approved SIP, an emissions statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area and, that satisfies the emissions statement requirement for the 8-hour standard. *See*, 25 Pa. Code 135.21(a)(1), codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base-year inventory for the Altoona Area, which was submitted on February 8, 2007, concurrently with its maintenance plan, into the Pennsylvania SIP. EPA is proposing to approve the 2002 base year inventory as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA. A detailed evaluation of Pennsylvania's 2002 base-year inventory for the Altoona Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking. EPA has determined that the emission inventory and emissions statement requirements for the Altoona Area have been satisfied.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes that the general conformity and NSR requirements do not require approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See*, *Wall* v. *EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also*, 60 FR 62748 (December 7, 1995).

In the case of the Altoona Area, EPA has also determined that before being redesignated, the Altoona Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. See the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the Altoona Area the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the OTR. The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Altoona Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two

considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and Vehicle Inspection and Maintenance programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the Altoona Area by virtue of the Area's designation and classification. *See* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

In its December 22, 2006 decision in *South Coast*, the Court also addressed EPA's revocation of the 1-hour ozone standard. The current status of the revocation and associated anti-backsliding rules is dependent on whether the Court's decision stands as originally issued or is modified in response to any petition for rehearing or request for clarification that has been filed. As described more fully below, EPA determined that the Altoona Area attained the 1-hour standard by its attainment date (60 FR 3349, January 17, 1995), continues to attain that standard, and has fulfilled any requirements of the 1-hour standard that would apply even if the 1-hour standard is reinstated and those requirements are viewed as applying under the statute itself. Thus, the Court's decision, as it currently stands, imposes no impediment to moving forward with redesignation of the Area to attainment.

The conformity portion of the Court's ruling does not impact the redesignation request for the Altoona Area because there are no conformity requirements that are relevant to redesignation request for any standard, including the requirement to submit a transportation conformity SIP.[1] As we have previously noted, under longstanding EPA policy, EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. 40 CFR 51.390. *See*, *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See also*, 60 FR 62748 (Dec. 7, 1995) (Tampa, Florida redesignation).

With respect to the requirement for submission of contingency measures for the 1-hour standard, section 182(a) does not require contingency measures for marginal areas, and, therefore, that portion of the Court's ruling does not impact the redesignation request for the Altoona Area.

Prior to its designation as an 8-hour ozone nonattainment area, the Altoona Area was designated a marginal nonattainment area for the 1-hour standard. With respect to the 1-hour standard, the applicable requirements of subpart 1 and of subpart 2 of Part D (section 182) for the Altoona Area are discussed in the following paragraphs:

Section 182(a)(2)(A) required SIP revisions to correct or amend RACT for sources in marginal areas, such as the Altoona Area, that were subject to control technique guidelines (CTGs) issued before November 15, 1990 pursuant to CAA section 108. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of the CAA (59 FR 65971, December 22, 1994). EPA believes that this requirement applies only to marginal and higher classified areas under the 1-hour NAAQS pursuant to the 1990 amendments to the CAA; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 182(a)(2)(B) relates to the savings clause for vehicle inspection and maintenance (I/M). It requires marginal areas to adopt vehicle I/M programs. This provision was not applicable to the Altoona Area because this area did not have and was not required to have an I/M program before November 15, 1990.

Section 182(a)(3)(A) requires a triennial Periodic Emissions Inventory for the nonattainment area. The most recent inventory for the Altoona Area was compiled for 2002 and submitted to EPA as a SIP revision with the maintenance plan for the Altoona Area.

With respect to NSR, EPA has determined that areas being redesignated need not have an approved New Source Review program for the same reasons discussed previously with respect to the applicable part D requirements for the 8-hour standard.

Section 182(a)(3)(B)—This provision of the Act requires sources of VOCs and NO_X in the nonattainment area to submit annual Emissions Statements regarding the quantity of emissions from the previous year. As discussed previously, Pennsylvania already has in its approved SIP, a previously approved emissions statement rule for the 1-hour standard, which applies to the Altoona Area.

Section 182(a)(1)—This provision of the Act provides for the submission of a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator. In this proposed rule, EPA is proposing to approve a 2002 base year emissions inventory for the Altoona Area as meeting the requirement of section 182(a)(1). While EPA generally required that the base year inventory for the 1-hour standard be for calendar year 1990, EPA believes that Pennsylvania's 2002 inventory fulfills this requirement because it meets EPA's guidance and because it is more current than 1990. EPA also proposes to determine that, if the 1-hour standard is deemed to be reinstated, the 2002 base year inventory for the 8-hour standard will provide an acceptable substitute for the base year inventory for the 1-hour standard.

EPA has previously determined that the Altoona Area has attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995), and we believe that the Altoona Area is still in attainment for the 1-hour ozone NAAQS based upon the ozone monitoring data for the years 2003–2005. To demonstrate attainment, i.e., compliance with this standard, the annual average of the number of expected exceedances of the 1-hour standard over a three-year period must be less than or equal to 1. Table 3 provides a summary of the number of expected exceedances for each of the years 2003 through 2005 and three-year annual average.

TABLE 3.—ALTOONA AREA NUMBER OF EXPECTED EXCEEDANCES OF THE 1-HOUR OZONE STANDARD; ALTOONA COUNTY MONITOR/AIRS ID 42–013–0801

Year	Number of expected exceedances
2003	1.0
2004	0.0
2005	0.0
2006	0.0

The average number of expected exceedances for the 3-year period 2003 through 2005 is 0.3.

[1] Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

The average number of expected exceedances for the 3-year period 2004–2006 is 0.0.

In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Altoona Area is maintaining air quality that conforms to the 1-hour ozone NAAQS. EPA believes this conclusion remains valid after review of the certified 2006 data because no exceedances were recorded in the Altoona Area in 2006.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of the Altoona Area, which is located in the OTR, nonattainment NSR will be applicable after redesignation. As discussed previously, EPA has fully approved Pennsylvania's NSR SIP revision which applies the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

As discussed previously in this notice, EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. *See*, 61 FR 53174, October 10, 1996 and 62 FR 24826, May 7, 1997 (Reading, Pennsylvania Redesignation).

5. Altoona Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See*, 68 FR at 25425 (May 12, 2003) and citations therein.

C. The Air Quality Improvement in the Altoona Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Altoona Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 4.

TABLE 4.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Point*	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
2002	1.2	5.8	2.0	6.3	15.3
2004	1.2	5.6	1.8	5.4	14.0
Diff (02–04)	−0.0	−0.2	−0.2	−0.9	−1.3
Nitrogen Oxides (NO_X)					
2002	1.6	0.9	5.5	10.0	18.0
2004	2.3	0.9	5.1	8.8	17.1
Diff (02–04)	0.7	0.0	−0.4	−1.2	−0.9

*The stationary point source emissions shown here do not include banked emission credits of 68.9 tpd of VOC and 4.4 tpd of NO_X as indicated in Technical Appendix A–4 to Pennsylvania's SIP submission.

Between 2002 and 2004, VOC emissions decreased by 1.3 tpsd from 15.3 tpsd to 14.0 tpsd; NO_X emissions decreased by 0.9 tpsd from 18.0 tpsd to 17.1 tpsd. These reductions, and anticipated future reductions, are due to the following permanent and enforceable measures.

1. Stationary Point Sources

Federal NO_X SIP Call (66 FR 43795, August 21, 2001)

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003)

Portable Fuel Containers (69 FR 70893, December 8, 2004)

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP)

—Tier 1 (56 FR 25724, June 5, 1991)

—Tier 2 (65 FR 6698, February 10, 2000)

Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65 FR 59896, October 6, 2000)

National Low Emission Vehicle (NLEV) Program (PA) (64 FR 72564, December 28, 1999)

Vehicle Emission Inspection/ Maintenance Program (70 FR 58313, October 6, 2005)

4. Non-Road Sources

Non-road Diesel (69 FR 38958, June 29, 2004)

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard.

D. The Altoona Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Altoona Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 11 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for Altoona meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175 of the CAA sets forth the elements of a maintenance plan for

areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

Analysis of the Altoona Area Maintenance Plan

(a) Attainment inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2003–2005 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual ''typical summer day'' emissions of VOC and NO_X during 2004 and consists of a list of sources and their associated emissions.

The 2002 and 2004 point source data was compiled from actual sources. Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data Systems and EPA's publication series AP–42, and are based on Source Classification Codes (SCC). The 2002 area source data was compiled using county-level activity data, from census numbers, from county numbers, etc. The 2004 area source data was projected from the 2002 inventory using temporal allocations provided by the Mid-Atlantic Regional Air Management Association (MARAMA).

The on-road mobile source inventories for 2002 and 2004 were compiled using MOBILE6.2 and Pennsylvania Department of Transportation (PENNDOT) estimates for VMT. The PADEP has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_X emissions for 2002, as well as for the projection years of 2004, 2009, and 2018 (shown in Tables 5 and 6 below). The 2002 and 2004 emissions for the majority of non-road emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model calculates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled non-road equipment types and includes growth factors. The NONROAD model does not estimate emissions from locomotives or aircraft. For 2002 and 2004 locomotive emissions, the PADEP projected emissions from a 1999 survey using national fuel consumption information and EPA emission and conversion factors. There are no significant commercial aircraft operations (aircraft that can seat over 60 passengers) in Blair County. The Altoona Airport in Blair County supports some air taxi operations that account for a very small amount of emissions. For 2002 and 2004 aircraft emissions, PADEP estimated emissions using small airport operations statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can be found in the Technical Appendices, which are part of this submittal.

(b) Maintenance Demonstration—On February 8, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The Altoona maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Altoona Area through the year 2018. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also* 66 FR at 53099–53100; 68 FR at 25430–32.

Tables 5 and 6 specify the VOC and NO_X emissions for the Altoona Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the maintenance period.

TABLE 5.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Point*	1.2	1.2	1.5
Area	5.6	5.8	5.3
Mobile	5.4	4.2	2.8
Nonroad	1.8	1.4	1.3
Total	14.0	12.6	10.9

*Totals may vary due to rounding.

TABLE 6.—TOTAL NO_X EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Point*	2.3	1.7	1.8
Area	0.9	0.9	0.9
Mobile	8.8	6.5	3.3

TABLE 6.—TOTAL NO_X EMISSIONS FOR 2004–2018 (TPSD)—Continued

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Non-road	5.1	4.2	3.1
Total	17.1	13.3	9.1

* Totals may vary due to rounding.

Additionally, the following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- The Clean Air Interstate Rule (CAIR) (71 FR 25328, April 28, 2006).
- The Federal NO_X SIP Call (66 FR 43795, August 21, 2001).
- Area VOC regulations concerning portable fuel containers (69 FR 70893, December 8, 2004), consumer products (69 FR 70895, December 8, 2004), and architectural and industrial maintenance coatings (AIM) (69 FR 68080, November 23, 2004).
- Federal Motor Vehicle Control Programs (light-duty) (Tier 1, Tier 2; 56 FR 25724, June 5, 1991; 65 FR 6698, February 10, 2000).
- Vehicle emission/inspection/maintenance program (70 FR 58313, October 6, 2005).
- Heavy duty diesel on-road (2004/2007) and low sulfur on-road (2006); 66 FR 5002, (January 18, 2001).
- Non-road emission standards (2008) and off-road diesel fuel 2007/2010); 69 FR 38958 (June 29, 2004).
- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999)—Pennsylvania will implement this program in car model year 2008 and beyond.
- Pennsylvania Heavy-Duty Diesel Emissions Control Program. (May 10, 2002).

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Altoona Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Altoona Area. PADEP will continue to operate its current air quality monitor (located in Blair County), in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track the attainment status of the ozone NAAQs in the Area by reviewing air quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of Vehicle Miles Traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. The PADEP will also continue to operate the existing ozone monitoring station in the Area pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system. Section 175A(b) of the CAA states that eight years following redesignation of the Altoona Area, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made that commitment to meet the requirement section 175A(b).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Altoona Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the Area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the Blair County monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at the Altoona County, Pennsylvania monitor. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and in the Pennsylvania Air Pollution Control Act in order to return the Area to attainment with the standard. Contingency measures to be considered for Altoona will include, but not be limited to the following:

Regulatory measures:

—Additional controls on consumer products.

—Additional controls on portable fuel containers.

Non-Regulatory measures:

—Voluntary diesel engine ''chip reflash'' (installation software to correct the defeat device option on certain heavy-duty diesel engines).

—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local on-road or off-road fleets.

—Idling reduction technology for Class 2 yard locomotives.

—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Altoona Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e., RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed ''on-road mobile source emission budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4)

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBS for the Altoona Area are listed in Table 1 of this document for 2009 and 2018, and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Altoona Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The State used 2004 as the year to determine attainment levels of emissions for the Altoona Area. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 14.0 tpsd of VOC and 17.1 tpsd of NO_X. The PADEP projected emissions out to the year 2018 and projected a total of 10.9 tpsd of VOC and 9.1 tpsd of NO_X from all sources in the Altoona Area. The safety margin for 2018 would be the difference between these amounts, or 3.1 tpsd of VOC and 8.0 tpsd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 7 shows the safety margins for the 2009 and 2018 years.

TABLE 7.—2009 AND 2018 SAFETY MARGINS FOR ALTOONA

Inventory year	VOC emissions (tpsd)	NO_X emissions (tpsd)
2004 Attainment	14.0	17.1
2009 Interim	12.6	13.3
2009 Safety Margin	1.4	3.8
2004 Attainment	14.0	17.1
2018 Final	10.9	9.1
2018 Safety Margin	3.1	8.0

The PADEP allocated 0.4 tpsd VOC and 0.4 tpsd NO_X to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 0.6 tpsd VOC and 0.5 tpsd NO_X from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 8 shows the final 2009 and 2018 MVEBS for Altoona.

TABLE 8.—2009 AND 2018 FINAL MVEBS FOR ALTOONA

Inventory year	VOC emissions (tpsd)	NO_X emissions (tpsd)
2009 projected on-road mobile source projected emissions	3.8	6.1

TABLE 8.—2009 AND 2018 FINAL MVEBS FOR ALTOONA—Continued

Inventory year	VOC emissions (tpsd)	NO_X emissions (tpsd)
2009 Safety Margin Allocated to MVEBs	0.4	0.4
2009 MVEBs	4.2	6.5
2018 projected on-road mobile source projected emissions	2.2	2.8
2018 Safety Margin Allocated to MVEBs	0.6	0.5
2018 MVEBs	2.8	3.3

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Altoona Area are approvable because the MVEBs for VOCs and NO_X continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Altoona Maintenance Plan?

The MVEBs for the Altoona Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Altoona MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Altoona Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* (once there, click on ''Adequacy Review of SIP Submissions'').

VIII. Proposed Actions

EPA is proposing to determine that the Altoona Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Altoona Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Altoona Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Altoona Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Altoona Area, submitted on February 8, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Altoona Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Altoona Area, and the MVEBs submitted by Pennsylvania for the Altoona Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule, proposing to approve the redesignation of the Altoona Area to

attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 31, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E7–11019 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 412, 413, and 489

[CMS–1533–CN]

RIN 0938–A070

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that appeared in the proposed rule entitled ''Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates'' that appeared in the May 3, 2007 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 07–1920 of May 3, 2007 (72 FR 24680), there were a number of technical errors that are identified and corrected in the Correction of Errors section of this notice. We issued the fiscal year (FY) 2008 hospital inpatient prospective payment systems (IPPS) proposed rule on April 13, 2007. The FY 2008 IPPS proposed rule appeared in the May 3, 2007 **Federal Register**.

II. Summary of Errors

We recently discovered that an error was made in the calculation of the DRG relative weights presented in the FY 2008 IPPS proposed rule. We have revised the relative weights to correct the error and have recalculated the standardized amounts. These changes increase the standardized amounts slightly and reduce the proposed FY 2008 outlier threshold by $85. Further, these revisions affect the DRG-specific costs thresholds for new technology add-on payments. Therefore, in this notice we are correcting the following:

- Preamble language regarding the methodology used to calculate charge-based and cost-based relative weights.
- Outlier threshold.
- Recalibration, wage and recalibration, geographic reclassification, and rural floor budget neutrality factors.
- Tables 1A through 1D, 2, 4A, 4C, 4J, 5, 10.
- Impact analysis tables (Tables I and II).

In addition, we have posted these corrected tables on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/WIFN/list.asp.*

III. Correction of Errors

In FR Doc. 07–1920 of May 3, 2007 (72 FR 24680), make the following corrections:

A. Corrections to the Preamble

1. On page 24711, second column, last paragraph, sixth line from the bottom, the figure ''$23,015'' is corrected to read ''$22,930.''

2. On page 24746, second column,

a. Third full paragraph, line 9, the phrase, ''in the FY 2005 MedPAR'' is corrected to read ''in the FY 2006 MedPAR.''

b. Fifth full paragraph, last line, after the phrase ''cost of living adjustment.'', the following sentence is added to read as follows:

''Beginning with FY 2008, because hospital charges include charges for both operating and capital costs, we are proposing to standardize total charges to remove the effects of differences in geographic adjustment factors, large urban add-on payments, cost-of-living adjustment, disproportionate share payments, and IME adjustments under the capital IPPS as well.''

3. On page 24747, first column, third full paragraph, last line, after the phrase ''cost of living adjustment.'' and before the phrase ''Charges were then'', the following sentence is added to read as follows:

''Beginning with FY 2008, because hospital charges include charges for both operating and capital costs, we are proposing to standardize total charges to remove the effects of differences in geographic adjustment factors, large urban add-on payments, cost-of-living adjustment, disproportionate share payments, and IME adjustments under the capital IPPS as well.''

B. Corrections to the Addendum

1. On page 24836,

a. First column, second full paragraph,

(1) Line 14, the figure ''0.999317'' is corrected to read ''0.999367.''

(2) Lines 19 and 29, the figure ''0.998557'' is corrected to read ''0.998573.''

b. Second column, first partial paragraph, line 17, the figure ''0.991938'' is corrected to read ''0.991925.''

2. On page 24837, second column, second full paragraph, line 6, the figure ''$23,015'' is corrected to read ''$22,930''.

3. On page 24839, top half of the page, in the table Comparison of FY 2007 Standardized Amounts to Proposed FY 2008 Single Standardized Amount with Full Update and Reduced Update, the figures in the listed entries are corrected to read as follows:

	Full update (3.3 percent)	Reduced update (1.3 percent)
FY 2008 DRG Recalibrations and Wage Index Budget Neutrality Factor	0.999367	0.999367
FY 2008 Reclassification Budget Neutrality Factor	0.991925	0.991925

4. On page 24846, third column, first full paragraph,

a. Line 38, the figure ''$417.26'' is corrected to read ''$417.12.''

b. Line 40, the figure ''$413.87'' is corrected to read ''$413.73.''

5. On page 24847,

a. Middle of the page, in the table Comparison of Factors and Adjustments: FY 2007 Capital Federal Rate and Proposed FY 2008 Capital Federal Rate for Urban Hospitals, third column, last row, the figure, ''$413.87'' is corrected to read ''$413.73.''

b. Lower third of the page, in the table Comparison of Factors and Adjustments: FY 2007 Capital Federal Rate and Proposed FY 2008 Capital Federal Rate for Rural Hospitals, third column, last row, the figure ''$417.26'' is corrected to read ''$417.12.''

6. On page 24848,

a. First column, fourth full paragraph,

(1) Line 10, the phrase ''is $197.21'' is corrected to read ''is $197.11.''.

(2) Line 12, the figure ''$195.60'' is corrected to read ''$195.51.''

b. Second column, third paragraph, last line, the figure ''$23,015'' is corrected to read ''$22,930''.

7. On page 24850, in Table 1A.—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (69.7 Percent Labor Share/30.3 Percent Nonlabor Share If Wage Index Greater Than 1), the table is corrected to read as follows:

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (69.7 PERCENT LABOR SHARE/30.3 PERCENT NONLABOR SHARE IF WAGE INDEX GREATER THAN 1)

Full update (3.3 percent)		Reduced update (1.3 Percent)	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,430.41	$1,491.27	$3,363.99	$1,462.40

8. On page 24850, in Table 1B.—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share If Wage Index Less Than Or Equal To 1), the table is corrected to read as follows:

TABLE 1B.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX LESS THAN OR EQUAL TO 1)

Full update (3.3 percent)		Reduced update (1.3 Percent)	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,051.44	$1,870.24	$2,992.36	$1,834.03

9. On page 24850, in Table 1C.—Adjusted Operating Standardized Amounts For Puerto Rico Labor, Labor/Nonlabor, the table is corrected to read as follows:

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Rates if wage index greater than 1		Rates if wage index less than or equal to 1	
	Labor	Nonlabor	Labor	Nonlabor
National	$3,430.41	$1,491.27	$3,363.99	$1,462.40
Puerto Rico ..	1,442.16	883.90	1,365.40	960.66

10. On page 24850, in Table 1D.—Capital Standard Federal Payment Rate, the table is corrected to read as follows:

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Urban rate	Rural rate
National	$413.73	$417.12
Puerto Rico ..	195.51	197.11

11. On pages 24851 through 24917, in Table 2.—Hospital Case-Mix Indexes For Discharges Occurring in Federal Fiscal Year 2006; Hospital Wage Indexes For Federal Fiscal Year 2008; Hospital Average Hourly Wages For Federal Fiscal Years 2006 (2002 Wage Data), 2007 (2003 Wage Data), And 2008 (2004 Wage Data); And 3-Year Average Of Hospital Average Hourly Wages, the wage index for the listed provider numbers are corrected to read as follows:

Provider No.	FY 2008 wage index
010012	0.9390
010047	0.7776
010052	0.7701
010109	0.8049
010110	0.7900
010164	0.8042
040014	0.8720
040017	0.8718
040041	0.8720
040071	0.8720
040076	0.8720
040078	0.8720
040100	0.8720
040119	0.8720
050007	1.4907
050008	1.4792
050009	1.4200
050013	1.4200
050016	1.2015
050047	1.4792
050055	1.4792
050070	1.4907
050113	1.4907
050152	1.4792
050228	1.4792
050232	1.2015
050280	1.2826
050289	1.4907
050407	1.4792
050454	1.4792
050457	1.4792
050506	1.2015
050633	1.2015
050667	1.4200
050668	1.4792
050697	1.2826
050707	1.4907
050733	1.2826
050754	1.4907
060010	0.9730
060030	0.9730
080001	1.0777
080003	1.0777
100102	0.8874
100290	0.9331
110107	0.9752
110164	0.9752
110201	0.9752
130066	0.9680
130068	0.9680
150015	0.8904
160030	1.0022
180013	0.9407
180064	0.8131
180066	0.9407
180079	0.8075
180080	0.8042
180124	0.9407
190044	0.7849
190190	0.7752
190246	0.7752
200032	0.8878
210028	0.9429
230036	0.9398
230041	0.9398
230047	1.0091
230080	0.9398
230105	0.9398
230195	1.0091
230204	1.0091
230222	0.9398
230227	1.0091
230257	1.0091
230264	1.0091
230297	1.0091
230299	1.0091
230300	1.0091
240006	1.0760
240010	1.0760
240018	1.0084
240061	1.0760
240069	1.0760
240071	1.0760
270081	0.8574
280065	0.9746
310010	1.0812
310011	1.0864
310014	1.0777
310044	1.0812
310081	1.0777
310092	1.0812
310110	1.0812
320001	0.9739
320005	0.9739
320006	0.9739
320009	0.9739
320011	0.9407
320017	0.9739
320019	0.9739
320021	0.9739
320037	0.9739
320074	0.9739
320079	0.9739
320083	0.9739
330135	1.1528
330205	1.1528
330264	1.1528
340133	0.8916
360044	0.8825
370113	0.8718
380029	1.0479
380051	1.0479
380056	1.0479
390044	1.0777
390096	1.0777
390133	1.0777
410013	1.1793
430012	0.9394
430013	0.9394
430048	0.8398
440011	0.8042
440015	0.8042
440019	0.8042
440030	0.7972
440034	0.8042
440035	0.9407
440056	0.8042
440073	0.9407
440084	0.7949
440110	0.8042
440120	0.8042
440125	0.8042
440144	0.9407
440148	0.9407
440151	0.9407
440153	0.7923
440173	0.8042
440175	0.9407
440192	0.9407
440225	0.8042
440226	0.8042
450370	0.8444
450565	0.8690
450755	0.8498

12. On pages 24924, 29426, and 24941, in Table 4A.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas by CBSA—FY 2008, the wage index and GAF for the listed CBSAs are corrected to read as follows:

CBSA code	Urban area	Wage index	GAF
10740	Albuquerque, NM Bernalillo County, NM. Sandoval County, NM. Torrance County, NM. Valencia County, NM.	0.9739	0.9821
13020	Bay City MI Bay County, MI.	0.9398	0.9584
40340	Rochester, MN Dodge County, MN. Olmsted County, MN. Wabasha County, MN.	1.0760	1.0514

13. On pages 24948 through 24951, in Table 4C.—Wage Index And Capital Geographic Adjustment Factor (GAF) For Hospitals That Are Reclassified By CBSA FY 2008, the wage indices and GAFs for the listed areas are corrected to read as follows:

CBSA code	Area	Wage index	GAF
10740	Albuquerque, NM	0.9739	0.9821
13020	Bay City, MI	0.9398	0.9584
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8718	0.9103
35980	Norwich-New London, CT	1.1793	1.1196
40340	Rochester, MN	1.0760	1.0514
40660	Rome, GA	0.9390	0.9578
43620	Sioux Falls, SD	0.9394	0.9581

14. On pages 24952 through 24960, in Table 4J.—Out-Migration Adjustment—FY 2008, the entries for the listed providers are corrected to read as follows:

Provider No.	Reclassified for FY 2008	Out-migration adjustment	Qualifying county name	County code
010009	*	0.0092	MORGAN	01510
010025	*	0.0235	CHAMBERS	01080
010038		0.0039	CALHOUN	01070
010047		0.0178	BUTLER	01060
010052		0.0103	TALLAPOOSA	01610
010054	*	0.0092	MORGAN	01510
010065	*	0.0103	TALLAPOOSA	01610
010078		0.0039	CALHOUN	01070
010085	*	0.0092	MORGAN	01510
010109		0.0451	PICKENS	01530
010110		0.0302	BULLOCK	01050
010146		0.0039	CALHOUN	01070
010150	*	0.0178	BUTLER	01060
050007		0.0141	SAN MATEO	05510
050008		0.0026	SAN FRANCISCO	05480
050016		0.0103	SAN LUIS OBISPO	05500
050047		0.0026	SAN FRANCISCO	05480
050055		0.0026	SAN FRANCISCO	05480
050070		0.0141	SAN MATEO	05510
050076	*	0.0026	SAN FRANCISCO	05480
050113		0.0141	SAN MATEO	05510
050152		0.0026	SAN FRANCISCO	05480
050194	*	0.0052	SANTA CRUZ	05540
050197	*	0.0141	SAN MATEO	05510
050228		0.0026	SAN FRANCISCO	05480
050232		0.0103	SAN LUIS OBISPO	05500
050242	*	0.0052	SANTA CRUZ	05540
050289		0.0141	SAN MATEO	05510
050407		0.0026	SAN FRANCISCO	05480
050454		0.0026	SAN FRANCISCO	05480
050457		0.0026	SAN FRANCISCO	05480
050506		0.0103	SAN LUIS OBISPO	05500
050541	*	0.0141	SAN MATEO	05510
050633		0.0103	SAN LUIS OBISPO	05500
050668		0.0026	SAN FRANCISCO	05480
050707		0.0141	SAN MATEO	05510
050714	*	0.0052	SANTA CRUZ	05540
050754		0.0141	SAN MATEO	05510
060010		0.0153	LARIMER	06340
060030		0.0153	LARIMER	06340
080001	*	0.0063	NEW CASTLE	08010
080003	*	0.0063	NEW CASTLE	08010
100102		0.0125	COLUMBIA	10110
100156	*	0.0125	COLUMBIA	10110
100290		0.0582	SUMTER	10590
110146	*	0.0805	CAMDEN	11170
130049	*	0.032	KOOTENAI	13270
130066		0.032	KOOTENAI	13270
130067	*	0.0696	BINGHAM	13050
130068		0.032	KOOTENAI	13270
140167	*	0.1055	IROQUOIS	14460
150006	*	0.0113	LA PORTE	15450
150015		0.0113	LA PORTE	15450
150146	*	0.0319	NOBLE	15560
160030		0.004	STORY	16840
170137	*	0.0336	DOUGLAS	17220

Provider No.	Reclassified for FY 2008	Out-migration adjustment	Qualifying county name	County code
180064		0.0319	MONTGOMERY	18860
180066	*	0.0449	LOGAN	18700
180079		0.0263	HARRISON	18480
190044		0.0258	ACADIA	19000
190099	*	0.0188	AVOYELLES	19040
190184	*	0.0161	CALDWELL	19100
190190		0.0161	CALDWELL	19100
190246		0.0161	CALDWELL	19100
200032		0.0466	OXFORD	20080
210028		0.0512	ST. MARY'S	21180
230069	*	0.0209	LIVINGSTON	23460
230279	*	0.0209	LIVINGSTON	23460
240018		0.0872	GOODHUE	24240
270081		0.0237	MUSSELSHELL	27320
300011	*	0.0069	HILLSBOROUGH	30050
300012	*	0.0069	HILLSBOROUGH	30050
300020	*	0.0069	HILLSBOROUGH	30050
300034	*	0.0069	HILLSBOROUGH	30050
310010		0.0092	MERCER	31260
310011		0.0115	CAPE MAY	31180
310021	*	0.0092	MERCER	31260
310044		0.0092	MERCER	31260
310092		0.0092	MERCER	31260
310110		0.0092	MERCER	31260
320003	*	0.0629	SAN MIGUEL	32230
320011		0.0442	RIO ARRIBA	32190
330027	*	0.0149	NASSAU	33400
330106	*	0.0149	NASSAU	33400
330167	*	0.0149	NASSAU	33400
330181	*	0.0149	NASSAU	33400
330182	*	0.0149	NASSAU	33400
330198	*	0.0149	NASSAU	33400
330225	*	0.0149	NASSAU	33400
330259	*	0.0149	NASSAU	33400
330331	*	0.0149	NASSAU	33400
330332	*	0.0149	NASSAU	33400
330372	*	0.0149	NASSAU	33400
340133		0.0308	MARTIN	34580
360010	*	0.0076	TUSCARAWAS	36800
360013	*	0.0136	SHELBY	36760
360025	*	0.0072	ERIE	36220
360044		0.0124	DARKE	36190
360096	*	0.0072	COLUMBIANA	36140
360175	*	0.0176	CLINTON	36130
360185	*	0.0072	COLUMBIANA	36140
380022	*	0.0068	LINN	38210
380029		0.0075	MARION	38230
380051		0.0075	MARION	38230
380056		0.0075	MARION	38230
390030	*	0.0284	SCHUYLKILL	39650
390031	*	0.0284	SCHUYLKILL	39650
390065	*	0.049	ADAMS	39000
390138	*	0.0213	FRANKLIN	39350
390151	*	0.0213	FRANKLIN	39350
390162	*	0.02	NORTHAMPTON	39590
390181	*	0.0284	SCHUYLKILL	39650
390183	*	0.0284	SCHUYLKILL	39650
390313	*	0.0284	SCHUYLKILL	39650
420009	*	0.0113	OCONEE	42360
420039	*	0.0153	UNION	42430
420062	*	0.0109	CHESTERFIELD	42120
440030		0.0056	HAMBLEN	44310
440067	*	0.0056	HAMBLEN	44310
440084		0.0033	MONROE	44610
440153		0.0007	COCKE	44140
450324	*	0.0132	GRAYSON	45564
450370		0.024	COLORADO	45312
450393	*	0.0132	GRAYSON	45564
450395	*	0.0451	POLK	45850
450438	*	0.024	COLORADO	45312
450469	*	0.0132	GRAYSON	45564
450565		0.0486	PALO PINTO	45841
450755		0.0294	HOCKLEY	45652

Provider No.	Reclassified for FY 2008	Out-migration adjustment	Qualifying county name	County code
510077	*	0.0021	MINGO	51290

15. On pages 24960 through 24977, in Table 5.—List of Proposed Medicare Severity-Diagnosis Related Groups (MS–DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay, the table is corrected to read as follows:

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TABLE 5.—LIST OF PROPOSED MEDICARE SEVERITY-DIAGNOSIS RELATED GROUPS (MS-DRGS), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
1	NO	NO	PRE	SURG	Heart transplant or implant of heart assist system w MCC	24.4652	30.5	44.2
2	NO	NO	PRE	SURG	Heart transplant or implant of heart assist system w/o MCC	11.6444	16.0	22.8
3	YES	NO	PRE	SURG	ECMO or trach w MV 96+ hrs or PDX exc face, mouth & neck w maj O.R.	18.7049	36.2	43.2
4	YES	NO	PRE	SURG	Trach w MV 96+ hrs or PDX exc face, mouth & neck w/o maj O.R.	11.4209	26.2	31.3
5	NO	NO	PRE	SURG	Liver transplant w MCC or intestinal transplant	10.7737	17.0	22.6
6	NO	NO	PRE	SURG	Liver transplant w/o MCC	4.8801	8.7	10.0
7	NO	NO	PRE	SURG	Lung transplant	8.0577	14.6	17.3
8	NO	NO	PRE	SURG	Simultaneous pancreas/kidney transplant	5.1988	10.2	11.9
9	NO	NO	PRE	SURG	Bone marrow transplant	6.3298	18.1	21.6
10	NO	NO	PRE	SURG	Pancreas transplant	3.7938	9.1	10.2
11	NO	NO	PRE	SURG	Tracheostomy for face, mouth & neck diagnoses w MCC	4.8196	13.0	16.3
12	NO	NO	PRE	SURG	Tracheostomy for face, mouth & neck diagnoses w CC	3.0382	9.0	10.9
13	NO	NO	PRE	SURG	Tracheostomy for face, mouth & neck diagnoses w/o CC/MCC	1.9056	6.1	7.3
20	NO	NO	01	SURG	Intracranial vascular procedures w PDX hemorrhage w MCC	8.3329	15.4	19.2
21	NO	NO	01	SURG	Intracranial vascular procedures w PDX hemorrhage w CC	6.3209	13.4	15.6
22	NO	NO	01	SURG	Intracranial vascular procedures w PDX hemorrhage w/o CC/MCC	4.1684	7.9	9.7
23	NO	NO	01	SURG	Craniotomy w major device implant or acute complex CNS PDX w MCC	5.1264	9.8	13.7
24	NO	NO	01	SURG	Craniotomy w major device implant or acute complex CNS PDX w/o MCC	3.4546	6.1	8.7
25	YES	NO	01	SURG	Craniotomy & endovascular intracranial procedures w MCC	5.0164	10.7	13.8
26	YES	NO	01	SURG	Craniotomy & endovascular intracranial procedures w CC	2.9897	6.7	8.4
27	YES	NO	01	SURG	Craniotomy & endovascular intracranial procedures w/o CC/MCC	2.0681	3.6	4.7
28	NO	NO	01	SURG	Spinal procedures w MCC	4.9571	10.9	14.7
29	NO	NO	01	SURG	Spinal procedures w CC	2.6224	5.7	7.7
30	NO	NO	01	SURG	Spinal procedures w/o CC/MCC	1.5421	2.7	3.7
31	NO	NO	01	SURG	Ventricular shunt procedures w MCC	3.8871	9.2	13.2
32	NO	NO	01	SURG	Ventricular shunt procedures w CC	1.7693	3.9	5.8
33	NO	NO	01	SURG	Ventricular shunt procedures w/o CC/MCC	1.2803	2.3	3.1
34	NO	NO	01	SURG	Carotid artery stent procedure w MCC	3.2643	4.8	7.3
35	NO	NO	01	SURG	Carotid artery stent procedure w CC	2.0396	2.0	3.0
36	NO	NO	01	SURG	Carotid artery stent procedure w/o CC/MCC	1.5934	1.3	1.6
37	NO	NO	01	SURG	Extracranial procedures w MCC	3.0386	6.0	8.7
38	NO	NO	01	SURG	Extracranial procedures w CC	1.5565	2.6	3.8
39	NO	NO	01	SURG	Extracranial procedures w/o CC/MCC	1.0177	1.5	1.9
40	YES	YES	01	SURG	Periph & cranial nerve & other nerv syst proc w MCC	3.8423	10.4	14.0
41	YES	YES	01	SURG	Periph & cranial nerve & other nerv syst proc w CC	2.1526	5.6	7.5
42	YES	YES	01	SURG	Periph & cranial nerve & other nerv syst proc w/o CC/MCC	1.7012	2.5	3.7
52	NO	NO	01	MED	Spinal disorders & injuries w CC/MCC	1.5148	4.9	6.8
53	NO	NO	01	MED	Spinal disorders & injuries w/o CC/MCC	0.9121	3.2	4.0
54	YES	NO	01	MED	Nervous system neoplasms w MCC	1.6351	5.5	7.4

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
55	YES	NO	01	MED	Nervous system neoplasms w/o MCC	1.0674	3.9	5.1
56	YES	NO	01	MED	Degenerative nervous system disorders w MCC	1.6183	6.2	8.2
57	YES	NO	01	MED	Degenerative nervous system disorders w/o MCC	0.8436	4.0	5.0
58	NO	NO	01	MED	Multiple sclerosis & cerebellar ataxia w MCC	1.6205	5.8	8.0
59	NO	NO	01	MED	Multiple sclerosis & cerebellar ataxia w CC	0.9355	4.3	5.2
60	NO	NO	01	MED	Multiple sclerosis & cerebellar ataxia w/o CC/MCC	0.7185	3.4	4.1
61	NO	NO	01	MED	Acute ischemic stroke w use of thrombolytic agent w MCC	2.9677	7.4	9.8
62	NO	NO	01	MED	Acute ischemic stroke w use of thrombolytic agent w CC	2.0257	5.4	6.4
63	NO	NO	01	MED	Acute ischemic stroke w use of thrombolytic agent w/o CC/MCC	1.5827	4.0	4.6
64	YES	NO	01	MED	Intracranial hemorrhage or cerebral infarction w MCC	1.8957	5.9	7.9
65	YES	NO	01	MED	Intracranial hemorrhage or cerebral infarction w CC	1.1799	4.5	5.4
66	YES	NO	01	MED	Intracranial hemorrhage or cerebral infarction w/o CC/MCC	0.8580	3.2	3.8
67	NO	NO	01	MED	Nonspecific cva & precerebral occlusion w/o infarct w MCC	1.4872	4.8	6.2
68	NO	NO	01	MED	Nonspecific cva & precerebral occlusion w/o infarct w/o MCC	0.8820	2.8	3.6
69	NO	NO	01	MED	Transient ischemia	0.7357	2.5	3.1
70	YES	NO	01	MED	Nonspecific cerebrovascular disorders w MCC	1.8599	6.3	8.2
71	YES	NO	01	MED	Nonspecific cerebrovascular disorders w CC	1.1717	4.6	5.8
72	YES	NO	01	MED	Nonspecific cerebrovascular disorders w/o CC/MCC	0.8311	3.0	3.8
73	NO	NO	01	MED	Cranial & peripheral nerve disorders w MCC	1.3216	4.8	6.4
74	NO	NO	01	MED	Cranial & peripheral nerve disorders w/o MCC	0.8469	3.4	4.4
75	NO	NO	01	MED	Viral meningitis w CC/MCC	1.7072	6.0	7.7
76	NO	NO	01	MED	Viral meningitis w/o CC/MCC	0.9353	3.5	4.2
77	NO	NO	01	MED	Hypertensive encephalopathy w MCC	1.7272	5.6	7.2
78	NO	NO	01	MED	Hypertensive encephalopathy w CC	1.0179	3.8	4.6
79	NO	NO	01	MED	Hypertensive encephalopathy w/o CC/MCC	0.8052	2.9	3.5
80	NO	NO	01	MED	Nontraumatic stupor & coma w MCC	1.0496	3.6	4.9
81	NO	NO	01	MED	Nontraumatic stupor & coma w/o MCC	0.6842	2.7	3.4
82	NO	NO	01	MED	Traumatic stupor & coma, coma >1 hr w MCC	2.0118	3.9	6.4
83	NO	NO	01	MED	Traumatic stupor & coma, coma >1 hr w CC	1.3480	3.8	5.3
84	NO	NO	01	MED	Traumatic stupor & coma, coma >1 hr w/o CC/MCC	0.8955	2.3	3.1
85	YES	NO	01	MED	Traumatic stupor & coma, coma <1 hr w MCC	2.0698	6.0	8.2
86	YES	NO	01	MED	Traumatic stupor & coma, coma <1 hr w CC	1.2040	4.1	5.3
87	YES	NO	01	MED	Traumatic stupor & coma, coma <1 hr w/o CC/MCC	0.8153	2.7	3.4
88	NO	NO	01	MED	Concussion w MCC	1.6095	4.3	6.1
89	NO	NO	01	MED	Concussion w CC	0.9499	3.0	3.8
90	NO	NO	01	MED	Concussion w/o CC/MCC	0.6757	2.0	2.5
91	YES	NO	01	MED	Other disorders of nervous system w MCC	1.6253	4.9	6.8
92	YES	NO	01	MED	Other disorders of nervous system w CC	0.9195	3.6	4.5
93	YES	NO	01	MED	Other disorders of nervous system w/o CC/MCC	0.6879	2.6	3.2

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
94	NO	NO	01	MED	Bacterial & tuberculous infections of nervous system w MCC	3.5143	10.3	12.9
95	NO	NO	01	MED	Bacterial & tuberculous infections of nervous system w CC	2.3540	7.7	9.4
96	NO	NO	01	MED	Bacterial & tuberculous infections of nervous system w/o CC/MCC	1.9077	5.1	6.3
97	NO	NO	01	MED	Non-bacterial infect of nervous sys exc viral meningitis w MCC	3.0712	9.6	12.0
98	NO	NO	01	MED	Non-bacterial infect of nervous sys exc viral meningitis w CC	1.8534	7.0	8.7
99	NO	NO	01	MED	Non-bacterial infect of nervous sys exc viral meningitis w/o CC/MCC	1.3832	5.2	6.4
100	YES	NO	01	MED	Seizures w MCC	1.4905	4.8	6.4
101	YES	NO	01	MED	Seizures w/o MCC	0.7649	3.0	3.7
102	NO	NO	01	MED	Headaches w MCC	1.0432	3.6	5.1
103	NO	NO	01	MED	Headaches w/o MCC	0.6541	2.5	3.2
113	NO	NO	02	SURG	Orbital procedures w CC/MCC	1.6255	3.9	5.6
114	NO	NO	02	SURG	Orbital procedures w/o CC/MCC	0.8412	2.0	2.7
115	NO	NO	02	SURG	Extraocular procedures except orbit	1.1174	3.3	4.5
116	NO	NO	02	SURG	Intraocular procedures w CC/MCC	1.0285	2.2	3.5
117	NO	NO	02	SURG	Intraocular procedures w/o CC/MCC	0.6544	1.5	2.0
121	NO	NO	02	MED	Acute major eye infections w CC/MCC	0.9920	4.7	5.8
122	NO	NO	02	MED	Acute major eye infections w/o CC/MCC	0.5605	3.4	4.1
123	NO	NO	02	MED	Neurological eye disorders	0.7231	2.4	2.9
124	NO	NO	02	MED	Other disorders of the eye w MCC	1.1102	4.0	5.3
125	NO	NO	02	MED	Other disorders of the eye w/o MCC	0.6564	2.7	3.5
129	NO	NO	03	SURG	Major head & neck procedures w CC/MCC or major device	1.9598	3.6	5.1
130	NO	NO	03	SURG	Major head & neck procedures w/o CC/MCC	1.1910	2.5	3.2
131	NO	NO	03	SURG	Cranial/facial procedures w CC/MCC	1.8252	3.9	5.6
132	NO	NO	03	SURG	Cranial/facial procedures w/o CC/MCC	1.0801	2.1	2.6
133	NO	NO	03	SURG	Other ear, nose, mouth & throat O.R. procedures w CC/MCC	1.7415	4.0	6.4
134	NO	NO	03	SURG	Other ear, nose, mouth & throat O.R. procedures w/o CC/MCC	0.7866	1.8	2.3
135	NO	NO	03	SURG	Sinus & mastoid procedures w CC/MCC	1.8325	4.0	6.1
136	NO	NO	03	SURG	Sinus & mastoid procedures w/o CC/MCC	0.9370	1.7	2.3
137	NO	NO	03	SURG	Mouth procedures w CC/MCC	1.3976	3.7	5.4
138	NO	NO	03	SURG	Mouth procedures w/o CC/MCC	0.8012	1.9	2.4
139	NO	NO	03	SURG	Salivary gland procedures	0.8704	1.5	1.9
146	NO	NO	03	MED	Ear, nose, mouth & throat malignancy w MCC	2.2462	7.1	10.2
147	NO	NO	03	MED	Ear, nose, mouth & throat malignancy w CC	1.1561	4.2	5.8
148	NO	NO	03	MED	Ear, nose, mouth & throat malignancy w/o CC/MCC	0.7245	2.5	3.5
149	NO	NO	03	MED	Dysequilibrium	0.6191	2.2	2.7
150	NO	NO	03	MED	Epistaxis w MCC	1.3140	4.0	5.5
151	NO	NO	03	MED	Epistaxis w/o MCC	0.5809	2.3	2.9
152	NO	NO	03	MED	Otitis media & URI w MCC	0.9524	3.7	4.7
153	NO	NO	03	MED	Otitis media & URI w/o MCC	0.6049	2.8	3.4

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
154	NO	NO	03	MED	Nasal trauma & deformity w MCC	1.3968	4.9	6.5
155	NO	NO	03	MED	Nasal trauma & deformity w CC	0.8749	3.6	4.6
156	NO	NO	03	MED	Nasal trauma & deformity w/o CC/MCC	0.6346	2.5	3.2
157	NO	NO	03	MED	Dental & Oral Diseases w MCC	1.4940	5.0	6.9
158	NO	NO	03	MED	Dental & Oral Diseases w CC	0.8635	3.4	4.5
159	NO	NO	03	MED	Dental & Oral Diseases w/o CC/MCC	0.6037	2.4	3.1
163	YES	NO	04	SURG	Major chest procedures w MCC	5.0499	12.7	15.4
164	YES	NO	04	SURG	Major chest procedures w CC	2.5820	7.0	8.5
165	YES	NO	04	SURG	Major chest procedures w/o CC/MCC	1.8026	4.5	5.4
166	YES	NO	04	SURG	Other resp system O.R. procedures w MCC	3.7640	10.6	13.4
167	YES	NO	04	SURG	Other resp system O.R. procedures w CC	2.0819	6.7	8.3
168	YES	NO	04	SURG	Other resp system O.R. procedures w/o CC/MCC	1.3554	4.1	5.5
175	YES	NO	04	MED	Pulmonary embolism w MCC	1.6158	6.4	7.6
176	YES	NO	04	MED	Pulmonary embolism w/o MCC	1.1012	4.9	5.6
177	YES	NO	04	MED	Respiratory infections & inflammations w MCC	2.0432	7.6	9.5
178	YES	NO	04	MED	Respiratory infections & inflammations w CC	1.4992	6.3	7.7
179	YES	NO	04	MED	Respiratory infections & inflammations w/o CC/MCC	1.0448	4.8	5.8
180	NO	NO	04	MED	Respiratory neoplasms w MCC	1.7157	6.1	8.0
181	NO	NO	04	MED	Respiratory neoplasms w CC	1.2317	4.6	6.0
182	NO	NO	04	MED	Respiratory neoplasms w/o CC/MCC	0.8952	3.3	4.3
183	NO	NO	04	MED	Major chest trauma w MCC	1.5069	5.7	7.2
184	NO	NO	04	MED	Major chest trauma w CC	0.9152	3.8	4.6
185	NO	NO	04	MED	Major chest trauma w/o CC/MCC	0.6364	2.7	3.3
186	YES	NO	04	MED	Pleural effusion w MCC	1.6263	6.0	7.7
187	YES	NO	04	MED	Pleural effusion w CC	1.1258	4.4	5.6
188	YES	NO	04	MED	Pleural effusion w/o CC/MCC	0.8380	3.3	4.2
189	NO	NO	04	MED	Pulmonary edema & respiratory failure	1.3728	4.9	6.3
190	YES	NO	04	MED	Chronic obstructive pulmonary disease w MCC	1.3332	5.3	6.6
191	YES	NO	04	MED	Chronic obstructive pulmonary disease w CC	0.9943	4.3	5.2
192	YES	NO	04	MED	Chronic obstructive pulmonary disease w/o CC/MCC	0.7383	3.4	4.1
193	YES	NO	04	MED	Simple pneumonia & pleurisy w MCC	1.4619	5.7	7.0
194	YES	NO	04	MED	Simple pneumonia & pleurisy w CC	1.0205	4.5	5.4
195	YES	NO	04	MED	Simple pneumonia & pleurisy w/o CC/MCC	0.7404	3.6	4.2
196	YES	NO	04	MED	Interstitial lung disease w MCC	1.5627	6.0	7.5
197	YES	NO	04	MED	Interstitial lung disease w CC	1.1063	4.5	5.5
198	YES	NO	04	MED	Interstitial lung disease w/o CC/MCC	0.8423	3.5	4.3
199	NO	NO	04	MED	Pneumothorax w MCC	1.7793	6.7	8.6
200	NO	NO	04	MED	Pneumothorax w CC	1.0161	4.0	5.2
201	NO	NO	04	MED	Pneumothorax w/o CC/MCC	0.7316	3.2	4.1

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
202	NO	NO	04	MED	Bronchitis & asthma w CC/MCC	0.8264	3.6	4.5
203	NO	NO	04	MED	Bronchitis & asthma w/o CC/MCC	0.5968	2.9	3.5
204	NO	NO	04	MED	Respiratory signs & symptoms	0.6691	2.2	2.9
205	YES	NO	04	MED	Other respiratory system diagnoses w MCC	1.2336	4.4	5.8
206	YES	NO	04	MED	Other respiratory system diagnoses w/o MCC	0.7447	2.7	3.5
207	YES	NO	04	MED	Respiratory system diagnosis w ventilator support 96+ hours	5.1335	13.0	15.3
208	NO	NO	04	MED	Respiratory system diagnosis w ventilator support <96 hours	2.2484	5.3	7.4
215	NO	NO	05	SURG	Other heart assist system implant	11.7031	6.3	12.2
216	YES	NO	05	SURG	Cardiac valve & oth maj cardiothoracic proc w card cath w MCC	10.3150	16.5	19.3
217	YES	NO	05	SURG	Cardiac valve & oth maj cardiothoracic proc w card cath w CC	6.9289	11.2	12.6
218	YES	NO	05	SURG	Cardiac valve & oth maj cardiothoracic proc w card cath w/o CC/MCC	5.4894	8.5	9.2
219	YES	YES	05	SURG	Cardiac valve & oth maj cardiothoracic proc w/o card cath w MCC	8.2176	12.0	14.7
220	YES	YES	05	SURG	Cardiac valve & oth maj cardiothoracic proc w/o card cath w CC	5.3374	7.7	8.8
221	YES	YES	05	SURG	Cardiac valve & oth maj cardiothoracic proc w/o card cath w/o CC/MCC	4.3466	6.1	6.5
222	NO	NO	05	SURG	Cardiac defib implant w cardiac cath w AMI/HF/shock w MCC	8.8053	10.8	13.3
223	NO	NO	05	SURG	Cardiac defib implant w cardiac cath w AMI/HF/shock w/o MCC	6.5320	5.0	6.6
224	NO	NO	05	SURG	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w MCC	8.1254	9.2	11.5
225	NO	NO	05	SURG	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w/o MCC	6.0742	4.6	5.8
226	NO	NO	05	SURG	Cardiac defibrillator implant w/o cardiac cath w MCC	6.6941	6.2	9.4
227	NO	NO	05	SURG	Cardiac defibrillator implant w/o cardiac cath w/o MCC	4.9705	1.8	2.8
228	YES	NO	05	SURG	Other cardiothoracic procedures w MCC	7.7466	12.4	15.1
229	YES	NO	05	SURG	Other cardiothoracic procedures w CC	4.9808	8.1	9.3
230	YES	NO	05	SURG	Other cardiothoracic procedures w/o CC/MCC	3.9170	5.8	6.7
231	NO	NO	05	SURG	Coronary bypass w PTCA w MCC	7.8869	10.8	13.2
232	NO	NO	05	SURG	Coronary bypass w PTCA w/o MCC	5.6865	8.1	9.0
233	YES	NO	05	SURG	Coronary bypass w cardiac cath w MCC	7.1350	12.9	14.7
234	YES	NO	05	SURG	Coronary bypass w cardiac cath w/o MCC	4.6211	8.3	9.0
235	YES	NO	05	SURG	Coronary bypass w/o cardiac cath w MCC	5.8373	10.0	11.9
236	YES	NO	05	SURG	Coronary bypass w/o cardiac cath w/o MCC	3.5640	6.1	6.7
237	NO	NO	05	SURG	Major cardiovascular procedures w MCC	5.1964	8.3	11.6
238	NO	NO	05	SURG	Major cardiovascular procedures w/o MCC	2.8862	3.4	4.9
239	YES	NO	05	SURG	Amputation for circ sys disorders exc upper limb & toe w MCC	4.4532	13.5	16.9
240	YES	NO	05	SURG	Amputation for circ sys disorders exc upper limb & toe w CC	2.6131	9.4	11.4
241	YES	NO	05	SURG	Amputation for circ sys disorders exc upper limb & toe w/o CC/MCC	1.5828	6.2	7.4
242	YES	NO	05	SURG	Permanent cardiac pacemaker implant w MCC	3.7542	7.1	9.1
243	YES	NO	05	SURG	Permanent cardiac pacemaker implant w CC	2.6104	3.9	5.2
244	YES	NO	05	SURG	Permanent cardiac pacemaker implant w/o CC/MCC	2.0264	2.2	3.0
245	NO	NO	05	SURG	AICD lead & generator procedures	3.1953	2.1	3.3
246	NO	NO	05	SURG	Percutaneous cardiovascular proc w drug-eluting stent w MCC	3.3982	4.4	6.3

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247	NO	NO	05	SURG	Percutaneous cardiovascular proc w drug-eluting stent w/o MCC	2.0956	1.7	2.2
248	NO	NO	05	SURG	Percutaneous cardiovasc proc w non-drug-eluting stent w MCC	2.9888	4.7	6.5
249	NO	NO	05	SURG	Percutaneous cardiovasc proc w non-drug-eluting stent w/o MCC	1.7841	1.9	2.5
250	NO	NO	05	SURG	Perc cardiovasc proc w/o coronary artery stent or AMI w MCC	2.8830	5.3	7.5
251	NO	NO	05	SURG	Perc cardiovasc proc w/o coronary artery stent or AMI w/o MCC	1.6582	2.1	3.0
252	NO	NO	05	SURG	Other vascular procedures w MCC	2.9165	5.7	8.8
253	NO	NO	05	SURG	Other vascular procedures w CC	2.2773	4.3	6.3
254	NO	NO	05	SURG	Other vascular procedures w/o CC/MCC	1.5431	2.1	2.9
255	YES	NO	05	SURG	Upper limb & toe amputation for circ system disorders w MCC	2.4362	7.9	10.5
256	YES	NO	05	SURG	Upper limb & toe amputation for circ system disorders w CC	1.5386	6.2	7.9
257	YES	NO	05	SURG	Upper limb & toe amputation for circ system disorders w/o CC/MCC	0.9768	3.9	5.2
258	NO	NO	05	SURG	Cardiac pacemaker device replacement w MCC	2.8879	5.5	7.6
259	NO	NO	05	SURG	Cardiac pacemaker device replacement w/o MCC	1.6127	1.9	2.6
260	NO	NO	05	SURG	Cardiac pacemaker revision except device replacement w MCC	2.9818	7.3	10.2
261	NO	NO	05	SURG	Cardiac pacemaker revision except device replacement w CC	1.3182	2.8	4.0
262	NO	NO	05	SURG	Cardiac pacemaker revision except device replacement w/o CC/MCC	0.9222	1.9	2.5
263	NO	NO	05	SURG	Vein ligation & stripping	1.4996	3.5	5.5
264	YES	NO	05	SURG	Other circulatory system O.R. procedures	2.4535	6.1	9.2
280	YES	NO	05	MED	Acute myocardial infarction, discharged alive w MCC	1.9659	6.4	7.8
281	YES	NO	05	MED	Acute myocardial infarction, discharged alive w CC	1.2657	4.2	5.1
282	YES	NO	05	MED	Acute myocardial infarction, discharged alive w/o CC/MCC	0.9078	2.7	3.4
283	NO	NO	05	MED	Acute myocardial infarction, expired w MCC	1.7301	3.4	5.5
284	NO	NO	05	MED	Acute myocardial infarction, expired w CC	0.9989	2.3	3.5
285	NO	NO	05	MED	Acute myocardial infarction, expired w/o CC/MCC	0.6635	1.7	2.3
286	NO	NO	05	MED	Circulatory disorders except AMI, w card cath w MCC	2.0441	5.3	7.1
287	NO	NO	05	MED	Circulatory disorders except AMI, w card cath w/o MCC	1.0900	2.5	3.2
288	YES	NO	05	MED	Acute & subacute endocarditis w MCC	3.1486	10.4	12.8
289	YES	NO	05	MED	Acute & subacute endocarditis w CC	1.9617	7.7	9.2
290	YES	NO	05	MED	Acute & subacute endocarditis w/o CC/MCC	1.2658	5.6	6.9
291	YES	NO	05	MED	Heart failure & shock w MCC	1.4760	5.3	6.8
292	YES	NO	05	MED	Heart failure & shock w CC	1.0169	4.3	5.2
293	YES	NO	05	MED	Heart failure & shock w/o CC/MCC	0.7265	3.1	3.8
294	NO	NO	05	MED	Deep vein thrombophlebitis w CC/MCC	0.9500	4.6	5.6
295	NO	NO	05	MED	Deep vein thrombophlebitis w/o CC/MCC	0.5974	3.8	4.4
296	NO	NO	05	MED	Cardiac arrest, unexplained w MCC	1.2850	2.0	3.3
297	NO	NO	05	MED	Cardiac arrest, unexplained w CC	0.7581	1.5	2.0
298	NO	NO	05	MED	Cardiac arrest, unexplained w/o CC/MCC	0.4865	1.2	1.5
299	YES	NO	05	MED	Peripheral vascular disorders w MCC	1.4498	5.4	7.1
300	YES	NO	05	MED	Peripheral vascular disorders w CC	0.9215	4.3	5.3

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
301	YES	NO	05	MED	Peripheral vascular disorders w/o CC/MCC	0.6526	3.1	3.8
302	NO	NO	05	MED	Atherosclerosis w MCC	1.0118	3.3	4.4
303	NO	NO	05	MED	Atherosclerosis w/o MCC	0.5898	2.1	2.6
304	NO	NO	05	MED	Hypertension w MCC	1.0586	4.0	5.3
305	NO	NO	05	MED	Hypertension w/o MCC	0.5853	2.3	2.9
306	NO	NO	05	MED	Cardiac congenital & valvular disorders w MCC	1.4476	4.6	6.5
307	NO	NO	05	MED	Cardiac congenital & valvular disorders w/o MCC	0.7659	2.8	3.5
308	NO	NO	05	MED	Cardiac arrhythmia & conduction disorders w MCC	1.3421	4.3	5.8
309	NO	NO	05	MED	Cardiac arrhythmia & conduction disorders w CC	0.8437	3.2	4.0
310	NO	NO	05	MED	Cardiac arrhythmia & conduction disorders w/o CC/MCC	0.5938	2.3	2.8
311	NO	NO	05	MED	Angina pectoris	0.5117	1.9	2.3
312	NO	NO	05	MED	Syncope & collapse	0.7227	2.5	3.2
313	NO	NO	05	MED	Chest pain	0.5550	1.7	2.1
314	YES	NO	05	MED	Other circulatory system diagnoses w MCC	1.7317	5.3	7.3
315	YES	NO	05	MED	Other circulatory system diagnoses w CC	0.9984	3.7	4.8
316	YES	NO	05	MED	Other circulatory system diagnoses w/o CC/MCC	0.6642	2.4	3.1
326	YES	NO	06	SURG	Stomach, esophageal & duodenal proc w MCC	5.9129	13.9	17.7
327	YES	NO	06	SURG	Stomach, esophageal & duodenal proc w CC	2.8678	8.2	10.5
328	YES	NO	06	SURG	Stomach, esophageal & duodenal proc w/o CC/MCC	1.4849	3.4	4.6
329	YES	NO	06	SURG	Major small & large bowel procedures w MCC	5.1615	13.3	16.4
330	YES	NO	06	SURG	Major small & large bowel procedures w CC	2.5708	8.6	10.0
331	YES	NO	06	SURG	Major small & large bowel procedures w/o CC/MCC	1.6191	5.5	6.1
332	YES	NO	06	SURG	Rectal resection w MCC	4.6681	12.7	15.2
333	YES	NO	06	SURG	Rectal resection w CC	2.4473	8.0	9.1
334	YES	NO	06	SURG	Rectal resection w/o CC/MCC	1.6126	5.0	5.7
335	YES	NO	06	SURG	Peritoneal adhesiolysis w MCC	4.2172	12.2	14.7
336	YES	NO	06	SURG	Peritoneal adhesiolysis w CC	2.2559	7.8	9.4
337	YES	NO	06	SURG	Peritoneal adhesiolysis w/o CC/MCC	1.4746	4.5	5.7
338	NO	NO	06	SURG	Appendectomy w complicated principal diag w MCC	3.3217	9.1	10.9
339	NO	NO	06	SURG	Appendectomy w complicated principal diag w CC	1.8717	6.2	7.2
340	NO	NO	06	SURG	Appendectomy w complicated principal diag w/o CC/MCC	1.2652	3.6	4.3
341	NO	NO	06	SURG	Appendectomy w/o complicated principal diag w MCC	2.3751	5.4	7.3
342	NO	NO	06	SURG	Appendectomy w/o complicated principal diag w CC	1.3601	3.4	4.4
343	NO	NO	06	SURG	Appendectomy w/o complicated principal diag w/o CC/MCC	0.9438	1.9	2.3
344	NO	NO	06	SURG	Minor small & large bowel procedures w MCC	3.1837	9.4	12.1
345	NO	NO	06	SURG	Minor small & large bowel procedures w CC	1.6146	6.3	7.3
346	NO	NO	06	SURG	Minor small & large bowel procedures w/o CC/MCC	1.1556	4.5	5.0
347	NO	NO	06	SURG	Anal & stomal procedures w MCC	2.1762	6.2	8.4
348	NO	NO	06	SURG	Anal & stomal procedures w CC	1.2674	4.2	5.6

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349	NO	NO	06	SURG	Anal & stomal procedures w/o CC/MCC	0.7654	2.4	3.1
350	NO	NO	06	SURG	Inguinal & femoral hernia procedures w MCC	2.3854	5.9	8.1
351	NO	NO	06	SURG	Inguinal & femoral hernia procedures w CC	1.2321	3.5	4.7
352	NO	NO	06	SURG	Inguinal & femoral hernia procedures w/o CC/MCC	0.7900	1.9	2.5
353	NO	NO	06	SURG	Hernia procedures except inguinal & femoral w MCC	2.5693	6.6	8.7
354	NO	NO	06	SURG	Hernia procedures except inguinal & femoral w CC	1.3809	4.0	5.1
355	NO	NO	06	SURG	Hernia procedures except inguinal & femoral w/o CC/MCC	0.9357	2.3	2.9
356	YES	NO	06	SURG	Other digestive system O.R. procedures w MCC	3.8364	10.0	13.7
357	YES	NO	06	SURG	Other digestive system O.R. procedures w CC	2.1419	6.3	8.3
358	YES	NO	06	SURG	Other digestive system O.R. procedures w/o CC/MCC	1.4104	3.6	4.7
368	NO	NO	06	MED	Major esophageal disorders w MCC	1.6235	5.1	6.7
369	NO	NO	06	MED	Major esophageal disorders w CC	1.0765	3.9	4.8
370	NO	NO	06	MED	Major esophageal disorders w/o CC/MCC	0.7961	2.9	3.4
371	YES	NO	06	MED	Major gastrointestinal disorders & peritoneal infections w MCC	1.8943	6.9	9.0
372	YES	NO	06	MED	Major gastrointestinal disorders & peritoneal infections w CC	1.2735	5.8	7.0
373	YES	NO	06	MED	Major gastrointestinal disorders & peritoneal infections w/o CC/MCC	0.8698	4.3	5.1
374	YES	NO	06	MED	Digestive malignancy w MCC	2.0081	6.7	9.0
375	YES	NO	06	MED	Digestive malignancy w CC	1.2368	4.7	6.1
376	YES	NO	06	MED	Digestive malignancy w/o CC/MCC	0.8690	3.2	4.1
377	YES	NO	06	MED	G.I. hemorrhage w MCC	1.6066	5.2	6.6
378	YES	NO	06	MED	G.I. hemorrhage w CC	1.0438	3.9	4.8
379	YES	NO	06	MED	G.I. hemorrhage w/o CC/MCC	0.7730	3.0	3.5
380	YES	NO	06	MED	Complicated peptic ulcer w MCC	1.7195	5.7	7.3
381	YES	NO	06	MED	Complicated peptic ulcer w CC	1.1610	4.4	5.4
382	YES	NO	06	MED	Complicated peptic ulcer w/o CC/MCC	0.8136	3.1	3.7
383	NO	NO	06	MED	Uncomplicated peptic ulcer w MCC	1.2744	4.6	5.9
384	NO	NO	06	MED	Uncomplicated peptic ulcer w/o MCC	0.8156	3.2	3.9
385	NO	NO	06	MED	Inflammatory bowel disease w MCC	1.8846	6.7	9.1
386	NO	NO	06	MED	Inflammatory bowel disease w CC	1.0647	4.6	5.8
387	NO	NO	06	MED	Inflammatory bowel disease w/o CC/MCC	0.8096	3.6	4.4
388	YES	NO	06	MED	G.I. obstruction w MCC	1.5767	5.7	7.6
389	YES	NO	06	MED	G.I. obstruction w CC	0.9394	4.1	5.1
390	YES	NO	06	MED	G.I. obstruction w/o CC/MCC	0.6489	3.0	3.6
391	NO	NO	06	MED	Esophagitis, gastroent & misc digest disorders w MCC	1.1223	4.1	5.5
392	NO	NO	06	MED	Esophagitis, gastroent & misc digest disorders w/o MCC	0.6890	2.8	3.6
393	NO	NO	06	MED	Other digestive system diagnoses w MCC	1.5356	5.0	7.0
394	NO	NO	06	MED	Other digestive system diagnoses w CC	0.9672	3.9	5.0
395	NO	NO	06	MED	Other digestive system diagnoses w/o CC/MCC	0.6888	2.7	3.4
405	YES	NO	07	SURG	Pancreas, liver & shunt procedures w MCC	5.7915	13.3	17.8

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406	YES	NO	07	SURG	Pancreas, liver & shunt procedures w CC	2.8094	7.2	9.6
407	YES	NO	07	SURG	Pancreas, liver & shunt procedures w/o CC/MCC	1.8070	4.3	5.6
408	NO	NO	07	SURG	Biliary tract proc except only cholecyst w or w/o c.d.e. w MCC	4.2386	12.1	14.9
409	NO	NO	07	SURG	Biliary tract proc except only cholecyst w or w/o c.d.e. w CC	2.5053	8.3	10.0
410	NO	NO	07	SURG	Biliary tract proc except only cholecyst w or w/o c.d.e. w/o CC/MCC	1.7048	5.8	6.8
411	NO	NO	07	SURG	Cholecystectomy w c.d.e. w MCC	3.8953	10.9	13.1
412	NO	NO	07	SURG	Cholecystectomy w c.d.e. w CC	2.4047	7.6	8.9
413	NO	NO	07	SURG	Cholecystectomy w c.d.e. w/o CC/MCC	1.7173	5.2	6.1
414	YES	NO	07	SURG	Cholecystectomy except by laparoscope w/o c.d.e. w MCC	3.6320	10.0	12.1
415	YES	NO	07	SURG	Cholecystectomy except by laparoscope w/o c.d.e. w CC	2.0539	6.7	7.8
416	YES	NO	07	SURG	Cholecystectomy except by laparoscope w/o c.d.e. w/o CC/MCC	1.3193	4.2	4.9
417	NO	NO	07	SURG	Laparoscopic cholecystectomy w/o c.d.e. w MCC	2.4872	6.6	8.4
418	NO	NO	07	SURG	Laparoscopic cholecystectomy w/o c.d.e. w CC	1.6735	4.5	5.7
419	NO	NO	07	SURG	Laparoscopic cholecystectomy w/o c.d.e. w/o CC/MCC	1.1352	2.5	3.2
420	NO	NO	07	SURG	Hepatobiliary diagnostic procedures w MCC	4.1189	10.1	14.1
421	NO	NO	07	SURG	Hepatobiliary diagnostic procedures w CC	1.9309	5.6	7.9
422	NO	NO	07	SURG	Hepatobiliary diagnostic procedures w/o CC/MCC	1.1954	3.4	4.5
423	NO	NO	07	SURG	Other hepatobiliary or pancreas O.R. procedures w MCC	4.2680	11.4	15.4
424	NO	NO	07	SURG	Other hepatobiliary or pancreas O.R. procedures w CC	2.4413	7.8	10.3
425	NO	NO	07	SURG	Other hepatobiliary or pancreas O.R. procedures w/o CC/MCC	1.6507	4.7	5.9
432	NO	NO	07	MED	Cirrhosis & alcoholic hepatitis w MCC	1.6160	5.2	6.9
433	NO	NO	07	MED	Cirrhosis & alcoholic hepatitis w CC	0.9108	3.8	4.9
434	NO	NO	07	MED	Cirrhosis & alcoholic hepatitis w/o CC/MCC	0.6601	2.8	3.6
435	NO	NO	07	MED	Malignancy of hepatobiliary system or pancreas w MCC	1.7369	5.8	7.7
436	NO	NO	07	MED	Malignancy of hepatobiliary system or pancreas w CC	1.1936	4.6	5.9
437	NO	NO	07	MED	Malignancy of hepatobiliary system or pancreas w/o CC/MCC	0.9520	3.3	4.4
438	NO	NO	07	MED	Disorders of pancreas except malignancy w MCC	1.7653	5.7	7.8
439	NO	NO	07	MED	Disorders of pancreas except malignancy w CC	1.0640	4.3	5.5
440	NO	NO	07	MED	Disorders of pancreas except malignancy w/o CC/MCC	0.7196	3.2	3.9
441	YES	NO	07	MED	Disorders of liver except malig,cirr,alc hepa w MCC	1.5717	5.2	7.1
442	YES	NO	07	MED	Disorders of liver except malig,cirr,alc hepa w CC	0.9873	4.1	5.2
443	YES	NO	07	MED	Disorders of liver except malig,cirr,alc hepa w/o CC/MCC	0.7148	3.1	3.9
444	NO	NO	07	MED	Disorders of the biliary tract w MCC	1.5713	5.2	6.7
445	NO	NO	07	MED	Disorders of the biliary tract w CC	1.0599	3.9	4.9
446	NO	NO	07	MED	Disorders of the biliary tract w/o CC/MCC	0.7625	2.7	3.3
453	NO	NO	08	SURG	Combined anterior/posterior spinal fusion w MCC	10.2692	12.7	15.9
454	NO	NO	08	SURG	Combined anterior/posterior spinal fusion w CC	6.6576	7.0	8.6
455	NO	NO	08	SURG	Combined anterior/posterior spinal fusion w/o CC/MCC	4.9313	4.2	4.9
456	NO	NO	08	SURG	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w MCC	8.3460	12.2	15.7

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457	NO	NO	08	SURG	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w CC	5.6488	6.8	8.3
458	NO	NO	08	SURG	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w/o CC/MCC	4.6468	4.2	4.8
459	YES	NO	08	SURG	Spinal fusion except cervical w MCC	5.8629	8.2	10.0
460	YES	NO	08	SURG	Spinal fusion except cervical w/o MCC	3.4402	3.8	4.4
461	NO	NO	08	SURG	Bilateral or multiple major joint procs of lower extremity w MCC	4.4939	7.0	8.4
462	NO	NO	08	SURG	Bilateral or multiple major joint procs of lower extremity w/o MCC	3.0414	3.9	4.3
463	YES	NO	08	SURG	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w MCC	4.6965	14.0	18.3
464	YES	NO	08	SURG	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w CC	2.5960	8.4	11.0
465	YES	NO	08	SURG	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w/o CC/MCC	1.5920	4.9	6.5
466	YES	NO	08	SURG	Revision of hip or knee replacement w MCC	4.4158	8.2	10.2
467	YES	NO	08	SURG	Revision of hip or knee replacement w CC	2.9618	5.3	6.3
468	YES	NO	08	SURG	Revision of hip or knee replacement w/o CC/MCC	2.2661	3.7	4.1
469	YES	NO	08	SURG	Major joint replacement or reattachment of lower extremity w MCC	3.3053	7.5	8.9
470	YES	NO	08	SURG	Major joint replacement or reattachment of lower extremity w/o MCC	1.9530	3.8	4.0
471	NO	NO	08	SURG	Cervical spinal fusion w MCC	4.3260	7.0	10.1
472	NO	NO	08	SURG	Cervical spinal fusion w CC	2.5363	2.9	4.4
473	NO	NO	08	SURG	Cervical spinal fusion w/o CC/MCC	1.8652	1.6	2.0
474	YES	NO	08	SURG	Amputation for musculoskeletal sys & conn tissue dis w MCC	3.3537	10.6	13.5
475	YES	NO	08	SURG	Amputation for musculoskeletal sys & conn tissue dis w CC	1.9793	7.2	9.2
476	YES	NO	08	SURG	Amputation for musculoskeletal sys & conn tissue dis w/o CC/MCC	1.1001	4.0	5.2
477	YES	YES	08	SURG	Biopsies of musculoskeletal system & connective tissue w MCC	3.3971	9.9	12.8
478	YES	YES	08	SURG	Biopsies of musculoskeletal system & connective tissue w CC	2.0692	4.9	7.0
479	YES	YES	08	SURG	Biopsies of musculoskeletal system & connective tissue w/o CC/MCC	1.4586	1.9	2.9
480	YES	YES	08	SURG	Hip & femur procedures except major joint w MCC	2.8568	8.2	9.7
481	YES	YES	08	SURG	Hip & femur procedures except major joint w CC	1.8290	5.7	6.3
482	YES	YES	08	SURG	Hip & femur procedures except major joint w/o CC/MCC	1.4704	4.6	5.0
483	NO	NO	08	SURG	Major joint & limb reattachment proc of upper extremity w CC/MCC	2.1931	3.6	4.6
484	NO	NO	08	SURG	Major joint & limb reattachment proc of upper extremity w/o CC/MCC	1.6862	2.2	2.5
485	NO	NO	08	SURG	Knee procedures w pdx of infection w MCC	3.2749	10.4	12.7
486	NO	NO	08	SURG	Knee procedures w pdx of infection w CC	2.1202	7.0	8.4
487	NO	NO	08	SURG	Knee procedures w pdx of infection w/o CC/MCC	1.5067	5.1	5.8
488	NO	NO	08	SURG	Knee procedures w/o pdx of infection w CC/MCC	1.6942	4.3	5.7
489	NO	NO	08	SURG	Knee procedures w/o pdx of infection w/o CC/MCC	1.0759	2.6	3.1
490	NO	NO	08	SURG	Back & neck procedures except spinal fusion w CC/MCC or disc devices	1.6665	3.4	4.9
491	NO	NO	08	SURG	Back & neck procedures except spinal fusion w/o CC/MCC	0.9610	1.8	2.3
492	YES	YES	08	SURG	Lower extrem & humer proc except hip,foot,femur w MCC	2.7119	7.1	8.9
493	YES	YES	08	SURG	Lower extrem & humer proc except hip,foot,femur w CC	1.7385	4.5	5.5
494	YES	YES	08	SURG	Lower extrem & humer proc except hip,foot,femur w/o CC/MCC	1.2053	2.9	3.4
495	YES	NO	08	SURG	Local excision & removal int fix devices exc hip & femur w MCC	3.2361	9.0	11.7

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496	YES	NO	08	SURG	Local excision & removal int fix devices exc hip & femur w CC	1.7147	4.7	6.2
497	YES	NO	08	SURG	Local excision & removal int fix devices exc hip & femur w/o CC/MCC	1.1475	2.4	3.3
498	NO	NO	08	SURG	Local excision & removal int fix devices of hip & femur w CC/MCC	2.0730	6.0	8.4
499	NO	NO	08	SURG	Local excision & removal int fix devices of hip & femur w/o CC/MCC	0.9167	2.4	3.3
500	YES	YES	08	SURG	Soft tissue procedures w MCC	3.0896	8.4	11.5
501	YES	YES	08	SURG	Soft tissue procedures w CC	1.4932	4.6	6.1
502	YES	YES	08	SURG	Soft tissue procedures w/o CC/MCC	0.9386	2.3	3.0
503	NO	NO	08	SURG	Foot procedures w MCC	2.1471	6.9	8.9
504	NO	NO	08	SURG	Foot procedures w CC	1.4888	5.1	6.5
505	NO	NO	08	SURG	Foot procedures w/o CC/MCC	0.9820	2.6	3.4
506	NO	NO	08	SURG	Major thumb or joint procedures	0.9941	2.3	3.2
507	NO	NO	08	SURG	Major shoulder or elbow joint procedures w CC/MCC	1.6423	3.8	5.3
508	NO	NO	08	SURG	Major shoulder or elbow joint procedures w/o CC/MCC	1.0444	1.7	2.1
509	NO	NO	08	SURG	Arthroscopy	1.0448	2.0	2.9
510	NO	NO	08	SURG	Shoulder,elbow or forearm proc,exc major joint proc w MCC	2.0106	5.0	6.6
511	NO	NO	08	SURG	Shoulder,elbow or forearm proc,exc major joint proc w CC	1.2891	3.1	3.9
512	NO	NO	08	SURG	Shoulder,elbow or forearm proc,exc major joint proc w/o CC/MCC	0.9244	1.7	2.1
513	NO	NO	08	SURG	Hand or wrist proc, except major thumb or joint proc w CC/MCC	1.3453	3.7	5.1
514	NO	NO	08	SURG	Hand or wrist proc, except major thumb or joint proc w/o CC/MCC	0.8186	2.0	2.6
515	YES	YES	08	SURG	Other musculoskelet sys & conn tiss O.R. proc w MCC	3.0920	8.4	11.1
516	YES	YES	08	SURG	Other musculoskelet sys & conn tiss O.R. proc w CC	1.8326	4.5	6.1
517	YES	YES	08	SURG	Other musculoskelet sys & conn tiss O.R. proc w/o CC/MCC	1.3226	2.1	2.9
533	YES	NO	08	MED	Fractures of femur w MCC	1.4347	5.5	7.2
534	YES	NO	08	MED	Fractures of femur w/o MCC	0.6894	3.4	4.2
535	YES	NO	08	MED	Fractures of hip & pelvis w MCC	1.3759	5.1	6.6
536	YES	NO	08	MED	Fractures of hip & pelvis w/o MCC	0.6802	3.5	4.1
537	NO	NO	08	MED	Sprains, strains, & dislocations of hip, pelvis & thigh w CC/MCC	0.8592	3.9	4.7
538	NO	NO	08	MED	Sprains, strains, & dislocations of hip, pelvis & thigh w/o CC/MCC	0.5471	2.6	3.1
539	YES	NO	08	MED	Osteomyelitis w MCC	2.0175	8.4	10.8
540	YES	NO	08	MED	Osteomyelitis w CC	1.3077	6.2	7.6
541	YES	NO	08	MED	Osteomyelitis w/o CC/MCC	0.9189	4.6	5.8
542	YES	NO	08	MED	Pathological fractures & musculoskelet & conn tiss malig w MCC	1.8470	7.1	9.0
543	YES	NO	08	MED	Pathological fractures & musculoskelet & conn tiss malig w CC	1.1134	5.0	6.2
544	YES	NO	08	MED	Pathological fractures & musculoskelet & conn tiss malig w/o CC/MCC	0.7656	3.9	4.6
545	YES	NO	08	MED	Connective tissue disorders w MCC	2.2470	6.7	9.2
546	YES	NO	08	MED	Connective tissue disorders w CC	1.0645	4.4	5.6
547	YES	NO	08	MED	Connective tissue disorders w/o CC/MCC	0.7384	3.2	4.0
548	NO	NO	08	MED	Septic arthritis w MCC	1.8850	7.2	9.5
549	NO	NO	08	MED	Septic arthritis w CC	1.1387	5.2	6.4

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550	NO	NO	08	MED	Septic arthritis w/o CC/MCC	0.7478	3.7	4.6
551	YES	NO	08	MED	Medical back problems w MCC	1.5107	5.8	7.5
552	YES	NO	08	MED	Medical back problems w/o MCC	0.7570	3.5	4.2
553	NO	NO	08	MED	Bone diseases & arthropathies w MCC	1.0960	4.8	6.1
554	NO	NO	08	MED	Bone diseases & arthropathies w/o MCC	0.6192	3.0	3.7
555	NO	NO	08	MED	Signs & symptoms of musculoskeletal system & conn tissue w MCC	0.9584	3.7	4.9
556	NO	NO	08	MED	Signs & symptoms of musculoskeletal system & conn tissue w/o MCC	0.5808	2.5	3.2
557	YES	NO	08	MED	Tendonitis, myositis & bursitis w MCC	1.5260	5.7	7.2
558	YES	NO	08	MED	Tendonitis, myositis & bursitis w/o MCC	0.7937	3.6	4.3
559	YES	NO	08	MED	Aftercare, musculoskeletal system & connective tissue w MCC	1.6234	5.6	7.7
560	YES	NO	08	MED	Aftercare, musculoskeletal system & connective tissue w CC	0.9259	3.8	4.9
561	YES	NO	08	MED	Aftercare, musculoskeletal system & connective tissue w/o CC/MCC	0.5744	2.2	2.8
562	YES	NO	08	MED	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w MCC	1.3865	5.3	6.8
563	YES	NO	08	MED	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w/o MCC	0.6638	3.2	3.8
564	NO	NO	08	MED	Other musculoskeletal sys & connective tissue diagnoses w MCC	1.3899	5.4	7.2
565	NO	NO	08	MED	Other musculoskeletal sys & connective tissue diagnoses w CC	0.8789	4.0	5.1
566	NO	NO	08	MED	Other musculoskeletal sys & connective tissue diagnoses w/o CC/MCC	0.6416	3.0	3.8
573	YES	NO	09	SURG	Skin graft &/or debrid for skn ulcer or cellulitis w MCC	3.2500	11.3	14.9
574	YES	NO	09	SURG	Skin graft &/or debrid for skn ulcer or cellulitis w CC	1.9044	7.9	10.1
575	YES	NO	09	SURG	Skin graft &/or debrid for skn ulcer or cellulitis w/o CC/MCC	1.1444	5.0	6.2
576	NO	NO	09	SURG	Skin graft &/or debrid exc for skin ulcer or cellulitis w MCC	3.2329	7.8	12.2
577	NO	NO	09	SURG	Skin graft &/or debrid exc for skin ulcer or cellulitis w CC	1.5871	4.1	6.0
578	NO	NO	09	SURG	Skin graft &/or debrid exc for skin ulcer or cellulitis w/o CC/MCC	0.9496	2.5	3.5
579	YES	NO	09	SURG	Other skin, subcut tiss & breast proc w MCC	2.8730	9.1	12.0
580	YES	NO	09	SURG	Other skin, subcut tiss & breast proc w CC	1.6083	5.7	7.5
581	YES	NO	09	SURG	Other skin, subcut tiss & breast proc w/o CC/MCC	0.9517	3.0	4.1
582	NO	NO	09	SURG	Mastectomy for malignancy w CC/MCC	0.9894	2.1	2.8
583	NO	NO	09	SURG	Mastectomy for malignancy w/o CC/MCC	0.7438	1.5	1.8
584	NO	NO	09	SURG	Breast biopsy, local excision & other breast procedures w CC/MCC	1.2849	2.7	4.5
585	NO	NO	09	SURG	Breast biopsy, local excision & other breast procedures w/o CC/MCC	0.7975	1.5	1.9
592	YES	NO	09	MED	Skin ulcers w MCC	1.7353	7.1	9.3
593	YES	NO	09	MED	Skin ulcers w CC	1.0554	5.5	6.8
594	YES	NO	09	MED	Skin ulcers w/o CC/MCC	0.7103	4.1	5.0
595	NO	NO	09	MED	Major skin disorders w MCC	1.7547	6.1	8.3
596	NO	NO	09	MED	Major skin disorders w/o MCC	0.7999	3.8	4.8
597	NO	NO	09	MED	Malignant breast disorders w MCC	1.6278	5.9	8.1
598	NO	NO	09	MED	Malignant breast disorders w CC	1.0038	4.3	5.6
599	NO	NO	09	MED	Malignant breast disorders w/o CC/MCC	0.6029	2.6	3.6
600	NO	NO	09	MED	Non-malignant breast disorders w CC/MCC	0.9377	4.2	5.4

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601	NO	NO	09	MED	Non-malignant breast disorders w/o CC/MCC	0.6145	3.1	3.8
602	YES	NO	09	MED	Cellulitis w MCC	1.3674	5.7	7.2
603	YES	NO	09	MED	Cellulitis w/o MCC	0.7692	4.0	4.8
604	NO	NO	09	MED	Trauma to the skin, subcut tiss & breast w MCC	1.1571	4.2	5.4
605	NO	NO	09	MED	Trauma to the skin, subcut tiss & breast w/o MCC	0.6605	2.8	3.5
606	NO	NO	09	MED	Minor skin disorders w MCC	1.0951	4.2	5.9
607	NO	NO	09	MED	Minor skin disorders w/o MCC	0.6152	2.9	3.8
614	NO	NO	10	SURG	Adrenal & pituitary procedures w CC/MCC	2.4971	5.3	7.4
615	NO	NO	10	SURG	Adrenal & pituitary procedures w/o CC/MCC	1.4008	2.8	3.4
616	YES	NO	10	SURG	Amputat of lower limb for endocrine,nutrit,& metabol dis w MCC	3.9372	13.8	16.6
617	YES	NO	10	SURG	Amputat of lower limb for endocrine,nutrit,& metabol dis w CC	2.0922	7.7	9.4
618	YES	NO	10	SURG	Amputat of lower limb for endocrine,nutrit,& metabol dis w/o CC/MCC	1.2910	5.4	6.7
619	NO	NO	10	SURG	O.R. procedures for obesity w MCC	3.7049	6.4	9.3
620	NO	NO	10	SURG	O.R. procedures for obesity w CC	2.0649	3.4	4.3
621	NO	NO	10	SURG	O.R. procedures for obesity w/o CC/MCC	1.5677	2.1	2.4
622	YES	NO	10	SURG	Skin grafts & wound debrid for endoc, nutrit & metab dis w MCC	3.2312	10.8	14.1
623	YES	NO	10	SURG	Skin grafts & wound debrid for endoc, nutrit & metab dis w CC	1.8656	7.3	9.2
624	YES	NO	10	SURG	Skin grafts & wound debrid for endoc, nutrit & metab dis w/o CC/MCC	1.0921	4.8	6.1
625	NO	NO	10	SURG	Thyroid, parathyroid & thyroglossal procedures w MCC	2.2648	5.0	7.5
626	NO	NO	10	SURG	Thyroid, parathyroid & thyroglossal procedures w CC	1.1578	2.2	3.3
627	NO	NO	10	SURG	Thyroid, parathyroid & thyroglossal procedures w/o CC/MCC	0.7438	1.3	1.6
628	YES	NO	10	SURG	Other endocrine, nutrit & metab O.R. proc w MCC	3.3468	8.0	12.0
629	YES	NO	10	SURG	Other endocrine, nutrit & metab O.R. proc w CC	2.2530	7.4	9.2
630	YES	NO	10	SURG	Other endocrine, nutrit & metab O.R. proc w/o CC/MCC	1.5021	4.0	5.5
637	YES	NO	10	MED	Diabetes w MCC	1.3752	4.8	6.3
638	YES	NO	10	MED	Diabetes w CC	0.8236	3.5	4.5
639	YES	NO	10	MED	Diabetes w/o CC/MCC	0.5659	2.5	3.1
640	YES	NO	10	MED	Nutritional & misc metabolic disorders w MCC	1.1282	4.2	5.7
641	YES	NO	10	MED	Nutritional & misc metabolic disorders w/o MCC	0.6825	3.1	3.9
642	NO	NO	10	MED	Inborn errors of metabolism	1.0662	3.8	5.2
643	YES	NO	10	MED	Endocrine disorders w MCC	1.6658	6.2	8.0
644	YES	NO	10	MED	Endocrine disorders w CC	1.0299	4.5	5.5
645	YES	NO	10	MED	Endocrine disorders w/o CC/MCC	0.7359	3.2	3.9
652	NO	NO	11	SURG	Kidney transplant	3.0502	6.7	7.9
653	YES	NO	11	SURG	Major bladder procedures w MCC	5.7256	14.1	17.5
654	YES	NO	11	SURG	Major bladder procedures w CC	2.9989	9.0	10.3
655	YES	NO	11	SURG	Major bladder procedures w/o CC/MCC	2.0278	6.0	6.7
656	NO	NO	11	SURG	Kidney & ureter procedures for neoplasm w MCC	3.3640	8.4	10.8
657	NO	NO	11	SURG	Kidney & ureter procedures forneoplasm w CC	1.8718	5.2	6.2

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
658	NO	NO	11	SURG	Kidney & ureter procedures for neoplasm w/o CC/MCC	1.3816	3.4	3.9
659	YES	NO	11	SURG	Kidney & ureter procedures for non-neoplasm w MCC	3.3062	8.5	11.6
660	YES	NO	11	SURG	Kidney & ureter procedures for non-neoplasm w CC	1.8787	5.0	6.7
661	YES	NO	11	SURG	Kidney & ureter procedures for non-neoplasm w/o CC/MCC	1.2616	2.8	3.6
662	NO	NO	11	SURG	Minor bladder procedures w MCC	2.5879	7.3	10.5
663	NO	NO	11	SURG	Minor bladder procedures w CC	1.3791	3.6	5.2
664	NO	NO	11	SURG	Minor bladder procedures w/o CC/MCC	0.9539	1.7	2.2
665	NO	NO	11	SURG	Prostatectomy w MCC	2.8287	9.3	12.2
666	NO	NO	11	SURG	Prostatectomy w CC	1.5129	4.2	6.4
667	NO	NO	11	SURG	Prostatectomy w/o CC/MCC	0.8050	2.1	2.9
668	NO	NO	11	SURG	Transurethral procedures w MCC	2.2009	6.3	8.6
669	NO	NO	11	SURG	Transurethral procedures w CC	1.2000	3.1	4.4
670	NO	NO	11	SURG	Transurethral procedures w/o CC/MCC	0.7738	1.9	2.6
671	NO	NO	11	SURG	Urethral procedures w CC/MCC	1.3900	4.0	5.8
672	NO	NO	11	SURG	Urethral procedures w/o CC/MCC	0.7545	1.9	2.6
673	NO	NO	11	SURG	Other kidney & urinary tract procedures w MCC	2.8505	6.0	10.1
674	NO	NO	11	SURG	Other kidney & urinary tract procedures w CC	2.1894	4.5	7.3
675	NO	NO	11	SURG	Other kidney & urinary tract procedures w/o CC/MCC	1.3393	1.7	2.6
682	YES	NO	11	MED	Renal failure w MCC	1.6662	5.5	7.4
683	YES	NO	11	MED	Renal failure w CC	1.1648	4.8	6.0
684	YES	NO	11	MED	Renal failure w/o CC/MCC	0.7735	3.3	4.1
685	NO	NO	11	MED	Admit for renal dialysis	0.8438	2.4	3.5
686	NO	NO	11	MED	Kidney & urinary tract neoplasms w MCC	1.7151	6.0	8.1
687	NO	NO	11	MED	Kidney & urinary tract neoplasms w CC	1.0529	4.0	5.3
688	NO	NO	11	MED	Kidney & urinary tract neoplasms w/o CC/MCC	0.7018	2.6	3.3
689	YES	NO	11	MED	Kidney & urinary tract infections w MCC	1.2317	5.2	6.6
690	YES	NO	11	MED	Kidney & urinary tract infections w/o MCC	0.7584	3.6	4.4
691	NO	NO	11	MED	Urinary stones w esw lithotripsy w CC/MCC	1.4476	3.0	4.2
692	NO	NO	11	MED	Urinary stones w esw lithotripsy w/o CC/MCC	1.0292	1.8	2.3
693	NO	NO	11	MED	Urinary stones w/o esw lithotripsy w MCC	1.2739	3.9	5.2
694	NO	NO	11	MED	Urinary stones w/o esw lithotripsy w/o MCC	0.6702	2.0	2.6
695	NO	NO	11	MED	Kidney & urinary tract signs & symptoms w MCC	1.1844	4.3	5.8
696	NO	NO	11	MED	Kidney & urinary tract signs & symptoms w/o MCC	0.6055	2.6	3.2
697	NO	NO	11	MED	Urethral stricture	0.7129	2.4	3.3
698	YES	NO	11	MED	Other kidney & urinary tract diagnoses w MCC	1.4738	5.3	6.9
699	YES	NO	11	MED	Other kidney & urinary tract diagnoses w CC	0.9804	4.0	5.1
700	YES	NO	11	MED	Other kidney & urinary tract diagnoses w/o CC/MCC	0.7022	2.9	3.6
707	NO	NO	12	SURG	Major male pelvic procedures w CC/MCC	1.7194	3.8	4.9
708	NO	NO	12	SURG	Major male pelvic procedures w/o CC/MCC	1.1607	2.1	2.4

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709	NO	NO	12	SURG	Penis procedures w CC/MCC	1.8767	3.8	6.7
710	NO	NO	12	SURG	Penis procedures w/o CC/MCC	1.2095	1.5	1.9
711	NO	NO	12	SURG	Testes procedures w CC/MCC	1.8691	5.4	8.0
712	NO	NO	12	SURG	Testes procedures w/o CC/MCC	0.8008	2.2	3.0
713	NO	NO	12	SURG	Transurethral prostatectomy w CC/MCC	1.0935	2.9	4.1
714	NO	NO	12	SURG	Transurethral prostatectomy w/o CC/MCC	0.6317	1.7	2.0
715	NO	NO	12	SURG	Other male reproductive system O.R. proc for malignancy w CC/MCC	1.8227	3.9	6.2
716	NO	NO	12	SURG	Other male reproductive system O.R. proc for malignancy w/o CC/MCC	0.9994	1.3	1.5
717	NO	NO	12	SURG	Other male reproductive system O.R. proc exc malignancy w CC/MCC	1.8468	5.2	7.7
718	NO	NO	12	SURG	Other male reproductive system O.R. proc exc malignancy w/o CC/MCC	0.7896	2.1	2.8
722	NO	NO	12	MED	Malignancy, male reproductive system w MCC	1.4655	5.6	7.5
723	NO	NO	12	MED	Malignancy, male reproductive system w CC	1.0350	4.2	5.4
724	NO	NO	12	MED	Malignancy, male reproductive system w/o CC/MCC	0.6083	2.5	3.4
725	NO	NO	12	MED	Benign prostatic hypertrophy w MCC	1.0518	4.3	5.6
726	NO	NO	12	MED	Benign prostatic hypertrophy w/o MCC	0.6583	2.8	3.5
727	NO	NO	12	MED	Inflammation of the male reproductive system w MCC	1.2483	5.1	6.6
728	NO	NO	12	MED	Inflammation of the male reproductive system w/o MCC	0.6802	3.3	4.1
729	NO	NO	12	MED	Other male reproductive system diagnoses w CC/MCC	1.0838	3.8	5.2
730	NO	NO	12	MED	Other male reproductive system diagnoses w/o CC/MCC	0.5814	2.5	3.3
734	NO	NO	13	SURG	Pelvic evisceration, rad hysterectomy & rad vulvectomy w CC/MCC	2.3381	5.9	7.7
735	NO	NO	13	SURG	Pelvic evisceration, rad hysterectomy & rad vulvectomy w/o CC/MCC	1.0337	3.0	3.5
736	NO	NO	13	SURG	Uterine & adnexa proc for ovarian or adnexal malignancy w MCC	4.1948	11.6	13.9
737	NO	NO	13	SURG	Uterine & adnexa proc for ovarian or adnexal malignancy w CC	2.0008	6.3	7.4
738	NO	NO	13	SURG	Uterine & adnexa proc for ovarian or adnexal malignancy w/o CC/MCC	1.1638	3.6	4.0
739	NO	NO	13	SURG	Uterine,adnexa proc for non-ovarian/adnexal malig w MCC	2.8865	7.9	10.2
740	NO	NO	13	SURG	Uterine,adnexa proc for non-ovarian/adnexal malig w CC	1.4096	4.4	5.2
741	NO	NO	13	SURG	Uterine,adnexa proc for non-ovarian/adnexal malig w/o CC/MCC	0.9735	2.8	3.2
742	NO	NO	13	SURG	Uterine & adnexa proc for non-malignancy w CC/MCC	1.3711	3.6	4.7
743	NO	NO	13	SURG	Uterine & adnexa proc for non-malignancy w/o CC/MCC	0.8373	2.1	2.4
744	NO	NO	13	SURG	D&C, conization, laparascopy & tubal interruption w CC/MCC	1.3991	4.1	5.9
745	NO	NO	13	SURG	D&C, conization, laparascopy & tubal interruption w/o CC/MCC	0.7325	2.1	2.6
746	NO	NO	13	SURG	Vagina, cervix & vulva procedures w CC/MCC	1.2201	3.0	4.2
747	NO	NO	13	SURG	Vagina, cervix & vulva procedures w/o CC/MCC	0.8159	1.7	1.9
748	NO	NO	13	SURG	Female reproductive system reconstructive procedures	0.7922	1.5	1.8
749	NO	NO	13	SURG	Other female reproductive system O.R. procedures w CC/MCC	2.5145	7.1	9.9
750	NO	NO	13	SURG	Other female reproductive system O.R. procedures w/o CC/MCC	0.9622	2.6	3.3
754	NO	NO	13	MED	Malignancy, female reproductive system w MCC	1.8551	6.4	8.9
755	NO	NO	13	MED	Malignancy, female reproductive system w CC	1.0874	4.2	5.7
756	NO	NO	13	MED	Malignancy, female reproductive system w/o CC/MCC	0.6317	2.5	3.3

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757	NO	NO	13	MED	Infections, female reproductive system w MCC	1.6842	6.9	9.0
758	NO	NO	13	MED	Infections, female reproductive system w CC	1.0655	4.9	6.2
759	NO	NO	13	MED	Infections, female reproductive system w/o CC/MCC	0.7551	3.8	4.6
760	NO	NO	13	MED	Menstrual & other female reproductive system disorders w CC/MCC	0.7707	3.0	3.8
761	NO	NO	13	MED	Menstrual & other female reproductive system disorders w/o CC/MCC	0.4959	2.0	2.5
765	NO	NO	14	SURG	Cesarean section w CC/MCC	1.0347	4.1	5.3
766	NO	NO	14	SURG	Cesarean section w/o CC/MCC	0.7101	3.0	3.2
767	NO	NO	14	SURG	Vaginal delivery w sterilization &/or D&C	0.7180	2.5	2.9
768	NO	NO	14	SURG	Vaginal delivery w O.R. proc except steril &/or D&C	1.7024	4.7	5.8
769	NO	NO	14	SURG	Postpartum & post abortion diagnoses w O.R. procedure	1.9229	3.3	5.7
770	NO	NO	14	SURG	Abortion w D&C, aspiration curettage or hysterotomy	0.7530	1.6	2.7
774	NO	NO	14	MED	Vaginal delivery w complicating diagnoses	0.5829	2.6	3.2
775	NO	NO	14	MED	Vaginal delivery w/o complicating diagnoses	0.4379	2.1	2.3
776	NO	NO	14	MED	Postpartum & post abortion diagnoses w/o O.R. procedure	0.6448	2.6	3.6
777	NO	NO	14	MED	Ectopic pregnancy	0.7120	1.8	2.1
778	NO	NO	14	MED	Threatened abortion	0.3699	2.0	2.8
779	NO	NO	14	MED	Abortion w/o D&C	0.6007	1.7	2.6
780	NO	NO	14	MED	False labor	0.2804	1.3	2.7
781	NO	NO	14	MED	Other antepartum diagnoses w medical complications	0.5639	2.7	3.8
782	NO	NO	14	MED	Other antepartum diagnoses w/o medical complications	0.4275	1.7	2.8
789	NO	NO	15	MED	Neonates, died or transferred to another acute care facility	1.4246	*	*
790	NO	NO	15	MED	Extreme immaturity or respiratory distress syndrome, neonate	4.6977	*	*
791	NO	NO	15	MED	Prematurity w major problems	3.2084	*	*
792	NO	NO	15	MED	Prematurity w/o major problems	1.9359	*	*
793	NO	NO	15	MED	Full term neonate w major problems	3.2957	*	*
794	NO	NO	15	MED	Neonate w other significant problems	1.1665	*	*
795	NO	NO	15	MED	Normal newborn	0.1579	*	*
799	NO	NO	16	SURG	Splenectomy w MCC	4.8416	10.8	14.3
800	NO	NO	16	SURG	Splenectomy w CC	2.5162	6.5	8.4
801	NO	NO	16	SURG	Splenectomy w/o CC/MCC	1.6376	3.8	4.9
802	NO	NO	16	SURG	Other O.R. proc of the blood & blood forming organs w MCC	3.5945	9.2	12.8
803	NO	NO	16	SURG	Other O.R. proc of the blood & blood forming organs w CC	1.6806	4.8	6.6
804	NO	NO	16	SURG	Other O.R. proc of the blood & blood forming organs w/o CC/MCC	0.9993	2.4	3.3
808	YES	NO	16	MED	Major hematol/immun diag exc sickle cell crisis & coagul w MCC	1.9351	6.2	8.1
809	YES	NO	16	MED	Major hematol/immun diag exc sickle cell crisis & coagul w CC	1.0944	4.0	5.1
810	YES	NO	16	MED	Major hematol/immun diag exc sickle cell crisis & coagul w/o CC/MCC	0.8400	3.1	4.0
811	NO	NO	16	MED	Red blood cell disorders w MCC	1.1655	4.0	5.6
812	NO	NO	16	MED	Red blood cell disorders w/o MCC	0.7266	2.8	3.7
813	NO	NO	16	MED	Coagulation disorders	1.3293	3.8	5.2

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814	NO	NO	16	MED	Reticuloendothelial & immunity disorders w MCC	1.5515	5.4	7.2
815	NO	NO	16	MED	Reticuloendothelial & immunity disorders w CC	0.9747	3.9	4.9
816	NO	NO	16	MED	Reticuloendothelial & immunity disorders w/o CC/MCC	0.6987	2.7	3.4
820	NO	NO	17	SURG	Lymphoma & leukemia w major O.R. procedure w MCC	5.7556	13.8	18.4
821	NO	NO	17	SURG	Lymphoma & leukemia w major O.R. procedure w CC	2.2465	5.4	7.8
822	NO	NO	17	SURG	Lymphoma & leukemia w major O.R. procedure w/o CC/MCC	1.2539	2.7	3.7
823	NO	NO	17	SURG	Lymphoma & non-acute leukemia w other O.R. proc w MCC	4.0908	12.1	15.4
824	NO	NO	17	SURG	Lymphoma & non-acute leukemia w other O.R. proc w CC	2.1572	6.6	8.9
825	NO	NO	17	SURG	Lymphoma & non-acute leukemia w other O.R. proc w/o CC/MCC	1.3431	3.3	4.8
826	NO	NO	17	SURG	Myeloprolif disord or poorly diff neopl w maj O.R. proc w MCC	5.1263	13.2	17.4
827	NO	NO	17	SURG	Myeloprolif disord or poorly diff neopl w maj O.R. proc w CC	2.1113	5.8	7.6
828	NO	NO	17	SURG	Myeloprolif disord or poorly diff neopl w maj O.R. proc w/o CC/MCC	1.2399	3.0	3.8
829	NO	NO	17	SURG	Myeloprolif disord or poorly diff neopl w other O.R. proc w CC/MCC	2.7134	6.9	10.5
830	NO	NO	17	SURG	Myeloprolif disord or poorly diff neopl w other O.R. proc w/o CC/MCC	1.0483	2.5	3.7
834	NO	NO	17	MED	Acute leukemia w/o major O.R. procedure w MCC	4.0108	9.2	15.0
835	NO	NO	17	MED	Acute leukemia w/o major O.R. procedure w CC	1.9097	5.4	8.4
836	NO	NO	17	MED	Acute leukemia w/o major O.R. procedure w/o CC/MCC	1.1444	3.4	5.1
837	NO	NO	17	MED	Chemo w acute leukemia as sdx or w high dose chemo agent w MCC	5.8967	17.2	22.7
838	NO	NO	17	MED	Chemo w acute leukemia as sdx or w high dose chemo agent w CC	2.4571	6.3	9.2
839	NO	NO	17	MED	Chemo w acute leukemia as sdx or w high dose chemo agent w/o CC/MCC	1.2593	4.8	6.0
840	YES	NO	17	MED	Lymphoma & non-acute leukemia w MCC	2.3961	7.1	9.8
841	YES	NO	17	MED	Lymphoma & non-acute leukemia w CC	1.4452	5.1	6.7
842	YES	NO	17	MED	Lymphoma & non-acute leukemia w/o CC/MCC	0.9597	3.3	4.3
843	NO	NO	17	MED	Other myeloprolif dis or poorly diff neopl diag w MCC	1.9159	6.3	8.8
844	NO	NO	17	MED	Other myeloprolif dis or poorly diff neopl diag w CC	1.1313	4.5	6.0
845	NO	NO	17	MED	Other myeloprolif dis or poorly diff neopl diag w/o CC/MCC	0.8416	3.3	4.3
846	NO	NO	17	MED	Chemotherapy w/o acute leukemia as secondary diagnosis w MCC	2.2072	5.8	8.5
847	NO	NO	17	MED	Chemotherapy w/o acute leukemia as secondary diagnosis w CC	0.9795	2.7	3.3
848	NO	NO	17	MED	Chemotherapy w/o acute leukemia as secondary diagnosis w/o CC/MCC	0.7427	2.3	2.9
849	NO	NO	17	MED	Radiotherapy	1.2606	4.3	6.0
853	YES	NO	18	SURG	Infectious & parasitic diseases w O.R. procedure w MCC	5.3836	13.4	17.4
854	YES	NO	18	SURG	Infectious & parasitic diseases w O.R. procedure w CC	2.9165	9.5	11.5
855	YES	NO	18	SURG	Infectious & parasitic diseases w O.R. procedure w/o CC/MCC	1.8414	5.8	7.6
856	YES	NO	18	SURG	Postoperative or post-traumatic infections w O.R. proc w MCC	4.9596	13.4	17.4
857	YES	NO	18	SURG	Postoperative or post-traumatic infections w O.R. proc w CC	2.1107	7.3	9.3
858	YES	NO	18	SURG	Postoperative or post-traumatic infections w O.R. proc w/o CC/MCC	1.3501	5.0	6.3
862	YES	NO	18	MED	Postoperative & post-traumatic infections w MCC	1.8936	6.6	8.6
863	YES	NO	18	MED	Postoperative & post-traumatic infections w/o MCC	0.9282	4.4	5.4
864	NO	NO	18	MED	Fever of unknown origin	0.8236	3.2	4.1

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865	NO	NO	18	MED	Viral illness w MCC	1.5756	4.9	6.8
866	NO	NO	18	MED	Viral illness w/o MCC	0.6743	2.8	3.5
867	YES	NO	18	MED	Other infectious & parasitic diseases diagnoses w MCC	2.4974	7.5	10.2
868	YES	NO	18	MED	Other infectious & parasitic diseases diagnoses w CC	1.1658	4.7	6.1
869	YES	NO	18	MED	Other infectious & parasitic diseases diagnoses w/o CC/MCC	0.8346	3.6	4.4
870	YES	NO	18	MED	Septicemia w MV 96+ hours	5.7561	13.0	15.7
871	YES	NO	18	MED	Septicemia w/o MV 96+ hours w MCC	1.8632	5.8	7.8
872	YES	NO	18	MED	Septicemia w/o MV 96+ hours w/o MCC	1.1242	4.8	5.9
876	NO	NO	19	SURG	O.R. procedure w principal diagnoses of mental illness	2.4393	6.8	11.2
880	NO	NO	19	MED	Acute adjustment reaction & psychosocial dysfunction	0.6118	2.4	3.2
881	NO	NO	19	MED	Depressive neuroses	0.5205	3.1	4.2
882	NO	NO	19	MED	Neuroses except depressive	0.5694	3.1	4.5
883	NO	NO	19	MED	Disorders of personality & impulse control	0.8948	4.6	7.4
884	YES	NO	19	MED	Organic disturbances & mental retardation	0.8409	4.2	5.5
885	NO	NO	19	MED	Psychoses	0.7596	5.6	7.6
886	NO	NO	19	MED	Behavioral & developmental disorders	0.6932	4.0	5.9
887	NO	NO	19	MED	Other mental disorder diagnoses	0.8323	3.1	4.6
894	NO	NO	20	MED	Alcohol/drug abuse or dependence, left ama	0.3593	2.1	2.9
895	NO	NO	20	MED	Alcohol/drug abuse or dependence w rehabilitation therapy	0.7393	8.2	10.5
896	YES	NO	20	MED	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	1.3007	5.0	6.8
897	YES	NO	20	MED	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.5846	3.3	4.1
901	NO	NO	21	SURG	Wound debridements for injuries w MCC	3.6940	9.3	14.5
902	NO	NO	21	SURG	Wound debridements for injuries w CC	1.7452	5.7	8.0
903	NO	NO	21	SURG	Wound debridements for injuries w/o CC/MCC	1.0219	3.5	4.9
904	NO	NO	21	SURG	Skin grafts for injuries w CC/MCC	2.9414	7.3	12.3
905	NO	NO	21	SURG	Skin grafts for injuries w/o CC/MCC	1.0780	3.6	4.8
906	NO	NO	21	SURG	Hand procedures for injuries	0.9822	2.2	3.3
907	YES	NO	21	SURG	Other O.R. procedures for injuries w MCC	3.6173	8.4	12.0
908	YES	NO	21	SURG	Other O.R. procedures for injuries w CC	1.9035	5.3	7.2
909	YES	NO	21	SURG	Other O.R. procedures for injuries w/o CC/MCC	1.1274	2.8	3.7
913	NO	NO	21	MED	Traumatic injury w MCC	1.3048	4.5	6.1
914	NO	NO	21	MED	Traumatic injury w/o MCC	0.6562	2.7	3.4
915	NO	NO	21	MED	Allergic reactions w MCC	1.1847	3.3	4.6
916	NO	NO	21	MED	Allergic reactions w/o MCC	0.4525	1.7	2.1
917	YES	NO	21	MED	Poisoning & toxic effects of drugs w MCC	1.4792	3.9	5.4
918	YES	NO	21	MED	Poisoning & toxic effects of drugs w/o MCC	0.5885	2.1	2.7
919	NO	NO	21	MED	Complications of treatment w MCC	1.4849	4.5	6.3
920	NO	NO	21	MED	Complications of treatment w CC	0.9267	3.4	4.5
921	NO	NO	21	MED	Complications of treatment w/o CC/MCC	0.6184	2.4	3.0

MS-DRG	FY 2008 Proposed Rule Post-Acute DRG	FY 2008 Proposed Rule Special Pay DRG	MDC	TYPE	MS-DRG Title	Weights	Geometric Mean Length of Stay	Arithmetic Mean Length of Stay
922	NO	NO	21	MED	Other injury, poisoning & toxic effect diag w MCC	1.4477	4.2	6.1
923	NO	NO	21	MED	Other injury, poisoning & toxic effect diag w/o MCC	0.6408	2.4	3.3
927	NO	NO	22	SURG	Extensive burns or full thickness burns w MV 96+ hrs w skin graft	12.4226	23.1	29.0
928	NO	NO	22	SURG	Full thickness burn w skin graft or inhal inj w CC/MCC	4.6883	12.2	16.2
929	NO	NO	22	SURG	Full thickness burn w skin graft or inhal inj w/o CC/MCC	1.8159	5.6	7.8
933	NO	NO	22	MED	Extensive burns or full thickness burns w MV 96+ hrs w/o skin graft	2.6376	2.7	5.9
934	NO	NO	22	MED	Full thickness burn w/o skin grft or inhal inj	1.3698	4.8	7.0
935	NO	NO	22	MED	Non-extensive burns	1.1617	3.7	5.6
939	NO	NO	23	SURG	O.R. proc w diagnoses of other contact w health services w MCC	2.7197	7.5	11.0
940	NO	NO	23	SURG	O.R. proc w diagnoses of other contact w health services w CC	1.7567	4.5	6.5
941	NO	NO	23	SURG	O.R. proc w diagnoses of other contact w health services w/o CC/MCC	1.0986	2.4	3.1
945	YES	NO	23	MED	Rehabilitation w CC/MCC	1.1442	9.3	11.1
946	YES	NO	23	MED	Rehabilitation w/o CC/MCC	0.9241	7.3	8.1
947	YES	NO	23	MED	Signs & symptoms w MCC	1.0281	3.9	5.1
948	YES	NO	23	MED	Signs & symptoms w/o MCC	0.6283	2.8	3.4
949	NO	NO	23	MED	Aftercare w CC/MCC	0.7824	2.5	4.2
950	NO	NO	23	MED	Aftercare w/o CC/MCC	0.5089	2.4	3.4
951	NO	NO	23	MED	Other factors influencing health status	0.6084	2.1	3.8
955	NO	NO	24	SURG	Craniotomy for multiple significant trauma	5.0965	8.6	12.3
956	YES	YES	24	SURG	Limb reattachment, hip & femur proc for multiple significant trauma	3.3837	7.9	9.7
957	NO	NO	24	SURG	Other O.R. procedures for multiple significant trauma w MCC	6.7567	11.6	16.9
958	NO	NO	24	SURG	Other O.R. procedures for multiple significant trauma w CC	4.3275	8.8	11.6
959	NO	NO	24	SURG	Other O.R. procedures for multiple significant trauma w/o CC/MCC	3.0962	5.8	7.8
963	NO	NO	24	MED	Other multiple significant trauma w MCC	2.7634	6.7	9.6
964	NO	NO	24	MED	Other multiple significant trauma w CC	1.6233	5.5	6.9
965	NO	NO	24	MED	Other multiple significant trauma w/o CC/MCC	1.2308	3.8	4.7
969	NO	NO	25	SURG	HIV w extensive O.R. procedure w MCC	5.5777	13.6	19.0
970	NO	NO	25	SURG	HIV w extensive O.R. procedure w/o MCC	2.9706	8.2	11.8
974	NO	NO	25	MED	HIV w major related condition w MCC	2.1883	6.5	9.4
975	NO	NO	25	MED	HIV w major related condition w CC	1.5323	5.8	8.0
976	NO	NO	25	MED	HIV w major related condition w/o CC/MCC	1.0396	4.2	5.6
977	NO	NO	25	MED	HIV w or w/o other related condition	1.0221	3.8	5.2
981	YES	NO		SURG	Extensive O.R. procedure unrelated to principal diagnosis w MCC	5.0520	12.5	15.8
982	YES	NO		SURG	Extensive O.R. procedure unrelated to principal diagnosis w CC	3.1468	8.2	10.3
983	YES	NO		SURG	Extensive O.R. procedure unrelated to principal diagnosis w/o CC/MCC	2.0448	4.1	5.6
984	NO	NO		SURG	Prostatic O.R. procedure unrelated to principal diagnosis w MCC	3.3208	11.8	14.6
985	NO	NO		SURG	Prostatic O.R. procedure unrelated to principal diagnosis w CC	2.0821	7.5	9.9
986	NO	NO		SURG	Prostatic O.R. procedure unrelated to principal diagnosis w/o CC/MCC	1.2323	3.6	5.2
987	YES	NO		SURG	Non-extensive O.R. proc unrelated to principal diagnosis w MCC	3.5021	10.4	13.6
988	YES	NO		SURG	Non-extensive O.R. proc unrelated to principal diagnosis w CC	1.8730	6.1	8.1
989	YES	NO		SURG	Non-extensive O.R. proc unrelated to principal diagnosis w/o CC/MCC	1.1092	3.0	4.3
998	NO	NO		**	Principal diagnosis invalid as discharge diagnosis	0.0000	0.0	0.0
999	NO	NO		**	Ungroupable	0.0000	0.0	0.0

MS-DRGs 998 and 999 contain cases that could not be assigned to valid DRGs.
Note: If there is no value or asterisk in either the geometric mean length of stay or the arithmetic mean length of stay columns, the volume of cases is insufficient to determine a meaningful computation of these statistics.

16. On pages 25095 through 25099, in Table 10.—Geometric Mean Plus The Lesser of .75 Of The National Adjusted Operating Standardized Payment

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Amount (Increased To Reflect The Difference Between Costs And Charges) Or .75 Of One Standard Deviation Of Mean Charges By Proposed Medicare Severity Diagnosis Related Group (MS–DRG) April 2007,[1] the table is corrected to read as follows:

Proposed MS–DRG	Number of cases	Threshold
1	629	$337,776
2	328	177,459
3	23,999	266,199
4	21,742	162,448
5	842	159,506
6	495	90,877
7	413	130,276
8	560	92,482
9	1,358	96,148
10	177	72,498
11	1,289	71,569
12	1,923	51,377
13	1,484	36,890
20	901	138,451
21	558	107,625
22	251	74,547
23	3,112	81,762
24	2,576	60,740
25	8,417	79,522
26	11,626	52,970
27	14,454	41,141
28	1,609	73,994
29	2,862	45,280
30	3,751	30,578
31	1,057	59,862
32	2,987	35,341
33	4,263	30,562
34	813	58,045
35	2,506	42,020
36	7,710	36,365
37	4,777	51,688
38	14,602	33,107
39	55,357	25,687
40	4,549	58,682
41	7,720	39,547
42	5,430	34,186
52	1,156	29,433
53	593	22,836
54	4,664	30,610
55	16,896	24,934
56	7,716	29,072
57	48,432	19,657
58	789	28,525
59	2,639	22,939
60	4,201	17,679
61	1,340	53,318
62	2,288	41,979
63	1,185	36,186
64	55,552	34,358
65	112,189	27,004
66	94,547	21,586
67	1,383	30,616
68	12,393	23,506
69	103,747	18,936
70	7,092	34,031
71	10,001	26,444
72	6,056	20,628
73	8,655	26,844
74	32,523	21,427
75	1,197	33,931
76	874	24,318
77	1,101	32,854
78	1,307	24,933
79	957	20,523
80	2,077	24,135
81	8,190	17,502
82	1,646	33,910
83	1,940	28,383
84	2,591	22,654
85	5,328	35,679
86	10,382	26,404
87	12,152	20,144
88	717	30,107
89	2,641	23,706
90	3,319	17,874
91	6,676	29,690
92	14,890	22,313
93	15,484	17,172
94	1,521	56,938
95	1,088	42,964
96	755	36,338
97	1,252	51,314
98	1,048	35,977
99	642	30,167
100	15,837	28,714
101	56,905	19,341
102	1,352	24,321
103	15,023	17,133
113	568	31,544
114	601	21,640
115	1,098	25,563
116	665	23,828
117	1,400	16,827
121	587	22,514
122	674	13,518
123	2,843	19,108
124	679	24,153
125	4,705	16,568
129	1,374	37,663
130	1,072	28,539
131	655	35,824
132	728	27,050
133	1,352	31,142
134	2,661	20,306
135	781	35,301
136	1,113	24,451
137	1,108	28,410
138	1,370	20,587
139	2,145	22,300
146	687	35,060
147	1,422	25,142
148	935	18,944
149	39,248	15,883
150	939	25,105
151	6,801	13,607
152	2,352	22,958
153	16,028	15,145
154	1,843	27,851
155	4,207	22,020
156	5,140	16,103
157	1,145	28,232
158	3,039	21,662
159	2,418	15,345
163	13,431	79,829
164	18,047	47,971
165	14,553	37,942
166	20,290	58,779
167	20,772	40,117
168	5,758	30,294
175	11,954	33,475
176	40,173	26,670
177	57,179	36,617
178	71,192	30,381
179	27,454	24,673
180	22,474	32,948
181	32,156	26,822
182	6,163	22,468
183	1,654	29,694
184	4,141	22,561
185	2,593	15,740
186	8,533	31,857
187	9,968	25,761
188	5,148	20,974
189	104,531	28,757
190	57,041	27,770
191	121,659	24,280
192	196,903	18,419
193	88,053	29,668
194	266,599	24,679
195	147,744	18,274
196	5,143	30,999
197	6,894	25,721
198	4,943	21,129
199	3,257	33,231
200	8,185	23,984
201	3,523	17,676
202	31,587	20,635
203	41,587	15,003
204	26,039	17,394
205	5,775	26,368
206	22,415	18,854
207	46,165	83,212
208	79,432	41,398
215	150	151,502
216	8,411	165,422
217	7,609	118,088
218	3,256	98,470
219	10,062	132,460
220	13,481	94,478
221	8,383	81,144
222	2,865	149,784
223	5,770	116,219
224	1,919	138,213
225	5,871	109,030
226	7,048	112,464
227	50,536	88,444
228	3,084	126,976
229	4,128	89,139
230	1,989	73,311
231	1,478	138,287
232	1,795	107,403
233	16,911	119,988
234	39,167	86,734
235	9,628	97,022
236	32,871	68,172
237	21,789	85,211
238	44,929	53,794
239	13,814	64,168
240	13,349	43,051
241	3,350	31,297
242	17,179	64,273
243	37,856	50,218
244	68,201	42,102
245	6,241	54,054
246	32,661	64,613
247	279,972	46,787
248	5,013	58,218
249	29,657	41,876
250	5,739	53,408
251	39,905	38,200
252	44,602	48,168
253	46,864	43,475
254	59,029	34,550
255	2,609	39,961
256	3,833	30,250
257	774	23,818
258	598	49,682

[1] Cases taken from the FY 2006 MedPAR file; proposed MS–DRGs are from GROUPER Version 25.0.

Proposed MS–DRG	Number of cases	Threshold
259	7,328	35,034
260	867	47,446
261	2,804	28,303
262	3,378	23,301
263	788	29,053
264	30,137	39,708
280	60,735	36,717
281	57,734	28,584
282	60,951	23,031
283	15,852	30,928
284	4,911	23,409
285	3,254	17,351
286	23,282	40,266
287	172,488	28,923
288	3,245	50,617
289	1,423	36,464
290	484	28,249
291	183,774	29,157
292	217,052	24,421
293	226,688	17,810
294	1,704	21,989
295	1,658	13,805
296	1,730	26,654
297	943	20,306
298	554	12,889
299	17,443	28,063
300	46,820	21,997
301	39,910	15,712
302	7,873	23,741
303	81,458	15,192
304	2,084	24,110
305	35,646	15,139
306	1,379	27,644
307	6,447	18,857
308	33,528	27,255
309	79,751	20,827
310	160,738	14,816
311	24,867	13,364
312	169,247	18,273
313	220,769	14,894
314	60,053	30,750
315	30,730	23,629
316	20,101	16,823
326	11,567	88,786
327	10,901	49,818
328	9,333	32,074
329	48,135	80,371
330	66,303	47,127
331	31,391	35,021
332	1,890	74,102
333	6,196	46,130
334	4,023	34,266
335	7,161	68,407
336	12,516	43,200
337	8,835	32,563
338	1,499	58,047
339	3,192	39,795
340	3,607	30,753
341	874	42,806
342	2,536	31,921
343	6,875	24,258
344	898	51,426
345	2,915	33,636
346	2,909	27,779
347	1,568	36,443
348	3,985	27,800
349	5,787	19,265
350	1,669	41,035
351	3,997	28,329
352	8,419	19,894
353	3,182	44,303
354	9,118	30,612
355	17,451	23,281
356	8,366	58,953
357	8,046	40,130
358	2,714	31,167
368	3,052	31,502
369	4,005	25,728
370	3,914	20,084
371	16,843	32,446
372	22,903	26,907
373	14,897	20,598
374	9,414	34,760
375	19,730	26,563
376	4,816	22,403
377	50,503	30,943
378	84,806	24,936
379	128,748	19,140
380	2,917	32,583
381	4,894	26,915
382	5,445	20,581
383	1,303	28,065
384	8,664	21,556
385	2,107	33,476
386	7,221	25,067
387	5,230	20,543
388	18,267	29,699
389	46,328	23,347
390	48,052	16,336
391	47,511	24,761
392	306,515	17,829
393	23,917	28,925
394	45,952	23,434
395	26,460	17,594
405	3,903	83,940
406	5,241	49,125
407	2,310	36,497
408	1,644	67,203
409	1,713	46,400
410	722	35,648
411	978	65,359
412	1,063	47,834
413	881	37,325
414	5,596	59,660
415	6,847	40,610
416	6,222	30,251
417	16,671	46,291
418	27,563	36,466
419	38,264	28,533
420	714	61,258
421	1,091	36,437
422	364	28,520
423	1,500	63,840
424	912	44,260
425	157	35,667
432	16,259	30,416
433	9,022	22,852
434	945	17,210
435	11,908	32,613
436	13,987	26,367
437	4,357	23,539
438	14,426	31,691
439	24,816	25,250
440	27,346	18,913
441	13,912	29,122
442	12,756	23,365
443	6,698	18,374
444	12,447	31,276
445	16,757	25,851
446	16,849	20,274
453	846	162,178
454	1,496	110,006
455	1,875	85,089
456	764	132,358
457	1,763	93,955
458	1,534	78,607
459	3,180	93,067
460	50,317	61,555
461	1,062	78,144
462	14,234	58,820
463	5,283	64,018
464	6,322	42,171
465	2,942	31,102
466	4,152	70,822
467	10,818	52,840
468	28,701	44,445
469	29,730	57,143
470	410,173	41,440
471	2,227	71,285
472	6,218	48,040
473	22,546	39,667
474	2,829	51,053
475	3,530	35,636
476	1,698	26,070
477	2,257	57,109
478	7,144	41,570
479	10,267	33,395
480	25,866	50,686
481	59,136	38,146
482	64,739	33,332
483	5,729	44,536
484	17,949	37,665
485	967	55,459
486	1,535	40,900
487	1,214	33,214
488	1,551	33,205
489	3,866	26,495
490	19,803	34,057
491	58,396	24,028
492	4,700	48,148
493	15,248	36,196
494	30,563	28,910
495	1,867	51,435
496	5,049	34,292
497	7,519	27,156
498	1,177	36,767
499	1,245	22,858
500	1,349	47,836
501	3,679	30,766
502	6,825	23,032
503	736	38,112
504	2,155	30,857
505	3,214	24,352
506	909	25,023
507	779	33,035
508	2,722	26,249
509	465	25,608
510	957	38,420
511	4,008	30,072
512	11,961	23,087
513	1,287	29,502
514	1,339	20,718
515	3,577	51,402
516	10,963	37,292
517	18,263	30,388
533	828	27,486
534	3,634	15,819
535	6,844	27,022
536	34,321	15,408
537	654	20,405
538	1,164	12,954
539	3,379	34,667
540	4,187	27,375
541	1,858	22,002
542	6,158	33,306
543	18,413	25,124
544	12,644	18,008
545	4,016	34,451
546	5,881	24,102

Proposed MS–DRG	Number of cases	Threshold
547	4,880	18,469
548	591	33,006
549	1,077	25,270
550	904	18,381
551	9,502	29,646
552	87,859	18,492
553	2,790	24,265
554	20,253	14,944
555	1,995	22,555
556	19,168	14,428
557	3,184	29,321
558	14,178	19,372
559	1,635	28,972
560	3,979	20,901
561	7,617	13,636
562	4,996	26,929
563	36,056	15,451
564	1,606	27,237
565	3,237	21,478
566	2,779	15,695
573	5,687	46,949
574	12,100	33,325
575	6,468	25,393
576	558	44,896
577	2,179	31,142
578	3,299	23,686
579	3,088	44,811
580	6,766	31,460
581	5,288	23,941
582	8,972	24,930
583	15,549	19,001
584	1,431	27,897
585	2,818	20,786
592	3,982	30,226
593	12,832	23,538
594	2,955	16,562
595	1,082	29,610
596	5,755	19,571
597	548	29,514
598	1,483	23,497
599	350	15,943
600	572	21,988
601	865	15,125
602	21,307	26,948
603	130,923	18,145
604	2,627	25,150
605	22,672	16,152
606	1,363	22,966
607	7,169	14,791
614	1,376	44,346
615	1,626	32,541
616	1,132	61,354
617	6,822	37,382
618	343	28,522
619	663	60,076
620	1,877	41,119
621	6,556	35,242
622	1,234	45,937
623	3,268	33,291
624	487	24,889
625	1,098	40,232
626	2,522	27,537
627	14,305	19,134
628	3,267	51,514
629	3,958	40,808
630	684	31,392
637	16,283	26,892
638	40,811	20,070
639	41,135	14,010
640	55,690	23,971
641	188,104	16,575
642	1,542	23,138
643	5,014	31,125
644	11,845	24,210
645	8,402	18,520
652	10,437	57,281
653	1,585	86,150
654	3,231	54,167
655	1,650	40,670
656	3,721	56,568
657	7,359	38,736
658	8,479	32,186
659	4,442	51,032
660	7,444	36,348
661	4,745	29,748
662	988	41,594
663	2,131	29,231
664	4,676	23,754
665	690	46,858
666	2,213	30,439
667	3,948	19,910
668	3,757	39,537
669	12,491	27,870
670	13,411	19,410
671	884	28,518
672	965	19,128
673	12,577	43,111
674	10,503	40,270
675	11,704	31,229
682	75,827	30,254
683	112,129	25,615
684	43,451	19,020
685	2,493	19,996
686	1,581	31,234
687	3,322	24,255
688	1,198	18,441
689	55,398	25,904
690	200,059	18,352
691	898	31,887
692	654	25,534
693	2,235	27,712
694	19,213	17,667
695	974	24,032
696	10,565	14,808
697	575	17,475
698	21,061	27,909
699	22,820	23,309
700	15,089	17,723
707	4,874	35,532
708	17,015	29,281
709	755	34,020
710	2,037	27,689
711	921	34,145
712	819	20,449
713	11,755	25,154
714	32,745	15,644
715	638	34,191
716	1,382	26,921
717	634	31,538
718	633	19,455
722	871	28,980
723	2,037	23,777
724	666	15,999
725	802	23,413
726	3,940	16,420
727	1,098	26,180
728	6,176	16,848
729	578	22,426
730	552	14,387
734	1,470	39,650
735	1,328	26,263
736	840	68,822
737	3,429	39,321
738	954	28,973
739	975	48,200
740	4,366	31,584
741	6,554	24,119
742	10,705	29,966
743	35,310	21,122
744	1,498	28,762
745	2,189	20,066
746	2,486	27,713
747	11,218	20,664
748	21,171	19,841
749	1,037	42,792
750	484	24,671
754	1,083	31,715
755	3,152	24,245
756	831	16,790
757	1,322	31,004
758	1,597	24,623
759	1,186	19,161
760	1,703	19,848
761	1,918	13,557
765	2,497	22,146
766	2,634	14,889
767	119	15,750
768	10	28,201
769	86	29,901
770	181	18,191
774	1,442	12,637
775	5,224	9,066
776	491	15,413
777	177	19,480
778	489	8,798
779	107	14,082
780	47	5,638
781	3,004	13,343
782	125	8,369
794	7	2,880
799	623	76,151
800	699	45,583
801	602	35,355
802	691	51,739
803	1,003	33,630
804	996	25,527
808	8,315	34,115
809	15,527	24,895
810	3,818	21,504
811	18,344	24,532
812	83,082	18,156
813	15,031	25,132
814	1,631	29,730
815	3,337	23,820
816	2,355	18,234
820	1,481	83,993
821	2,529	40,735
822	2,139	28,780
823	2,436	64,907
824	3,039	40,522
825	2,009	29,739
826	562	77,350
827	1,318	40,156
828	872	29,232
829	1,374	44,261
830	531	25,785
834	5,257	51,445
835	1,469	30,879
836	1,526	23,524
837	1,623	85,432
838	900	41,508
839	1,385	26,968
840	15,152	38,374
841	11,012	29,060
842	7,678	22,849
843	1,477	32,639
844	2,854	25,034
845	1,008	21,623
846	2,480	37,292

Proposed MS–DRG	Number of cases	Threshold
847	23,667	25,136
848	1,699	20,748
849	1,498	26,843
853	31,444	77,914
854	6,881	50,010
855	467	36,089
856	6,187	69,506
857	10,059	36,989
858	3,500	28,786
862	7,425	33,012
863	21,807	21,882
864	19,826	20,564
865	2,019	27,840
866	9,406	16,786
867	5,306	38,488
868	2,369	24,746
869	1,100	20,520
870	13,710	90,935
871	203,702	33,685
872	92,118	25,456
876	968	40,268
880	10,494	15,328
881	4,576	11,727
882	1,656	12,481
883	786	17,701
884	21,619	19,048
885	77,763	16,598
886	376	14,393
887	423	18,850
894	4,480	8,389
895	6,474	16,201
896	5,369	25,303
897	35,835	13,689
901	917	48,598
902	2,135	31,632
903	1,739	24,530
904	941	39,574
905	798	25,597
906	745	23,573
907	8,098	53,982
908	7,884	35,453
909	5,971	26,248
913	813	26,149
914	6,958	16,346
915	915	24,023
916	5,369	10,725
917	14,155	28,466
918	34,847	14,539
919	10,569	27,881
920	12,135	22,284
921	11,659	15,316
922	1,005	26,606
923	4,211	16,053
927	182	181,306
928	794	60,107
929	459	32,721
933	155	31,143
934	694	23,842
935	2,179	21,397
939	423	43,099
940	690	32,755
941	1,077	26,227
945	5,053	21,694
946	3,199	17,198
947	6,544	23,445
948	34,325	15,485
949	742	18,955
950	476	12,079
951	990	14,489
955	446	82,175
956	3,718	55,062
957	1,157	102,443
958	737	70,330
959	816	53,566
963	1,395	46,322
964	1,578	32,525
965	2,016	27,560
969	598	75,122
970	231	47,821
974	7,276	34,615
975	3,463	29,344
976	2,728	23,762
977	4,871	23,005
981	26,280	77,452
982	18,594	53,442
983	6,766	38,481
984	669	55,818
985	1,048	38,813
986	890	27,837
987	8,036	54,475
988	11,880	36,064
989	6,537	26,243
999	18	16,006

17. On pages 25118 through 25123, in Table I.—Impact Analysis of Proposed Changes For FY 2008, the listed entries and footnotes are corrected to read as follows:

BILLING CODE 4120–01–P

TABLE I.--IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2008

	No. of Hospitals[1] (1)	Published All Proposed FY 2008 Changes w/ CMI Adjustment Prior to Assumed Growth[11] (11)	Corrected All Proposed FY 2008 Changes w/ CMI Adjustment Prior to Assumed Growth[11] (11)	Published All Proposed FY 2008 Changes w/ CMI Adjustment and Assumed Growth[12] (12)	Corrected All Proposed FY 2008 Changes w/ CMI Adjustment and Assumed Growth[12] (12)
All Hospitals	3535	0.8	0.8	3.3	3.3
By Geographic Location:					
Urban hospitals	2540	1.2	1.2	3.6	3.6
Large urban areas	1409	1.7	1.7	4.2	4.2
Other urban areas	1131	0.4	0.4	2.8	2.9
Rural hospitals	995	-1.5	-1.7	0.9	0.7
Bed Size (Urban):					
0-99 beds	632	-2.0	-2.1	0.4	0.3
100-199 beds	849	0.9	0.8	3.4	3.2
200-299 beds	480	1.0	1.0	3.5	3.4
300-499 beds	412	1.5	1.6	4.0	4.0
500 or more beds	167	1.6	1.8	4.0	4.2
Bed Size (Rural):					
0-49 beds	342	-3.9	-4.2	-1.6	-1.9
50-99 beds	369	-1.9	-2.1	0.5	0.2
100-149 beds	172	-1.1	-1.3	1.3	1.1
150-199 beds	67	-1.0	-1.1	1.4	1.3
200 or more beds	45	-0.4	-0.4	2.0	2.0
Urban by Region:					
New England	126	0.2	0.2	2.6	2.6
Middle Atlantic	350	0.4	0.4	2.8	2.8
South Atlantic	388	1.8	1.8	4.2	4.3
East North Central	395	1.0	1.0	3.4	3.5
East South Central	166	0.8	0.8	3.2	3.2
West North Central	156	0.4	0.6	2.8	3.0
West South Central	358	1.6	1.6	4.0	4.0
Mountain	153	0.9	1.0	3.3	3.5
Pacific	395	2.2	2.2	4.7	4.7
Puerto Rico	53	1.1	0.8	3.6	3.3
Rural by Region:					
New England	19	-1.9	-1.9	0.4	0.4
Middle Atlantic	72	-1.6	-1.7	0.8	0.6
South Atlantic	173	-0.6	-0.8	1.8	1.6
East North Central	124	-1.7	-1.8	0.7	0.6
East South Central	177	-1.2	-1.4	1.2	1.0

	No. of Hospitals[1] (1)	Published All Proposed FY 2008 Changes w/ CMI Adjustment Prior to Assumed Growth[11] (11)	Corrected All Proposed FY 2008 Changes w/ CMI Adjustment Prior to Assumed Growth[11] (11)	Published All Proposed FY 2008 Changes w/ CMI Adjustment and Assumed Growth[12] (12)	Corrected All Proposed FY 2008 Changes w/ CMI Adjustment and Assumed Growth[12] (12)
West North Central	115	-1.7	-1.8	0.6	0.6
West South Central	194	-3.0	-3.3	-0.7	-0.9
Mountain	80	-1.5	-1.6	0.9	0.7
Pacific	41	-0.4	-0.6	2.0	1.8
By Payment Classification:					
Urban hospitals	2619	1.1	1.2	3.6	3.6
Large urban areas	1436	1.7	1.7	4.1	4.1
Other urban areas	1183	0.4	0.4	2.8	2.8
Rural areas	916	-1.4	-1.6	0.9	0.8
Teaching Status:					
Nonteaching	2479	0.2	0.1	2.7	2.6
Fewer than 100 residents	816	1.0	1.1	3.5	3.5
100 or more residents	240	1.7	1.8	4.1	4.2
Urban DSH:					
Non-DSH	879	-0.4	-0.4	2.0	2.1
100 or more beds	1527	1.6	1.6	4.0	4.0
Less than 100 beds	359	-0.6	-0.8	1.9	1.6
Rural DSH:					
SCH	391	-2.0	-2.3	0.3	0.0
RRC	189	-0.7	-0.8	1.7	1.6
100 or more beds	36	-0.3	-0.6	2.1	1.8
Less than 100 beds	154	-2.0	-2.4	0.4	0.0
Urban teaching and DSH:					
Both teaching and DSH	805	1.6	1.7	4.0	4.1
Teaching and no DSH	192	0.0	0.2	2.5	2.6
No teaching and DSH	1081	1.2	1.1	3.7	3.5
No teaching and no DSH	541	-0.5	-0.4	1.9	2.0
Special Hospital Types:					
RRC	59	0.1	0.1	2.5	2.5
SCH	45	-1.5	-1.6	0.8	0.8
MDH	21	-2.1	-2.4	0.3	0.0
SCH and RRC	17	0.3	0.3	2.7	2.7
MDH and RRC	1	-3.2	-3.1	-0.8	-0.8

	No. of Hospitals[1] (1)	Published All Proposed FY 2008 Changes w/ CMI Adjustment Prior to Assumed Growth[11] (11)	Corrected All Proposed FY 2008 Changes w/ CMI Adjustment Prior to Assumed Growth[11] (11)	Published All Proposed FY 2008 Changes w/ CMI Adjustment and Assumed Growth[12] (12)	Corrected All Proposed FY 2008 Changes w/ CMI Adjustment and Assumed Growth[12] (12)
Type of Ownership:					
Voluntary	2069	0.7	0.8	3.2	3.2
Proprietary	823	1.3	1.2	3.7	3.6
Government	598	1.1	1.0	3.5	3.4
Medicare Utilization as a Percent of Inpatient Days:					
0-25	230	3.2	3.1	5.6	5.5
25-50	1292	1.6	1.7	4.0	4.1
50-65	1453	0.1	0.1	2.6	2.5
Over 65	441	-1.2	-1.2	1.2	1.2
FY 2008 Reclassifications by the Medicare Geographic Classification Review Board:					
All Reclassified Hospitals	801	0.4	0.4	2.8	2.8
Non-Reclassified Hospitals	2734	1.0	1.0	3.4	3.4
Urban Hospitals Reclassified	434	0.9	0.9	3.3	3.4
Urban Nonreclassified, FY 2008:	2105	1.2	1.3	3.6	3.7
All Rural Hospitals Reclassified Full Year FY 2008:	367	-0.9	-1.0	1.5	1.4
Rural Nonreclassified Hospitals Full Year FY 2008:	568	-2.7	-2.9	-0.3	-0.6
All Section 401 Reclassified Hospitals:	31	-0.6	-0.8	1.8	1.6
Other Reclassified Hospitals (Section 1886(d)(8)(B))	61	-1.0	-1.3	1.4	1.1
Former 508 Hospitals	107	-1.9	-1.8	0.5	0.6
Specialty Hospitals					
Cardiac specialty Hospitals	22	-2.9	-2.4	-0.6	-0.1

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18. On page 25124,

[6] Shown here are the tentative effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2008 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2008. Reclassification for prior years has no bearing on the payment impacts shown here. This column reflect the geographic budget neutrality factor of 0.991925.

[7] This column displays the effects of the proposed changes in the rural floor budget neutrality adjustment applied on the wage index instead of on the standardized amount. The column reflects a proposed rural floor budget neutrality factor of 0.997080.

[11] This column shows tentative changes in payments from FY 2007 to FY 2008 including a 0.976 case mix index adjustment for coding and documentation improvements that are anticipated with the adoption of the MS–DRGs prior to the assumed growth occurring. In incorporates all of the changes displayed in Columns 4, 5, 6, 7, 8, 9, 10 and (the changes displayed in Columns 2 and 3 are included in Column 4).

[12] This column shows tentative changes in payments from FY 2007 to FY 2008 with a case mix index adjustment and the assumed growth for improvements in documentation and coding. It incorporates all of the changes displayed in

a. First column, second full paragraph, line 25, the figure ''0.999317'' is corrected to read ''0.999367.''

b. Second column, last paragraph, line 3, the figure ''0.999317'' is corrected to read ''0.999367.''

19. On page 25125,

a. First column, last paragraph, line 5, the figure ''0.991938'' is corrected to read ''0.991925.''

b. Second column, first full paragraph, line 17, the figure ''0.997084'' is corrected to read ''0.997080.''

20. On pages 25126 through 25128, in Table II.—Impact Analysis of Proposed Changes For FY 2008 Operating Prospective Payment System, the listed entries are corrected to read as follows:

TABLE II.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2008 OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER CASE)

[Percent changes in payments per case]

	Number of hospitals	Published average proposed FY 2008 payment per case [1]	Corrected average proposed FY 2008 payment per case [1]	Published all proposed FY 2008 changes	Corrected all proposed FY 2008 changes
	(1)	(3)	(3)	(4)	(4)
All hospitals	3535	9299	9299	3.3	3.3
By Geographic Location:					
Urban hospitals	2540	9678	9680	3.6	3.6
Large urban areas (populations over 1 million)	1409	10156	10157	4.2	4.2
Other urban areas (populations of 1 million or fewer)	1131	9103	9107	2.8	2.9
Rural hospitals	995	7123	7110	0.9	0.7
Bed Size (Urban):					
0–99 beds	632	7263	7261	0.4	0.3
100–199 beds	849	8170	8159	3.4	3.2
200–299 beds	480	9120	9117	3.5	3.4
300–499 beds	412	10136	10143	4.0	4.0
500 or more beds	167	12234	12254	4.0	4.2
Bed Size (Rural):					
0–49 beds	342	6065	6045	−1.6	−1.9
50–99 beds	369	6588	6572	0.5	0.2
100–149 beds	172	6960	6945	1.3	1.1
150–199 beds	67	7735	7727	1.4	1.3
200 or more beds	45	8938	8937	2.0	2.0
Urban by Region:					
New England	126	10001	10004	2.6	2.6
Middle Atlantic	350	10529	10532	2.8	2.8
South Atlantic	388	9175	9176	4.2	4.3
East North Central	395	9197	9199	3.4	3.5
East South Central	166	8784	8786	3.2	3.2
West North Central	156	9321	9334	2.8	3.0
West South Central	358	9174	9175	4.0	4.0
Mountain	153	9826	9836	3.3	3.5
Pacific	395	11657	11656	4.7	4.7
Puerto Rico	53	4525	4511	3.6	3.3
Rural by Region:					
New England	19	9714	9716	0.4	0.4
Middle Atlantic	72	7525	7514	0.8	0.6
South Atlantic	173	6700	6683	1.8	1.6
East North Central	124	7574	7567	0.7	0.6
East South Central	177	6479	6462	1.2	1.0
West North Central	115	7792	7786	0.6	0.6
West South Central	194	6339	6322	−0.7	−0.9
Mountain	80	7834	7822	0.9	0.7
Pacific	41	8896	8881	2.0	1.8
By Payment Classification:					
Urban hospitals	2619	9629	9631	3.6	3.6
Large urban areas (populations over 1 million)	1436	10127	10128	4.1	4.1
Other urban areas (populations of 1 million or fewer)	1183	9034	9038	2.8	2.8
Rural areas	916	7242	7230	0.9	0.8
Teaching Status:					
Non-teaching	2479	7851	7844	2.7	2.6
Fewer than 100 Residents	816	9384	9385	3.5	3.5
100 or more Residents	240	13533	13555	4.1	4.2
Urban DSH:					
Non-DSH	879	8307	8314	2.0	2.1
100 or more beds	1527	10182	10183	4.0	4.0

Columns 4, 5, 6, 7, 8, 9, 10 and (the changes displayed in Columns 2 and 3 are included in Column 4). It also reflects the impact of the proposed FY 2008 update, and changes in hospitals' reclassification status in FY 2008 compared to FY 2007. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effects.

TABLE II.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2008 OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER CASE)—Continued

[Percent changes in payments per case]

	Number of hospitals	Published average proposed FY 2008 payment per case [1]	Corrected average proposed FY 2008 payment per case [1]	Published all proposed FY 2008 changes	Corrected all proposed FY 2008 changes
	(1)	(3)	(3)	(4)	(4)
Less than 100 beds	359	6697	6682	1.9	1.6
Rural DSH:					
SCH	391	7013	6994	0.3	0.0
RRC	189	7818	7809	1.7	1.6
100 or more beds	36	6028	6010	2.1	1.8
Less than 100 beds	154	5353	5335	0.4	0.0
Urban teaching and DSH:					
Both teaching and DSH	805	11185	11192	4.0	4.1
Teaching and no DSH	192	9078	9089	2.5	2.6
No teaching and DSH	1081	8283	8273	3.7	3.5
No teaching and no DSH	541	7812	7817	1.9	2.0
Rural Hospital Types:					
RRC	59	8358	8359	2.5	2.5
SCH	45	9301	9296	0.8	0.8
MDH	21	6339	6319	0.3	0.0
SCH and RRC	17	10239	10236	2.7	2.7
MDH and RRC	1	9674	9677	−0.8	−0.8
Type of Ownership:					
Voluntary	2069	9424	9427	3.2	3.2
Proprietary	823	8478	8471	3.7	3.6
Government	598	9593	9589	3.5	3.4
Medicare Utilization as a Percent of Inpatient Days:					
0–25	230	13443	13434	5.6	5.5
25–50	1292	10570	10576	4.0	4.1
50–65	1453	8116	8113	2.6	2.5
Over 65	441	7331	7325	1.2	1.2
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2008 Reclassifications:					
All Reclassified Hospitals FY 2008	801	8938	8937	2.8	2.8
All Non-Reclassified Hospitals FY 2008	2734	9417	9416	3.4	3.4
Urban Reclassified Hospitals FY 2008	434	9581	9595	3.3	3.4
Urban Non-reclassified Hospitals FY 2008	2105	9701	9705	3.6	3.7
Rural Reclassified Hospitals FY 2008	367	7669	7663	1.5	1.4
Rural Nonreclassified Hospitals FY 2008	568	6392	6374	−0.3	−0.6
All Section 401 Reclassified Hospitals	31	8799	8787	1.8	1.6
Other Reclassified Hospitals (Section 1886(d)(8)(B))	61	6729	6710	1.4	1.1
Former Section 508 Hospitals	107	9814	9823	0.5	0.6
Specialty Hospitals					
Cardiac Specialty Hospitals	22	10676	10727	−0.6	−0.1

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 1, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 07–2806 Filed 6–1–07; 2:04 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7800]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive

Officer of each community. The respective addresses are listed in the table below.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Iredell County, North Carolina and Incorporated Areas				
Back Creek	At the Rowan/Iredell County boundary	None	+760	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 100 feet downstream of Oakridge Farm Highway/NC Highway 150.	None	+801	
Back Creek (North)	Approximately 1,500 feet upstream of the confluence with Third Creek.	+798	+799	Iredell County (Unincorporated Areas) City of Statesville.
	Approximately 1,400 feet upstream of Arey Road (State Road 1337).	None	+811	
Back Creek Tributary 1.	Approximately 500 feet upstream of the confluence with Back Creek.	None	+760	Iredell County (Unincorporated Areas).
	Approximately 1.1 miles upstream of River Hill Road (State Road 2166).	None	+787	
Beaver Creek	At the confluence with Fifth Creek	None	+731	Iredell County (Unincorporated Areas).
	Approximately 1.7 miles upstream of River Hill Road (State Road 2166).	None	+772	
Beaver Creek Tributary.	At the confluence with Beaver Creek	None	+740	Iredell County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Beaver Creek.	None	+752	
Beaverdam Creek (West).	Approximately 250 feet downstream of the Rowan/Iredell County boundary.	None	+814	Iredell County (Unincorporated Areas).
	Approximately 30 feet upstream of the upstream most Rowan/Iredell County boundary.	None	+851	
Bell Branch	At the confluence with South Yadkin River	None	+697	Iredell County (Unincorporated Areas).
	Approximately 2.4 miles upstream of Woodleaf Road (State Road 1003).	None	+752	
Big Kennedy Creek	At the confluence with Hunting Creek	None	+762	Iredell County (Unincorporated Areas).
	At the Iredell/Yadkin County boundary	None	+847	
Brushy Creek	At the confluence with Hunting Creek	None	+897	Iredell County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence of Pasture Bottom Creek.	None	+1,034	
Camel Branch	At the confluence with Rocky Creek (into South Yadkin River).	None	+829	Iredell County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,600 feet upstream of Jericho Road (State Road 1849).	None	+866	
Tributary 1	At the confluence with Camel Branch	None	+841	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Camel Branch.	None	+858	
Coddle Creek	At the Iredell/Cabarrus County boundary	None	+674	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 0.4 mile upstream of the confluence with Coddle Creek Tributary 8.	None	+779	
Tributary 5	At the confluence with Coddle Creek	None	+695	Iredell County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Coddle Creek.	None	+730	
Tributary 6	At the confluence with Coddle Creek	None	+737	Iredell County (Unincorporated Areas).
	Approximately 1,600 feet upstream of the confluence with Coddle Creek.	None	+749	
Tributary 7	At the confluence with Coddle Creek	None	+759	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 0.4 mile upstream of the confluence with Coddle Creek.	None	+779	
Tributary 8	At the confluence with Coddle Creek	None	+762	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 0.5 mile upstream of the confluence with Coddle Creek.	None	+783	
Dishmon Creek	At the confluence with Rocky Creek (into South Yadkin River).	None	+1,068	Iredell County (Unincorporated Areas).
	Approximately 1.1 mile upstream of the confluence with Rocky Creek (into South Yadkin River).	None	+1,094	
Dutchman Creek	At the confluence with Kinder Creek	None	+717	Iredell County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Tomlin Road (State Road 1843).	None	+839	
Tributary 6	Approximately 100 feet downstream of the Iredell/Davie County boundary.	None	+820	Iredell County (Unincorporated Areas).
	Approximately 120 feet downstream of Sandy Springs Road (State Road 2105).	None	+909	
Dye Creek	At the confluence with Rocky River	+705	+704	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 280 feet upstream of East McLelland Avenue.	None	+832	
Dye Creek Tributary	At the confluence with Dye Creek	+738	+739	Town of Mooresville.
	Approximately 1.3 miles upstream of Briarcliff Road.	None	+808	
East Fork Creek	At the confluence with Coddle Creek	None	+674	Iredell County (Unincorporated Areas).
	Approximately 400 feet upstream of Linwood Road (State Road 1150).	None	+712	
Fifth Creek	At the confluence with South Yadkin River	None	+703	Iredell County (Unincorporated Areas).
	Approximately 570 feet upstream of Whites Farm Road (State Road 1911N).	None	+832	
Fourth Creek	Approximately 1,000 feet downstream of the Iredell/Rowan County boundary.	None	+729	Iredell County (Unincorporated Areas) City of Statesville.
	Approximately 0.4 mile downstream of Antietam Road (State Road 1562).	None	+915	
Tributary 6	At the confluence with Fourth Creek	None	+731	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Fourth Creek.	None	+737	
Tributary 7	At the confluence with Fourth Creek	None	+740	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Fourth Creek.	None	+746	
Tributary 8	At the confluence with Fourth Creek	None	+748	Iredell County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Fourth Creek.	None	+763	
Free Nancy Branch	At the confluence with Fourth Creek	+791	+792	City of Statesville.
	Approximately 250 feet upstream of North Race Street.	+848	+852	
Greasy Creek	At the confluence with Third Creek	None	+741	Iredell County (Unincorporated Areas).
	Approximately 1.8 mile upstream of the confluence with Brushy Creek.	None	+770	
Harve Creek	At the confluence with South Yadkin River	None	+834	Iredell County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of the confluence with South Yadkin River.	None	+860	
Hunting Creek	At the Iredell/Davie County boundary	None	+724	Iredell County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Warren Bridge Road (State Road 1708).	None	+898	
I-L Creek	Approximately 0.4 mile upstream of the confluence with Third Creek.	+751	+752	Iredell County (Unincorporated Areas) Town of Troutman.
	Approximately 0.4 mile upstream of Patterson Street.	None	+909	
Kinder Creek	At the confluence with South Yadkin River	None	+713	Iredell County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Old Mocksville Road (State Road 2158).	None	+731	
Tributary 1	At the confluence with Kinder Creek	None	+713	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Vaughn Mill Road (State Road 2145).	None	+727	
Tributary 1A	At the confluence with Kinder Creek Tributary 1.	None	+713	Iredell County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Kinder Creek Tributary 1.	None	+728	
Little Creek (North)	At the Iredell/Davie County boundary	None	+798	Iredell County (Unincorporated Areas).
	Approximately 500 feet downstream of Hayes Farm Road (State Road 2144).	None	+823	
Little Creek (South)	At the Iredell/Rowan County boundary	None	+748	Iredell County (Unincorporated Areas).
	Approximately 800 feet upstream of Iredell/Rowan County boundary.	None	+755	
Little Rocky Creek	At the confluence with Patterson Creek	None	+824	Iredell County (Unincorporated Areas).
	Approximately 80 feet downstream of Hams Grove Road (State Road 2017).	None	+906	
Tributary 1	At the confluence with Little Rocky Creek	None	+851	Iredell County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Little Rocky Creek.	None	+876	
Long Branch	At the confluence with North Little Hunting Creek.	None	+773	Iredell County (Unincorporated Areas).
	Approximately 600 feet upstream of Barnard Mill Road (State Road 1824).	None	+898	
Morrison Creek	Approximately 250 feet upstream of the confluence with Fourth Creek.	+799	+798	Iredell County (Unincorporated Areas) City of Statesville.
	Approximately 1,820 feet upstream of Old Wilkesboro Road (State Road 1645).	None	+845	
North Little Hunting Creek.	At the confluence with Hunting Creek	None	+771	Iredell County (Unincorporated Areas).
	At the Iredell/Yadkin County boundary	None	+813	
Olin Creek	At the confluence with Patterson Creek	None	+796	Iredell County (Unincorporated Areas).
	Approximately 600 feet upstream of Eupeptic Springs Road (State Road 1858).	None	+907	
Pasture Bottom Creek	At the confluence with Brushy Creek	None	+992	Iredell County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Brushy Creek.	None	+1,035	
Patterson Creek	At the confluence with Rocky Creek (into South Yadkin River).	None	+789	Iredell County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence of Patterson Creek Tributary 2.	None	+916	
Tributary 1	At the confluence with Patterson Creek	None	+813	Iredell County (Unincorporated Areas).
	Approximately 530 feet downstream of Bussell Road (State Road 1894).	None	+828	
Tributary 2	At the confluence with Patterson Creek	None	+896	Iredell County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Patterson Creek.	None	+920	
Rocky Creek (into South Yadkin River).	At the confluence with South Yadkin River	None	+732	Iredell County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Branton Road (State Road 1601).	None	+1,115	
Rocky River	At the Iredell/Mecklenberg/Cabarrus County boundary.	None	+688	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 2.1 miles upstream of Coddle Creek Highway.	None	+827	
Tributary 12	At the Iredell/Mecklenburg County boundary	None	+690	Iredell County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.2 miles upstream of the confluence with Rocky River.	None	+727	
Shinns Creek	At the confluence with Weathers Creek	None	+768	Iredell County (Unincorporated Areas) Town of Troutman.
	Approximately 2.8 miles upstream of Weathers Creek Road (State Road 2379 S).	None	+901	
Sills Creek	At the Iredell/Rowan County boundary	None	+813	Iredell County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the Iredell/Rowan County boundary.	None	+825	
Snow Creek	At the confluence with South Yadkin River	None	+769	Iredell County (Unincorporated Areas).
	Approximately 100 feet upstream of the Alexander/Iredell County boundary.	None	+1,013	
South Fork Withrow Creek.	At the confluence with Weathers Creek and Withrow Creek.	None	+746	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Winthrow Creek Road (State Road 2379 S).	None	+791	
South Yadkin River	At the Davie/Iredell County boundary	None	+697	Iredell County (Unincorporated Areas).
	Approximately 100 feet upstream of the Alexander/Iredell County boundary.	None	+843	
Tributary 6	At the confluence with South Yadkin River	None	+709	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with South Yadkin River.	None	+709	
Tributary 7	At the confluence with South Yadkin River	None	+713	Iredell County (Unincorporated Areas).
	Approximately 1,940 feet upstream of the confluence with South Yadkin River.	None	+713	
Tributary 8	At the confluence with South Yadkin River	None	+716	Iredell County (Unincorporated Areas).
	Approximately 150 feet downstream of White Oak Branch Road (State Road 2162 W).	None	+716	
Third Creek	Approximately 100 feet downstream of the Iredell/Rowan County boundary.	None	+722	Iredell County (Unincorporated Areas) City of Statesville.
	Approximately 400 feet upstream of the Iredell/Alexander County boundary.	None	+915	Town of Troutman.
Tributary 1	At the confluence with Third Creek	None	+724	Iredell County (Unincorporated Areas).
	Approximately 1,900 feet upstream of Knox Farm Road (State Road 2363).	None	+735	
Tributary 2	At the confluence with Third Creek	None	+725	Iredell County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Third Creek.	None	+740	
Tributary 3	At the confluence with Third Creek	None	+730	Iredell County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Cornflower Road.	None	+752	
Tributary 3A	At the confluence with Third Creek Tributary 3.	None	+730	Iredell County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Third Creek Tributary 3.	None	+744	
Tributary 3B	At the confluence with Third Creek Tributary 3.	None	+741	Iredell County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Third Creek Tributary 3.	None	+757	
Tributary 4	At the confluence with Third Creek	None	+894	Iredell County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Third Creek.	None	+904	
Tributary 1	At the confluence with Fourth Creek	+768	+770	City of Statesville.
	Approximately 2,000 feet upstream of the confluence with Fourth Creek.	+772	+771	
Tributary 2	Approximately 700 feet upstream of the confluence with Third Creek.	+804	+805	Iredell County (Unincorporated Areas) City of Statesville.
	Approximately 0.4 mile upstream of Johnson Drive.	None	+863	
Tributary 2A	Approximately 500 feet upstream of the confluence with Third Creek.	+814	+815	City of Statesville.
	Approximately 0.8 mile upstream of Newton Drive.	None	+910	
Tributary 3	At the confluence with Fourth Creek	+786	+785	Iredell County (Unincorporated Areas) City of Statesville.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.2 miles upstream of Interstate 40.	None	+839	
Tributary 4	Approximately 1,000 feet upstream of the confluence with Third Creek.	None	+798	City of Statesville.
	Approximately 130 feet downstream of Cochran Street.	None	+858	
Tributary 5	Approximately 650 feet upstream of the confluence with Third Creek.	+771	+772	City of Statesville.
	Approximately 0.8 mile upstream of the confluence with Third Creek.	None	+866	
Tributary 6	Approximately 500 feet upstream of the confluence with Third Creek.	None	+764	City of Statesville.
	Approximately 0.6 mile upstream of the confluence of Tributary 6B.	None	+853	
Tributary 6A	At the confluence with Tributary 6	None	+817	City of Statesville.
	Approximately 900 feet upstream of I–77 Highway.	None	+843	
Tributary 6A1	At the confluence with Tributary 6A	None	+817	City of Statesville.
	Approximately 0.4 mile upstream of Tributary 6A.	None	+857	
Tributary 6A2	At the confluence with Tributary 6A	None	+827	City of Statesville.
	Approximately 1,200 feet upstream of Tributary 6A.	None	+846	
Tributary 6B	At the confluence with Tributary 6	None	+822	City of Statesville.
	Approximately 0.3 mile upstream of The confluence of Tributary 6B1.	None	+859	
Tributary 6B1	At the confluence with Tributary 6B	None	+829	City of Statesville.
	Approximately 880 feet upstream of the confluence with Tributary 6B.	None	+841	
Tuckers Creek	At the confluence with Patterson Creek	None	+878	Iredell County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Patterson Creek.	None	+942	
Weathers Creek	At the confluence with South Fork Withrow Creek and Withrow Creek.	None	+746	Iredell County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Westmoreland Road (State Road 2390).	None	+837	
Tributary 1	At the confluence with Weathers Creek	None	+757	Iredell County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Weathers Creek.	None	+773	
West Branch Rocky River.	At the Iredell/Mecklenberg County boundary	None	+687	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 0.5 mile upstream of Timber Road.	None	+794	
Tributary	At the confluence with West Branch Rocky River.	+715	+713	Unincorporated Areas of Iredell County, Town of Mooresville.
	Approximately 0.9 mile upstream of Mott Road.	None	+750	
Tributary 1	At the confluence with West Branch Rocky River.	None	+695	Iredell County (Unincorporated Areas) Town of Mooresville.
	Approximately 0.7 mile upstream of Midway Lake Road (State Road 1137).	None	+734	
Tributary 2	At the confluence with West Branch Rocky River.	None	+763	Town of Mooresville.
	Approximately 0.6 mile upstream of Timber Road.	None	+806	
Westmoreland Creek	At the confluence with Weathers Creek	None	+761	Iredell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Weathers Creek.	None	+771	
Withrow Creek	At the Rowan/Iredell County boundary	None	+743	Iredell County (Unincorporated Areas).
	At the confluence of South Fork Withrow Creek and Weathers Creek.	None	+746	
Woodleaf Branch (West).	Approximately 50 feet downstream of the Rowan/Iredell County boundary.	None	+765	Iredell County (Unincorporated Areas).
	Approximately 450 feet upstream of the Rowan/Iredell County boundary.	None	+767	

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

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

City of Statesville:

Maps are available for inspection at City of Statesville Planning Department, 301 South Center Street, Statesville, North Carolina.
Send comments to The Honorable Constantine Kutteh, Mayor of the City of Statesville, P.O. Box 1111, Statesville, North Carolina 28687.

Town of Mooresville:

Maps are available for inspection at Town of Mooresville Planning Department, 413 North Main Street, Mooresville, North Carolina.
Send comments to The Honorable Bill Thunberg, Mayor of the Town of Mooresville, P.O. Box 878, Mooresville, North Carolina 28115.

Town of Troutman:

Maps are available for inspection at Troutman Town Hall, 400 North Eastway Drive, Troutman, North Carolina.
Send comments to The Honorable Elbert Richardson, Mayor of the Town of Troutman, P.O. Box 26, Troutman, North Carolina 28166.

Iredell County (Unincorporated Areas):

Maps are available for inspection at Iredell County Planning Department, 227 South Center Street, Statesville, North Carolina.
Send comments to Mr. Joel Mashburn, Iredell County Manager, P.O. Box 788, Statesville, North Carolina 28687.

Ashtabula County, Ohio, and Incorporated Areas

Lake Erie	Entire Lake Erie coastline within the corporate limits of City of Ashtabula.	+576	+576	City of Ashtabula.
Lake Erie	Entire Lake Erie coastline within the corporate limits of City of Conneaut.	+576	+576	City of Conneaut.
Lake Erie	Entire Lake Erie coastline within the corporate limits of Village of Geneva-on-the-Lake.	+576	+576	Village of Geneva-On-The-Lake.
Lake Erie	Village of North Kingsville—Entire Lake Erie coastline within the corporate limits of Village of North Kingsville.	None	+576	Village of North Kingsville.
Lake Erie	Entire Lake Erie coastline within the Unincorporated Areas of Ashtabula County.	+576	+576	Ashtabula County (Unincorporated Areas).

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

ADDRESSES

City of Ashtabula:

Maps are available for inspection at 4717 Main Avenue, Ashtabula, OH 44004.
Send comments to Mr. Anthony Cantagallo, City Manager, City of Ashtabula, 4717 Main Avenue, Ashtabula, OH 44004.

City of Conneaut:

Maps are available for inspection at 294 Main Street, Conneaut, OH 44030.
Send comments to Mr. Douglas Lewis, City Manager, City of Conneaut, 294 Main Street, Conneaut, OH 44030.

City of Geneva:

Maps are available for inspection at 44 North Forest Street, Geneva, OH 44041.
Send comments to Mr. James Pearson, City Manager, City of Geneva, 44 North Forest Street, Geneva, OH 44041.

Ashtabula County (Unincorporated Areas):

Maps are available for inspection at 25 West Jefferson Street, Jefferson, OH 44047.
Send comments to Mr. David Smith, Chief Building Official, Ashtabula County, 25 West Jefferson Street, Jefferson, OH 44047.

Village of Geneva-On-The-Lake:

Maps are available for inspection at 25 West Jefferson Street, Jefferson, OH 44047.
Send comments to The Honorable Meredith Rhodes, Mayor, Village of Geneva-on-the-Lake, 4964 South Spencer Drive, Geneva-on-the-Lake, OH 44041.

Village of Jefferson:

Maps are available for inspection at 27 East Jefferson Street, Jefferson, OH 44047.
Send comments to The Honorable Judy Maloney, Village Administrator/Zoning Inspector, Village of Jefferson, 27 East Jefferson Street, Jefferson, OH 44047.

Village of North Kingsville:

Maps are available for inspection at 3541 East Center Street, North Kingsville, OH 44068.
Send comments to The Honorable Ron McVoy, Mayor, Village of North Kingsville, PO Box 253, 3541 East Center Street, North Kingsville, OH 44068.

Village of Roaming Shores:

Maps are available for inspection at 2500 Hayford Road, Roaming Shores, OH 44084.
Send comments to The Honorable Karl Biats, Jr., Mayor, Village of Roaming Shores, PO Box 237, 2500 Hayford Road, Roaming Shores, OH 44084.

Village of Rock Creek:

Maps are available for inspection at West Water Street, Rock Creek, OH 44084.
Send comments to The Honorable Robert P. Shultz, Mayor, Village of Rock Creek, PO Box 92, West Water Street, Rock Creek, OH 44084.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Door County, Wisconsin, and Incorporated Areas				
Ahnapee River	Approximately 0.6 mile downstream of County Highway J.	None	+587	Village of Forestville.
	Approximately 400 feet upstream of County Highway J.	None	+590	
Green Bay	Approximately 800 feet north of the intersection of County Highway CC and Lime Kiln Road.	+584	+585	Door County (Unincorporated Areas) Village of Egg Harbor.
	Approximately 900 feet west of the intersection of State Highway 42 and Garrett Bay Road.	+584	+585	Village of Sister Bay.

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

ADDRESSES

Door County (Unincorporated Areas):

Maps are available for inspection at Door County Courthouse, 421 Nebraska Street, Sturgeon Bay, WI 54235–0670.
Send comments to Mr. Charlie Most, Jr., Chairman, Door County Board of Commissioners, 421 Nebraska Street, Sturgeon Bay, WI 54235–0670.

Village of Egg Harbor:

Maps are available for inspection at Village of Egg Harbor Village Hall, 7860 Highway 42, Egg Harbor, WI 54209.
Send comments to Mr. Bruce Hill, Village President, Village of Egg Harbor, Post Office Box 175, Egg Harbor, WI 54209–0175.

Village of Forestville:

Maps are available for inspection at Village of Forestville Village Hall, 123 South Forestville Avenue, Forestville, WI 54213.
Send comments to Mr. Thomas Tostrup, Village President, Village of Forestville, Post Office Box 96, Forestville, WI 54213.

Village of Sister Bay:

Maps are available for inspection at Village of Sister Bay Village Hall, 421 Maple Drive, Sister Bay, WI 54234.
Send comments to Mr. Dennis Bhirdo, Village President, Village of Sister Bay, 235 Maple Drive, Sister Bay, WI 54234.

Sheboygan County, Wisconsin, and Incorporated Areas				
East Branch Milwaukee River.	Just upstream of Division Road	None	+1012	Sheboygan County (Unincorporated Areas).
	At intersection between Division Road and Scenic Drive.	None	+1012	
Sheboygan River	Approximately 4,700 feet upstream of County Highway JM.	+771	+770	Sheboygan County (Unincorporated Areas).
	Approximately 1,500 feet upstream of County Highway A.	+804	+798	

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

ADDRESSES

Sheboygan County (Unincorporated Areas):

Maps are available for inspection at Administration Building, 508 New York Avenue, Sheboygan, WI 53081–4126.
Send comments to William C. Goehring, Chairperson, Sheboygan County Board, 508 New York Avenue, Administration Building, Third Floor, Room 311, Sheboygan, WI 53081.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 15, 2007.

David I. Maurstad,

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

[FR Doc. 07–2824 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 041307D]

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; Notice of Limited Access Privilege Program Public Workshop

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

ACTION: Notification of an additional public workshop.

SUMMARY: NMFS will present an additional public workshop in June 2007 on the proposed program to implement the Amendment 80 Program (Program) for potentially eligible participants and other interested parties. The Program would implement a limited access privilege program (LAPP) for specific groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). At the workshop, NMFS will provide an overview of the proposed Program, discuss the key proposed Program elements, and answer questions. NMFS is conducting this public workshop to provide assistance to fishery participants in understanding and reviewing this proposed Program.

DATES: The workshop will be held on Monday, June 18, 2007, from 1 p.m. to 4 p.m. Pacific standard time.

ADDRESSES: The workshop will be held at the Nordby Conference Center, Fishermen's Terminal, 3919 18th Ave. W. Seattle, WA 98119.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS has published a proposed rule that would implement a LAPP for Amendment 80 to the Fishery Management Plan for BSAI Groundfish (FMP) (72 FR 30052, May 30, 2007). Among other things, Amendment 80 would allocate specific BSAI groundfish resources among a defined group of harvesters under a LAPP; limit the bycatch of halibut and crab resources; assign Amendment 80 quota share (QS) that could be used to yield an exclusive harvest privilege on an annual basis; allow Amendment 80 QS holders to form a cooperative with other Amendment 80 QS holders on an annual basis to receive an exclusive harvest privilege; implement use caps to limit the amount of Amendment 80 QS a person could hold; limit the total amount of catch in other groundfish fisheries that could be taken by participants in the Program; ensure minimum retention of groundfish while fishing in the BSAI; and establish necessary monitoring and enforcement standards. Amendment 80 was approved by the North Pacific Fishery Management Council on June 9, 2006.

In addition to other laws, the Program is specifically designed to meet the requirements of:

- Section 219 of the Consolidated Appropriations Act of 2005 (Public Law 108–447; December 8, 2004), which defined the Amendment 80 sector and implemented a capacity reduction program for several catcher/processor sectors;
- Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; July 11, 2006), which amended provisions of the Community Development Quota (CDQ) Program in the Magnuson-Stevens Fishery Conservation and Management Act; and
- The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109–479, January 12, 2007), which modified provisions related to the CDQ Program and instituted other measures applicable to LAPPs.

NMFS is conducting this public workshop to provide assistance to fishery participants in understanding and reviewing the proposed requirements. A similar workshop was held May 23, 2007 (72 FR 27798, May 17, 2007). At the workshop, NMFS will provide an overview of the proposed Program, and discuss the key Program elements, including: quota share application; cooperative and limited access participation provisions; cooperative quota transfer provisions; measures to establish sideboard limits to protect non-LAPP fishery participants, the appeals process; catch accounting; monitoring and enforcement; and electronic reporting. Additionally, NMFS will answer questions from workshop participants. For further information on the Program, please visit the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for special accommodations should be directed to Glenn Merrill (see **FOR FURTHER INFORMATION CONTACT**) by June 11, 2007.

Dated: May 31, 2007.

James P. Burgess

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

[FR Doc. E7–10923 Filed 6–6–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 109

Thursday, June 7, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California, June 18, 2007. The meeting will include routine business and discussion of future project submissions for RAC funding.

DATES: The meeting will be held June 18, 2007, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, Forest RAC coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 1, 2007.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 07–2828 Filed 6–6–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: 7 CFR Part 1730, Electric System Emergency Restoration Plan.

OMB Control Number: 0572–0140.

Type of Request: Request for an extension of a currently approved information collection.

Abstract: Electric power systems have been identified in Presidential Decision Directive 63 (PDD–63), May 1998, as one of the critical infrastructures of the United States. The term ''critical infrastructure'' is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as ''systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.'' Damage to or loss of critical or significant parts of the U.S. electric power system can cause enormous damage to the environment, loss of life and economic loss and can affect the national security of the United States. Such damage or loss can be caused by acts of nature or human acts, ranging from an accident to an act of terrorism. Of particular concern are physical and cyber threats from terrorists. Protecting America's critical infrastructure is the shared responsibility of Federal, State, and local government in active partnership with the private sector. Homeland Security Presidential Directive 7 (HSPD–7), December 2003, established a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks. America's open and technologically complex society includes a wide array of critical infrastructure and key resources that are potential terrorist targets. The majority of these are owned and operated by the private sector and State or local governments. These critical infrastructures and key resources are both physical and cyber-based and span all sectors of the economy. A substantial portion of the electric infrastructure of the United States resides in, and is maintained by, rural America. To ensure that the electric infrastructure in rural America is adequately protected, RUS is instituting the requirement that all current electric borrowers enhance an existing ERP or, if none exists, develop and maintain an ERP.

Title 7 CFR Part 1730, Electric System and Maintenance, establishes a

requirement for electric program distribution, generation, and transmission borrowers to develop an ERP or expand an existing ERP and to provide RUS with a written certification that they have an ERP based upon a VRA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Not for profit.

Estimated Number of Respondents: 676.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 338 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis at (202) 720–0812. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 31, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–10943 Filed 6–6–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050307A]

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Barges through the Beaufort Sea between West Dock and Cape Simpson or Point Lonely, Alaska

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request to authorize FEX L.P. (FEX) to take small numbers of marine mammals by harassment incidental to conducting a barging operation within the U.S. Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize FEX to incidentally take, by harassment, small numbers of bowhead whales, gray whales, beluga whales, ringed seals, bearded seals, and spotted seals in the above mentioned area between approximately July 1 and November 30, 2007.

DATES: Comments and information must be received no later than July 9, 2007.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.050307A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On April 26, 2007, NMFS received an application from FEX to take several species of marine mammals incidental to the movement of two tugs towing barges in the U.S. Beaufort Sea. Marine barges would be used to either resupply or demobilize from their ongoing drilling activities on the Northwest National Petroleum Reserve-Alaska Oil and Gas Leases. For a resupply operation, consumables, fuel, and essential pad construction equipment would be marine lifted from West Dock (Prudhoe Bay) to the Cape Simpson operational staging area, where it would be stored in preparation of the 2007 - 2008 winter exploration season. Barges proposed for the marine lift from the West Dock Causeway include but are not limited to: Crowley Marine *Kavik River* and the *Sag River* (1,100 horsepower each) tugs, and *Bowhead Stryker* or *Garrett* (two engines x 220 horsepower each) barges or comparable class vessels. Additional barges and support vessels may be utilized as available and needed. Barges would be moving at a speed at about 5 knots.

Barge traffic between West Dock and Cape Simpson or Pt. Lonely is scheduled to occur during the 2007 open-water season. The distance between West Dock and Cape Simpson is approximately 240 km (149 mi). From West Dock Causeway, it would take approximately 17.5 hours one way for a barge to reach Point Lonely and 22 hours to Cape Simpson. Typically the open-water season begins mid- to late July. Every effort will be made to complete the barging activities prior to August 15, but no later than September 1, 2007. A late season barge effort after

the annual bowhead whale hunt (late September/early October) and before freeze-up (late October/early November) may occur if necessary and would be addressed in the Conflict Avoidance Agreement (CAA). The 2007 open-water marine component will be complete after the supplies are stored at Cape Simpson in the case of a resupply, or moved back to West Dock or Pt. Lonely in the case of demobilization.

Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including Western Arctic bowhead whales (*Balaena mysticetus*), Eastern North Pacific gray whale (*Eschrichius robustus*), Beaufort Sea and Eastern Chuchi Sea stocks of beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Only the bowhead whale is listed as endangered under the Endangered Species Act (ESA) and designated as ''depleted'' under the MMPA. The Western Arctic stock of bowhead whales has the largest population size among all 5 stocks of this species (Angliss and Outlaw, 2007). A brief description of the distribution, movement patterns, and current status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports (SARs). Please refer to those documents for more information on these species. The SARs can be downloaded electronically from: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2006.pdf*. The FEX application is also available on-line (see **ADDRESSES**).

Potential Effects of Tug/Barge Operations and Associated Activities on Marine Mammals

Level B harassment of marine mammals may result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between vessels and whales will be essentially zero due to the slow tow speed (approximately 5 knots) and visual monitoring by on-board marine mammal observers (MMOs).

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals, spotted seals, and bearded seals.

Bowhead whales are not expected to be encountered in more than very small numbers during the planned period of time for the tug/barge movement because the most of them will be on their summer feeding grounds in the eastern Beaufort Sea and Amundsen Gulf of the Canadian waters (Fraker and Bockstoce, 1980; Shelden and Rugh, 1995).

A few transitory whales may be encountered during the transits. Most summering gray whales congregate in the northern Bering Sea, particularly off St. Lawrence Island and in the Chirikov Basin (Moore et al., 2000), and in the southern Chukchi Sea. In August 2001, Williams and Coltrane (2002) reported a single sighting of a gray whale near the Northstar production facility, indicating that small numbers do travel through the waters offshore from the Prudhoe Bay region during some summers, however, given their rare occurrence in the eastern portion of the Beaufort Sea in summer, no more than a few are expected during the summer and early fall.

Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transits. Ringed seals are expected to be present all along the tug/barge transit routes. There is the possibility that bearded and spotted seals would also be taken by Level B harassment during transit. Spotted seals may be present in the West Dock/Prudhoe Bay area, but it is likely that they may be closer to shore.

Numbers of Marine Mammals Expected to Be Taken

The number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable since there is a lack of abundance estimate data for these species within the transit route. However, based on prior barging activities in 2005 and 2006, it is expected that a small number of marine mammals could be exposed to barging noise levels at 120 dB re 1 microPa and above.

Harassment of cetaceans is possible by the 2007 planned barging operations based on the fact that bowhead whales, gray whales, and beluga whales were all observed during the 2005 operations (although no cetaceans were observed during 2006). Gray whales in 2005 were observed near Pt. Barrow, outside the West Dock/Cape Simpson operating lane, during periods the vessels traveled to Elson Lagoon to avoid foul weather. No gray whales have been observed between West Dock and Cape Simpson, and are not expected to be encountered unless weather conditions once again dictate the safety need of the vessels anchoring at Elson Lagoon.

Beluga distribution is difficult to predict. Sightings are always possible, especially if the pack ice is nearby.

The barging travel route between West Dock and Cape Simpson approximately follows the 7.5 m (25–ft) isobath. This nearshore depth zone represents the southern edge of the bowhead fall migration route. Aerial surveys conducted by Treacy (2002) between 1982 and 2001 found bowheads migrating in water this shallow in only 5 (25 percent) of the 20 years of survey. Thus, given the shallow water barging travel route, and the inter-annual differences in whale use of these waters, the number of whale sightings expected to be encountered might vary from 0 (as in 2006) to 9 (in 2005).

Some of the whales observed in 2005 may have briefly occurred in the 120–dB sonification zone (l km or 0.62 mi radius), therefore, Level B harassment of bowhead whales is possible. However, given the shallow water travel route, the low whale use of this shallow water area, the presence of marine mammal observers onboard the barges to detect whales early and help direct the barge away from the whales, the relatively short distances to the 120–dB isopleths, especially for the half the time the vessel are traveling unloaded, and based on cetacean encountering rates during the 2005 barding activity, NMFS expects that at maximum 9 bowhead whales, 8 beluga whales, and 4 gray whales could be exposed to sound levels greater than 120 dB during the 2007 barging season. These take numbers would represent approximately 0.09 percent of the Western Arctic bowhead whales (population estimated at 10,545), 0.02 percent of the Beaufort Sea beluga whales (population estimated at 39,258) or 0.21 percent of the Eastern Chukchi Sea beluga (population estimated at 3,710), and 0.02 percent of the Eastern North Pacific gray whales (population estimated at 18,178).

During the 2005 and 2006 barging season, 2,419 seals representing three species (ringed, spotted, and bearded seals) were recorded. Approximately 90 percent of these animals were ringed seals.

In 2006, reactions were recorded for 1,020 of the ringed seal sightings. Of these, 48 percent (490) had no reaction, 37 percent (381) reacted mildly, and 15 percent (148) more strongly and showed startling behavior. The percentage of ringed seals that reacted strongly is very

similar to the 17 percent recorded in 2005.

Of the 23 spotted seal sighting for which reactions were recorded in the 2006 barging season, 30 percent (9) showed behavioral changes.

Eighteen (24 percent) of the 75 unidentified phocids and 2 (7 percent) of 28 bearded seals sighted showed behavioral reactions as a result of the 2006 barging activity.

Based on the 2005 and 2006 barging activities, NMFS estimates that approximately 530 ringed seals, 10 spotted seals, 2 bearded seals, and 9 unidentified phocids could be taken by Level B harassment as a result of the proposed 2007 barging activity. These numbers represent less than 0.02, 0.02, and 0.0008 percent of ringed, spotted, and bearded seals in the proposed barging route, respectively. The population estimates for these animals are approximately 249,000, 59,214, and 250,000 - 300,000 for ringed, spotted, and bearded seals, respectively.

Effects on Subsistence Needs

Barrow residents are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Barrow hunters may hunt year round; however, in more recent years most of the harvest has been in the summer during open water instead of the more difficult hunting of seals at holes and lairs (Mclaren, 1958; Nelson, 1969). The Barrow fall bowhead whaling grounds, in some years, takes in the Cape Simpson and Point Lonely areas.

The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997).

Due to the transient and temporary nature of the barge operation, impacts upon these seals are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because: (1) transient operations would temporarily displace relatively few seals; (2) displaced seals would likely move only a short distance and remain in the area for potential harvest by native hunters; (3) studies at the Northstar development found no evidence of the development activities affecting the availability of seals for subsistence hunters; however, the Northstar vicinity is outside the areas used by subsistence hunters (Williams and Moulton, 2001); and (4) the area where barge operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to further minimize any effect of barge operations on the availability of seals for subsistence, the tug boat owners/operators will follow U.S. Coast Guard rules and regulations near coastal water, therefore avoiding hunters and the locations of any seals being hunted in the activity area, whenever possible.

The barging, as scheduled, would be completed before the westward migration of bowhead whales in the fall and the associated subsistence activities by the local whalers. Finally,

the travel route occurs west of Cross Island (Nuiqsut fall bowhead camp) and east of Barrow, therefore it does not pass by any of the whaling base camps.

Mitigation, Monitoring, and Reporting

As in 2005 and 2006, FEX propose to conduct a marine mammal monitoring program as part of the 2007 program. This program would involve the placement of an MMO onboard each vessel to conduct continuous monitoring for marine mammals. The MMOs will be trained by a qualified marine mammal biologist and be approved by NMFS.

The observers will scan the area around tug/barge with 7 x 50 reticule binoculars during the daylight hours, and document the presence, distribution, behavior, and reaction of marine mammals sighted from project-associated vessels. The primary purpose of the marine mammal monitoring program is to monitor the reaction of marine mammals to the presence of the vessels, and to detect early any whales occurring in the barge path thereby allowing the vessel captain time to avoid a close approach to the animals.

FEX is also working with the Alaska Eskimo Whaling Commission (AEWC) to develop a CAA. FEX met with the AEWC on May 24 and agreed upon the contents of the CAA. The CAA is expected to be signed in early June. FEX will continue to maintain interactive dialogue to resolve conflicts and to notify communities of any changes in the operations.

Reports for each roundtrip will be prepared and provided to NMFS and AEWC at the end of each trip. If a coordination center is opened by other North Slope operators and operated during FEX's monitoring operations, marine mammals trip sighting reports will be provided to that location.

A report documenting and analyzing any harassment or other ''takes'' of marine mammals that occur as part of this monitoring program will be provided to NMFS within 90 days of completion of the monitoring activities. Copies will be provided to other qualified interested parties. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including numbers of each species observed, location (distance) of animals relative to the barges, direction of movement of all individuals, and description of any observed changes or modifications in behavior.

ESA Consultation

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes barging transportation activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of incidental takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this proposed IHA on bowhead whales will be compared with the analysis contained in the 2001 biological opinion. NMFS will determine whether the effects of the proposed activity are consistent with the findings of that biological opinion, and, accordingly, NMFS will decide whether an Incidental Take Statement under section 7 of the ESA will be issued prior to making a final determination of issuing the IHA.

National Environmental Policy Act (NEPA)

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (FEIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and FEISs, and subsequently, on May 18, 2000, adopted the Corps' FEIS as its own document. The FEIS described impacts to marine

mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. NMFS is currently evaluating the FEIS to determine whether the proposed activity and its likely effects have been analyzed in the FEIS adopted in 2000. NMFS will make a determination as to the need for additional NEPA analysis prior to issuing the IHA.

Preliminary Conclusions

NMFS has determined preliminarily that the short-term impact of conducting a barging operation between West Dock and either Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a Level B harassment of temporary modification in behavior by a small number of certain species of whales and pinnipeds.

In addition, no take by injury and/or death is anticipated or authorized, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the barge transit route.

The principal measures undertaken to ensure that the barging operation will not have an unmitigable adverse impact on subsistence activities are a CAA between FEX, the AEWC and the Whaling Captains Association; a Plan of Cooperation; and an operation schedule that avoids barging operations during the traditional bowhead whaling season as much as possible.

Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock through the U.S. Beaufort Sea to either Cape Simpson or Point Lonely. This proposed IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: June 1, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10921 Filed 6–6–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010207A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Surveys in the Beaufort and Chukchi Seas off Alaska

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from Shell Offshore, Inc. (SOI) and WesternGeco for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting marine geophysical programs, including deep seismic surveys, on oil and gas lease blocks located on Outer Continental Shelf (OCS) waters in the mid and eastern Beaufort and on pre-lease areas in the Northern Chukchi Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to SOI and WesternGeco to incidentally take, by harassment, small numbers of several species of marine mammals between mid-July and November, 2007 incidental to conducting seismic surveys.

DATES: Written comments and information must be received no later than July 9, 2007.

ADDRESSES: Written comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.010207A @noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application (containing a list of the references used in this document) may be obtained by writing to this address or by telephoning the contact listed here and are also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*. Documents cited in this document, that are not available through standard public library access methods, may be viewed, by appointment, during regular business hours at the address provided here.

A copy of the NMFS/Minerals Management Service's (MMS) Draft Programmatic Environmental ImpactStatement (Draft PDEIS) is available on CD from the person listed below (see **ADDRESSES**) and at: *http://www.mms.gov/alaska/*.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289 or Brad Smith, NMFS Anchorage (907)271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which

(i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of a complete application followed by a 30–

day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On November 22, 2006, NMFS received an application from SOI for the taking, by harassment, of several species of marine mammals incidental to conducting a marine seismic survey program during 2007 in the mid- and eastern-Beaufort and northern Chukchi seas. SOI's 2007 open water seismic program includes: (1) Chukchi Sea Deep 3D Seismic, (2) Beaufort Sea Deep 3D Seismic; and (3) Beaufort Sea Marine Surveys (including site clearance and shallow hazards (sonar, shallow seismic, acoustic monitoring studies, seabed topography and environmental monitoring)).

The deep seismic survey component of the program will be conducted from WesternGeco's vessel *M/V Gilavar*. Detailed specifications on this seismic survey vessel are provided in Attachment A of SOI's IHA application. These specifications include: (1) complete descriptions of the number and lengths of the streamers which form the air gun and hydrophone arrays; (2) airgun size and sound propagation properties; and (3) additional detailed data on the *M/V Gilavar*'s characteristics. In summary, the *M/V Gilavar* will tow two source arrays, comprising three identical subarrays each, which will be fired alternately as the ship progresses downline in the survey area. The *M/V Gilavar* will tow up to 6 streamer cables up to 5.4 kilometers (km)(3.4 mi) long. With this configuration each pass of the Gilavar can record 12 subsurface lines spanning a swath of up to 360 meters (1181 ft). The seismic acquisition vessel will be supported by the M/V Kilabuk, or similar ice-class vessel. The Kilabuk will serve as a resupply, fueling support of acoustic and marine mammal monitoring, and seismic chase vessel. It also is capable of assisting in ice management operations but will not deploy seismic acquisition gear.

Plan for Seismic Operations

SOI plans for the *M/V Gilavar* to be in the Chukchi Sea in early July to begin deploying the acquisition equipment. Seismic acquisition is planned to begin on or about July 15, 2007. However, the proposed commencement date of July 15 will not occur earlier than that even if marine conditions allow since the timing is designed to ensure that there will be no conflict with the spring bowhead whale migration and subsistence hunts conducted by Barrow, Pt. Hope, or Wainwright or the beluga subsistence hunt conducted by the village of Pt. Lay in July.

The approximate area of operations are shown in Figure 1 in SOI's IHA application. Data acquisition will continue in the Chukchi Sea until ice conditions permit a transit into the Beaufort Sea around early August. Seismic acquisition is planned to continue in the Beaufort at one of three 3–D areas until early October depending on ice conditions. For each of the 3–D areas, the *M/V Gilavar* will traverse the area multiple times until data over the area of interest has been recorded. While SOI's application notes that at the conclusion of seismic acquisition in the Beaufort Sea, the *M/V Gilavar* will return to the Chukchi Sea and resume recording data there until near the end of October, SOI has confirmed that it does not plan to return to the Chukchi Sea following completion of its seismic work in the Beaufort Sea.

The proposed Beaufort Sea activities are proposed to commence in August and continue until weather precludes further seismic work. The deep seismic program will take place in OCS waters on SOI's leases beginning east of the Colville River delta to east of the village of Kaktovik. Within this area, SOI has acquired four separate groups of lease blocks, totaling 85 leases. The timing of activities is scheduled to avoid any conflict with the Beaufort Sea bowhead whale subsistence hunt conducted by the Alaska Eskimo Whaling Commission's (AEWC) villages.

Chukchi Sea Deep 3D Seismic

The proposed deep seismic survey in the Chukchi Sea will occur before the survey activity in the Beaufort Sea. As sea ice coverage conditions allow, seismic activity will begin approximately July 15 and continue to early-to-mid August when the *M/V Gilavar* and M/V Kilabuk, or similar vessel, will transit to the Beaufort Sea to start work on a deep seismic survey on SOI lease-holdings in the mid and eastern Beaufort. The M/V Peregrine or similar vessel will conduct crew change transfers. After mid-October when sea ice conditions in the mid and eastern Beaufort Sea make further survey work there impractical, the survey activity will leave the Arctic Ocean. The dates indicated here represent what might occur under ideal conditions for performing marine seismic work whereas the actual dates will depend on sea ice and weather conditions as they occur in summer and mid-autumn of 2007.

The geographic region where the proposed deep seismic survey will occur is the Chukchi Sea MMS OCS Program Area designated as Chukchi Sea Sale 193 (1989) and the proposed 2002–2007 Chukchi Sea Program Area (See Figure 1, MMS Chukchi Sea Sale 193). Since the Chukchi deep seismic program is being conducted most likely as a pre-lease activity, the exact locations where operations will occur remain confidential for business competitive reasons. That is, the seismic data acquired will be used by SOI to determine what leases it will bid on in a forth-coming competitive lease sale. In general, however, seismic acquisition will take place well offshore from the Alaska coast beyond any exclusion areas stipulated in the MMS Chukchi Sea Planning Area Oil and Gas Lease Sale EIS 193 on OCS waters averaging greater than 40 meter (m) depths.

Beaufort Sea Deep 3D Seismic

The deep seismic program will take place in OCS waters on SOI leases beginning east of the Colville River delta to east of the village of Kaktovik (see Figure 2 in SOI's application). Within this area, SOI has acquired four separate groups of lease blocks, totaling 85 leases. The program is planned to occur during open-water from late July to the end of October.

SOI plans to run approximately 6,437 km (4000 mi) of seismic surveys in the Chukchi and Beaufort Seas.

Beaufort Sea Marine Surveys

Marine surveys will include site clearance and shallow hazards surveys of potential exploratory drilling locations within SOI's OCS lease areas and a potential pipeline corridor within and outside of SOI OCS lease blocks as required by MMS regulations. Site clearance surveys are confined to small specific areas within OCS blocks. Site clearance surveys are to take place at specific sites on various SOI leases from the Sivulliq lease block north of Pt. Thomson east to the Olympia block north of Barter Island (Figure 2 in SOI's IHA application). All of these sites are in OCS waters. Additional site clearance studies are planned over a corridor from the center of the Sivulliq lease block south to Pt. Thomson, a distance of approximately 22.4 km (14 mi). Site clearance surveys will be conducted contemporaneously with SOI's 3D seismic survey program.

The site clearance and shallow hazards surveys will be conducted by the *M/V Henry Christoffersen*, the same vessel used during SOI's 2006 site clearance and shallow hazard surveys). It is proposed that the same acoustic

instrumentation during 2006 will again be used during 2007: (1) Dual frequency subbottom profiler Datasonics CAP6000 Chirp II (2–7kHz or 8–23 kHz); Medium penetration subbottom profiler, Datasonics SPR–1200 Bubble Pulser (400 (hertz [Hz]); (2) hi-resolution multi-channel 2D system, 240 cubic inches (in^3)(4X60) gun array (0–150 Hz); (3) multi-beam bathymetric sonar, Seabat 8101 (240 Hz); and (4) side-scan sonar system, Datasonics SIS–1500 (190 - 210 kHz). These systems are described in SOI's IHA application.

These systems will be used in order to examine and measure bathymetry, seabed topography, potential geohazards and other seabed characteristics (i.e. boulder patches). The site-specific locations of site clearance and shallow hazard surveys have not been definitively set, although they will occur within the area outlined in Figure 2 in SOI's IHA application. In addition, several (more than 10) sonabouys (passive acoustic monitoring equipment) are to be positioned in and around potential drilling locations within the Sivulliq lease block. SOI states that the timing of the activity is scheduled to avoid conflict with the Beaufort Sea subsistence hunts conducted by the Whaling Captain's Associations of Barrow, Kaktovik, and Nuiqsut (see Mitigation).

The multi-beam bathymetric sonar and the side-scan sonar systems operate at frequencies greater than 180 kHz, the highest frequency considered by knowledgeable marine mammal biologists to be of possible influence to marine mammals. No measurements of those two sources are planned, as the recording equipment has a practical upper limit of 90 kHz. As determined during the sound measurement process, there should be no exclusion zones for seals or whales during operation of those two sources.

Acoustic systems similar to the ones proposed for use by SOI have been described in detail by NMFS previously (see 66 FR 40996 (August 6, 2001), 70 FR 13466 (March 21, 2005)). NMFS encourages readers to refer to these documents for additional information on these systems.

A detailed description of the work proposed by SOI for 2007 is contained in SOI's application which is available for review (see **ADDRESSES**). A description of SOI's data acquisition program and WesternGeco's air-gun array has been provided in previous IHA notices on SOI's seismic program (see 71 FR 26055, May 3, 2006; 71 FR 50027, August 24, 2006) and is no different than previous programs.

Description of Marine 3–D Seismic Data Acquisition

In the seismic method, reflected sound energy produces graphic images of seafloor and sub-seafloor features. The seismic system consists of sources and detectors, the positions of which must be accurately measured at all times. The sound signal comes from arrays of towed energy sources. These energy sources store compressed air which is released on command from the towing vessel. The released air forms a bubble which expands and contracts in a predictable fashion, emitting sound waves as it does so. Individual sources are configured into arrays. These arrays have an output signal, which is more desirable than that of a single bubble, and also serve to focus the sound output primarily in the downward direction, which is useful for the seismic method. This array effect also minimizes the sound emitted in the horizontal direction.

The downward propagating sound travels to the seafloor and into the geologic strata below the seafloor. Changes in the acoustic properties between the various rock layers result in a portion of the sound being reflected back toward the surface at each layer. This reflected energy is received by detectors called hydrophones, which are housed within submerged streamer cables which are towed behind the seismic vessel. Data from these hydrophones are recorded to produce seismic records or profiles. Seismic profiles often resemble geologic cross-sections along the course traveled by the survey vessel.

Description of WesternGeco's Air-Gun Array

Shell will use WesternGeco's 3147 in^3 Bolt-Gun Array for its 3–D seismic survey operations in the Chukchi and Beaufort Seas. WesternGeco's source arrays are composed of 3 identically tuned Bolt-gun sub-arrays operating at an air pressure of 2,000 psi. In general, the signature produced by an array composed of multiple sub-arrays has the same shape as that produced by a single sub-array while the overall acoustic output of the array is determined by the number of sub-arrays employed.

The gun arrangement for each of the three 1049–in^3 sub-array is detailed in Shell's application. As indicated in the application's diagram, each sub-array is composed of six tuning elements; two 2–gun clusters and four single guns. The standard configuration of a source array for 3D surveys consists of one or more 1049–in^3 sub-arrays. When more than one sub-array is used, as here, the strings are lined up parallel to each other with either 8 m or 10 m (26 or 33 ft) cross-line separation between them. This separation was chosen so as to minimize the areal dimensions of the array in order to approximate point source radiation characteristics for frequencies in the nominal seismic processing band. For the 3147 in^3 array the overall dimensions of the array are 15 m (49 ft) long by 16 m (52.5 ft) wide.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here as there are no differences. Additional information can be found in the NMFS/MMS Draft PEIS (see **ADDRESSES**). Reviewers are encouraged to read these earlier documents for additional background information.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort and Chukchi sea ecosystems and their associated marine mammal populations can be found in the NMFS/MMS Draft PEIS and the MMS Final Programmatic Environmental Assessment (Final PEA) on Seismic Surveys (see **ADDRESSES** for availability).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales, gray whales, beluga whales, killer whales, harbor porpoise, ringed seals, spotted seals, bearded seals, walrus and polar bears. These latter two species are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are not discussed further in this document. Descriptions of the biology and distribution of the marine mammal species under NMFS' jurisdiction can be found in SOI's IHA application, the 2007 NMFS/MMS Draft PEIS on Arctic Seismic Surveys, and the MMS 2006 PEA. Information on these marine mammal species can also be found in NMFS Stock Assessment Reports (SARS). The Alaska SARS document is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005.pdf*. Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft may provide a potential secondary

source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic disturbance or avoidance effects on marine mammals involving visual or other cues.

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Survey Sounds on Marine Mammals

SOI (2006) states that the only anticipated impacts to marine mammals associated with noise propagation from vessel movement, seismic airgun operations, and seabed profiling would be the temporary and short term displacement of seals and whales from within ensonified zones produced by such noise sources. In the case of bowhead whales, that displacement might well take the form of a deflection of the swim paths of migrating bowheads away from (seaward of) received noise levels lower than 160 db (Richardson *et al.*, 1999). The cited and other studies conducted to test the hypothesis of the deflection response of bowheads have determined that bowheads return to the swim paths they were following at relatively short distances after their exposure to the received sounds. SOI believes that there is no evidence that bowheads so exposed have incurred injury to their auditory mechanisms. Additionally, SOI cites Richardson and Thomson [eds]. (2002) that there is no conclusive evidence that exposure to sounds exceeding 160 db have displaced bowheads from feeding activity.

Results from the 1996–1998 BP and Western Geophysical seismic monitoring programs in the Beaufort Sea indicate that most fall migrating bowheads deflected seaward to avoid an area within about 20 km (12.4 mi) of an active nearshore seismic operation, with the exception of a few closer sightings when there was an island or very shallow water between the seismic operations and the whales (Miller *et al.*, 1998, 1999). The available data do not provide an unequivocal estimate of the distance (and received sound levels) at which approaching bowheads begin to deflect, but this may be on the order of 35 km (21.7 mi). It is also uncertain how far beyond (west of) the seismic operation the seaward deflection persists (Miller *et al.*, 1999). In one study, although very few bowheads approached within 20 km (12.4 mi) of the operating seismic vessel, the number of bowheads sighted within that area returned to normal within 12–24 hours after the airgun operations ended (Miller *et al.*, 1999).

Although NMFS believes that some limited masking of low-frequency sounds (e.g., whale calls) is a possibility during seismic surveys, the intermittent nature of seismic source pulses (1 second in duration every 16 to 24 seconds (i.e., less than 7 percent duty cycle)) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Greene *et al.*, 1999, Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belugas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (Western Geophysical, 2000).

Hearing damage is not expected to occur during the SOI seismic survey project. It is not definitively known whether the hearing systems of marine mammals very close to an airgun would be at risk of temporary or permanent hearing impairment, but TTS is a theoretical possibility for animals within a few hundred meters of the source (Richardson *et al.*, 1995). However, planned monitoring and mitigation measures to detect marine mammals occurring near the array (described later in this document) are designed to avoid sudden onsets of seismic pulses at full power. These measures are likely to prevent animals from being exposed to sound pulses that have any possibility of causing hearing impairment.

When the received levels of noise exceed some threshold, cetaceans will show behavioral disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary among and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response also are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

The following species summaries are provided by NMFS to facilitate understanding of our knowledge of impulsive noise impacts on the principal marine mammal species that are expected to be affected.

Bowhead Whales

Seismic pulses are known to cause strong avoidance reactions by many of the bowhead whales occurring within a distance of a few kilometers, including changes in surfacing, respiration and

dive cycles, and may sometimes cause avoidance or other changes in bowhead behavior at considerably greater distances (Richardson *et al.*, 1995; Rexford, 1996; MMS, 1997). Studies conducted prior to 1996 (Reeves *et al.*, 1984, Fraker *et al.*, 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. In these studies, bowheads exposed to seismic pulses from vessels more than 7.5 km (4.7 mi) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (Western Geophysical, 2000). In three studies of bowhead whales and one of gray whales during this period, surfacing-dive cycles were unusually rapid in the presence of seismic noise, with fewer breaths per surfacing and longer intervals between breaths (Richardson *et al.*, 1986; Koski and Johnson, 1987; Ljungblad *et al.*, 1988; Malme *et al.*, 1988). This pattern of subtle effects was evident among bowheads 6 km to at least 73 km (3.7 to 45.3 mi) from seismic vessels. However, in the pre–1996 studies, active avoidance usually was not apparent unless the seismic vessel was closer than about 6 to 8 km (3.7 to 5.0 mi)(Western Geophysical, 2000).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than suggested by pre–1996 scientific studies (Rexford, 1996) previously mentioned in this document. Also, whalers believe that avoidance effects can extend out to distances on the order of 30 miles (48.3 km), and that bowheads exposed to seismic also are ''skittish'' and more difficult to approach. The ''skittish'' behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those documented for bowheads during the 1980s. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent of the migrating gray whales showed avoidance when the average received pulse level was 170 dB (re 1 microPa). By some behavioral measures, clear effects were evident at average pulse levels of 160+dB; less consistent results were suspected at levels of 140–160 dB. Recent research on migrating gray whales showed responses similar to those observed in the earlier research when the source was moored in the migration corridor 2 km (1.2 mi) from shore. However, when the source was placed offshore (4 km (2.5 mi) from shore) of the migration corridor, the avoidance response was not evident on track plots (Tyack and Clark, 1998).

Beluga

The beluga is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Belugas have poor hearing thresholds at frequencies below 200 Hz, where most of the energy from airgun arrays is concentrated. Their thresholds at these frequencies (as measured in a captive situation), are 125 dB re 1 microPa or more depending upon frequency (Johnson *et al.*, 1989). Although not expected to be significantly affected by the noise, given the high source levels of seismic pulses, airgun sounds sometimes may be audible to beluga at distances of 100 km (62.1 mi)(Richardson and Wursig, 1997), and perhaps further if actual low-frequency hearing thresholds in the open sea are better than those measured in captivity (Western Geophysical, 2000). The reaction distance for beluga, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belugas than that of bowheads for low-frequency sounds (Western Geophysical, 2000).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (LGL and Greeneridge, 1997, 1998, 1999a; J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals, ringed, harbor, and harp seals. These audiograms were reviewed in Richardson *et al.* (1995) and Kastak and Schusterman (1998). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat, down to at least 1 kHz, and ranges between 60 and 85 dB (re 1 microPa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 microPa @ 1 m) at 100 Hz (Kastak and Schusterman, 1998).

While no detailed studies of reactions of seals from open-water seismic exploration have been published (Richardson *et al.*, 1991, 1995), some data are available on the reactions of seals to various types of impulsive sounds (see LGL and Greeneridge, 1997, 1998, 1999a; Thompson *et al.* 1998). These references indicate that it is unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within relatively close proximity of the seismic array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while seals may be capable of hearing sounds from seismic arrays, they appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time.

Numbers of Marine Mammals Expected to Be Taken

The methodology used by SOI to estimate incidental take by harassment by seismic and the numbers of marine mammals that might be affected in the proposed seismic acquisition activity area in the Chukchi and Beaufort seas are presented here. The density estimates for the species covered under this proposed IHA are based on the estimates developed by LGL (2005) and used here for consistency. Density estimates are based on the data from Moore *et al.* (2000) on summering bowhead, gray, and beluga whales in the Beaufort and Chukchi Seas, and relevant studies on ringed seal estimates including Stirling *et al.* (1982) and Kingsley (1986).

In its application, SOI provides estimates of the number of potential ''exposures'' to sound levels greater than 160 dB re 1 microPa (rms) and greater than 170 dB. SOI states that while the 160–dB criterion applies to all species of cetaceans and pinnipeds, SOI believes that a 170–dB criterion should

be considered appropriate for delphinid cetaceans and pinnipeds, which tend to be less responsive, whereas the 160–dB criterion is considered appropriate for other cetaceans (LGL, 2005). However, NMFS has noted in the past that it is unaware of any empirical evidence to indicate that some delphinid species do not respond at the lower level (i.e., 160 dB). As a result, NMFS will estimate Level B harassment take levels based on the 160 dB criterion.

The estimates for marine mammal exposure are based on a consideration of the number of marine mammals that might be disturbed appreciably by as much as 6,437 km (4000 mi) of seismic surveys in Beaufort Sea and/or the Chukchi Sea. Source arrays are composed of identically tuned Bolt gun sub-arrays operating at 2,000 psi, air pressure. In general, the signature produced by an array composed of multiple sub-arrays has the same shape as that produced by a single sub-array while the overall acoustic output of the array is determined by the number of sub-arrays employed. The gun arrangement for the 1,049 square inches (in^3) sub-array is detailed below and is comprised of three subarrays comprising a total 3,147 in^3 sound source. The anticipated radii of influence of the bathymetric sonars and pinger are less than those for the air gun configurations described in Attachment A in SOI's IHA application. It is assumed that, during simultaneous operations of those additional sound sources and the air gun(s), any marine mammals close enough to be affected by the sonars or pinger would already be affected by the air gun(s). In this event, SOI believes that marine mammals are not expected to exhibit more than short-term and inconsequential responses, and such responses have not been considered to constitute ''taking'' therefore, potential taking estimates only include noise disturbance from the use of air guns. The specifications of the equipment, including site clearance activities, to be used and areas of ensonification are described more fully in SOI's IHA application (see Attachment B in SOI's IHA application).

Cetaceans

For belugas and gray whales, in both the Beaufort and Chukchi Seas and bowhead whales in the Chukchi Sea, Moore *et al.* (2000b and c) offer the most current data to estimate densities during summer. Density estimates for bowhead whale in the Beaufort Sea were taken from Miller *et al.*, 2002. Table 6–1 in SOI's IHA application gives the average and maximum densities for each cetacean species likely to occur within the project areas based on the density estimates developed and corrected as needed by LGL for the Beaufort and Chukchi Seas (LGL, 2005), however, these estimates were based on surveys of offshore waters (less than 100 m (328 ft) in depth). However, all seismic activities within the seismic activity areas proposed under this IHA will occur in waters between 20 and 40 m (65.6 and 131.2 ft) in depth. The estimated numbers of potential exposures presented in Tables 1 and 2 (Tables 6–3 and 6–4 in SOI's IHA application) are based on the 160 dB re 1 microPa (rms) criteria for most cetaceans (except for this geographic area, bowhead whales), because this range is assumed to be the sound source level at which marine mammals may change their behavior sufficiently to be considered ''taken by harassment.''

Pinnipeds

Ringed, spotted, and bearded seals are all associated with sea ice, and most census methods used to determine density estimates for pinnipeds are associated with counting the number of seals hauled out on ice. Correction factors have been developed for most pinniped species that address biases associated with detectability and availability of a particular species. Although extensive surveys of ringed and bearded seals have been conducted in the Beaufort Sea, the majority of the surveys have been conducted over the landfast ice and few seal surveys have been in open water. The most comprehensive survey data set on ringed seals (and bearded seal) from the central and eastern Beaufort Sea was conducted on offshore pack ice in late spring (Kingsley 1986). It is important to note that all proposed activities will be conducted during the open-water season and density estimates used here were based on counts of seals on ice. Therefore, densities and potential take numbers will overestimate the numbers of seals that would likely be encountered and/or exposed because only the animals in the water would be exposed to the seismic and clearance activity sound sources. Although the estimated numbers of potential exposures presented in Tables 1 and 2 (Tables 6–3 and 6–4 in the IHA application) are based on two sound source ranges (greater than 160 dB and greater than 170 dB re 1 microPa [rms]), for most pinnipeds, SOI believes that the 170 dB threshold should be used to determine ''take by harassment'' because this range is assumed to be the sound source level at which most pinnipeds may change their behavior in reaction to increased sound exposure.

Exposure Calculations for Cetaceans and Pinnipeds

Except for bowheads in the Beaufort Sea, number of exposures of a particular species to sound levels between 160 dB and 180 dB re 1 microPa (rms) was calculated by multiplying: (1) the expected species density average and maximum), taken from LGL (2005); (2) the maximum anticipated total line-km of operations in the Chukchi and/or Beaufort Seas the three 1,049 in^3 subarrays (6,437 km); and (3) the cross-track distances within which received sound levels are predicted to be greater than 160 dB and greater than 170 dB.

Distances of sound propagation are taken from direct measurement of sound levels at distances from the *M/V Gilavar* in the Chukchi Sea during the 2006 open water season. Shell estimates the sound level output radii (rms)) for a 3147 in^3 source array at a depth of 6 m (20 ft):

160 dB (rms) :: 8400 m/27559 ft
180 dB (rms) :: 1200 m/3937 ft
190 dB (rms) :: 440 m/1444 ft.

For bowhead whales in the Beaufort Sea, Richardson *et al.* (2002) provide estimates of densities specific to a given area (subdivided east to west and by depth) and time (two week intervals during summer and fall). The total number of individuals expected to be in the specific area where seismic operations are to occur in the Beaufort Sea is multiplied by that portion of the area expected to be ensonified above 160 dB.

Estimates of numbers of cetaceans and pinnipeds exposed to sound levels greater than 160 and 170 dB resulting from seismic acquisition activities in the Chukchi Sea are presented in Table 1 (Table 6–3 in SOI's IHA application). Estimates of exposure levels for the Beaufort Sea are presented in Table 2 (Table 6–4 in SOI's IHA application).

TABLE 1. ESTIMATED EXPOSURES AND REQUESTED TAKE LEVELS FOR CHUKCHI SEA OPERATIONS

	Average Density	190 dB	180 dB	170 dB	160 dB	Maximum Density	190 dB	180 dB	170 dB	160 dB	Requested Take
Cetaceans											
bowhead whales	0.0011		17	47	119	0.006		93	255	649	649
gray whale	0.0018		28	77	195	0.0072		112	306	779	779
Beluga	0.0034		53	145	368	0.0135		209	574	1,460	1,460
killer whale	0.0001		2	5	11	0.0004		7	17	44	44
Minke whale	0.0001		2	5	11	0.0004		7	17	44	44
Fin whale	0		0	0	0	0.0001		2	5	11	11
Pinnipeds											
ringed seal	0.0234	14	362	995		0.0935	53	1,445	3,973		3,973
spotted seal	0.0002	1	4	9		0.0009	1	14	39		39
bearded seal	0.0093	6	144	396		0.037	21	572	1573		1573

TABLE 2. ESTIMATED EXPOSURES AND REQUESTED TAKE LEVELS FOR BEAUFORT SEA OPERATIONS

	Average Density	190 dB	180 dB	170 dB	160 dB	Maximum Density	190 dB	180 dB	170 dB	160 dB	Requested Take
Cetaceans											
bowhead whales	NA					2,004.236		172	473	1203	1203
gray whale	0.0001		2	5	11	0.0004		7	17	44	44
Beluga	0.0068		106	289	736	0.0135		209	574	1,460	1,460
Harbor Porpoise	0		0	0	0	0.0002		4	9	22	22
Pinnipeds											
ringed seal	0.3547	201	5481	15071		0.7094	402	10,961	30,141		30,141
spotted seal	0.0037	3	58	158		0.0149	9	231	634		634
bearded seal	0.0181	11	280	770		0.0362	21	560	1,539		1,539

TABLE 3. ESTIMATED EXPOSURES AND REQUESTED TAKE LEVELS FOR BEAUFORT SEA HENRY "C" OPERATIONS

	Average Density	190 dB	180 dB	170 dB	160 dB	Maximum Density	190 dB	180 dB	170 dB	160 dB
Cetaceans										
bowhead whales	NA					2004.236		48	126	315
gray whale	0.0001		1	1	1	0.0004		1	1	2
Beluga	0.0068		3	7	18	0.0135		6	14	35
Harbor Porpoise	0		0	0	0	0.0002		1	1	1
Pinnipeds										
ringed seal	0.3547	49	135	359	898	0.7094	98	270	718	
spotted seal	0.0037	1	2	4		0.0149	3	6	16	
bearded seal	0.0181	3	7	19		0.0362	5	14	37	

Beaufort Sea: Marine Surveys

In addition to potential impacts from seismic surveys on Beaufort Sea marine mammals, SOI and NMFS anticipate that there is also a potential for marine mammals to be impacted by SOI's marine surveys (as described previously in this document). SOI determined that the air gun cluster on the *M/V Henry Christoffersen* was the strongest sound source on the vessel. Based on sound field measurements, the following distances were calculated: 190 dB - 89 m (292 ft); 180 dB - 248 m (814 ft); and 160 dB - 1,750 m (5741 ft). As explained in SOI's application, SOI has calculated a 50 percent margin factor and recommends that these zones be amended to the following: 190 dB - 120 m (394 ft), 180 dB - 330 m (1083 ft); and 160 dB - 2,220 m (7218 ft). Using similar methodology as for the *M/V Gillivar*, Table 3 (Table 6–6 in SOI's IHA application) provides estimates of marine mammal sound exposures at these SPLs for the *M/V Henry Christoffersen*.

Potential Impacts on Affected Species and Stocks of Marine Mammals

According to SOI, the only anticipated impacts to marine mammals associated with SOI's seismic activities with respect to noise propagation are from vessel movements, and seismic air gun operations. SOI states that these impacts would be temporary and short term displacement of seals and whales from within ensonified zones produced by such noise sources. Any impacts on the whale and seal populations of the Beaufort Sea activity area are likely to be short term and transitory arising from the temporary displacement of individuals or small groups from locations they may occupy at the times they are exposed to seismic sounds at the 160–190 db received levels. As noted elsewhere, it is highly unlikely that animals will be exposed to sounds of such intensity and duration as to physically damage their auditory mechanisms. In the case of bowhead whales that displacement might well take the form of a deflection of the swim paths of migrating bowheads away from (seaward of) received noise levels greater than 160 db (Richardson *et al.*, 1999). This study and others conducted to test the hypothesis of the deflection response of bowheads have determined that bowheads return to the swim paths they were following at relatively short distances after their exposure to the received sounds. There is no evidence that bowheads so exposed have incurred injury to their auditory mechanisms. Additionally, there is no conclusive

evidence that exposure to sounds exceeding 160 db have displaced bowheads from feeding activity (Richardson, W.J. and D.H. Thomson [eds]. 2002).

There is no evidence that seals are more than temporarily displaced from ensonified zones and no evidence that seals have experienced physical damage to their auditory mechanisms even within ensonified zones.

During the period of seismic acquisition, most marine mammals would be dispersed throughout the area. The peak of the bowhead whale migration through the Chukchi Sea typically occurs in October, and efforts to reduce potential impacts during this time will be addressed with the actual start of the migration and with the whaling communities. The timing of seismic activities in the Chukchi Sea will take place when the whales are widely distributed and would be expected to occur in very low numbers within the seismic activity area. Starting in late August bowheads may travel in proximity to the aforementioned activity area and hear sounds from vessel traffic and seismic activities, of which some might be displaced seaward by the planned activities.

The peak of the bowhead whale migration through the Beaufort Sea typically occurs in October, and efforts to reduce potential impacts during this time will be addressed with the actual start of the migration and with the whaling communities. The timing of seismic activities in the eastern U.S. Beaufort Sea will take place when the whales are not present, or in very low numbers. Starting in late August bowheads may travel in proximity to SOI's seismic activity areas and hear anthropogenic sounds from vessel traffic and seismic activities. Some bowheads may be displaced seaward by the planned activities.

In addition, feeding does not appear to be an important activity by bowheads migrating through the Chukchi Sea or the eastern and central part of the Alaskan Beaufort Sea in most years. Sightings of bowhead whales occur in the summer near Barrow (Moore and DeMaster, 2000) and there are suggestions that certain areas near Barrow are important feeding grounds. In addition, a few bowheads can be found in the Chukchi and Bering Seas during the summer and Rugh *et al.* (2003) suggests that this may be an expansion of the western Arctic stock, although more research is needed. In the absence of known important feeding areas in the U.S. Beaufort Sea, the potential diversion of a small number of bowheads away from seismic activities is not expected to have any significant or long-term consequences for individual bowheads or their population. Bowheads, gray, or beluga whales are not predicted to be excluded from any habitat.

Potential Impact on Habitat

SOI states that the proposed seismic activities will not result in any permanent impact on habitats used by marine mammals, or to their prey sources. Seismic activities will occur during the time of year when bowhead whales are widely distributed and would be expected to occur in very low numbers within the seismic activity area (mid- to late-July through September). Any effects would be temporary and of short duration at any one place. The primary potential impacts to marine mammals is associated with elevated sound levels from the proposed airguns were discussed previously in this document.

A broad discussion on the various types of potential effects of exposure to seismic on fish and invertebrates can be found in LGL (2005; University of Alaska-Fairbanks Seismic Survey across Arctic Ocean at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*), and includes a summary of direct mortality (pathological/physiological) and indirect (behavioral) effects.

Mortality to fish, fish eggs and larvae from seismic energy sources would be expected within a few meters (0.5 to 3 m (1.6 to 9.8 ft)) from the seismic source. Direct mortality has been observed in cod and plaice within 48 hours that were subjected to seismic pulses two meters from the source (Matishov, 1992), however other studies did not report any fish kills from seismic source exposure (La Bella *et al.*, 1996; IMG, 2002; Hassel *et al.*, 2003). To date, fish mortalities associated with standard seismic operations are thought to be slight. Saetre and Ona (1996) modeled a worst-case mathematical approach on the effects of seismic energy on fish eggs and larvae, and concluded that mortality rates caused by exposure to seismic are so low compared to natural mortality that issues relating to stock recruitment should be regarded as insignificant.

Limited studies on physiological effects on marine fish and invertebrates to acoustic stress have been conducted. No significant increases in physiological stress from seismic energy were detected for various fish, squid, and cuttlefish (McCauley *et al.*, 2000) or in male snow crabs (Christian *et al.*, 2003). Behavioral changes in fish associated with seismic exposures are expected to be minor at best. Because only a small portion of the available foraging habitat would be subjected to seismic pulses at a given time, fish would be expected to return to the area of disturbance anywhere from 15–30 minutes (McCauley *et al.*, 2000) to several days (Engas *et al.*, 1996).

Available data indicates that mortality and behavioral changes do occur within very close range to the seismic source, however, the proposed seismic acquisition activities in the Chukchi and Beaufort seas are predicted by SOI to have a negligible effect to the prey resource of the various life stages of fish and invertebrates available to marine mammals occurring during the project's duration.

Effects of Seismic Noise and Other Related Activities on Subsistence

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principal concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope and Western Alaskan communities. In particular, if fall-migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The impact would be that whaling crews would necessarily be forced to travel greater distances to intercept westward migrating whales thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise. Hunters related how whales also appear ''angry'' due to seismic noise, making whaling more dangerous.

This potential impact on subsistence uses of marine mammals is proposed to be mitigated by application of the procedures established in a Conflict Avoidance Agreement (CAA) between the seismic operators and the AEWC and the Whaling Captains' Associations of Kaktovik, Nuiqsut, Barrow, Pt. Hope and Wainwright. Under a CAA, the times and locations of seismic and other noise producing sources would likely to be curtailed during times of active bowhead whale scouting and actual whaling activities within the traditional subsistence hunting areas of the potentially affected communities. (See Mitigation for Subsistence). SOI states that survey activities will also be scheduled to avoid the traditional

subsistence beluga hunt which annually occurs in July in the community of Pt. Lay. As a result, SOI believes that there should be no adverse impacts on the availability of the whale species for subsistence uses.

In the Chukchi Sea, SOI's seismic work should not have unmitigable adverse impacts on the availability of the whale species for subsistence uses. The whale species normally taken by Inupiat hunters are the bowhead and belugas. SOI's Chukchi seismic operations will not begin until after July 15, 2007 by which time the majority of bowheads will have migrated to their summer feeding areas in Canada. Even if any bowheads remain in the northeastern Chukchi Sea after July 15, they are not normally hunted after this date until the return migration occurs around late September when a fall hunt by Barrow whalers takes place. In the past few years, a small number of bowheads have also been taken by coastal villages along the Chukchi coast. Seismic operations for the Chukchi Sea seismic program will be timed and located so as to avoid any possible conflict with the Barrow fall whaling, and specific provisions governing the timing and location have been incorporated into the CAA established between SOI and WesternGeco, the AEWC, and the Barrow Whaling Captains Association.

Beluga whales may also be taken sporadically for subsistence needs by coastal villages, but traditionally are taken in small numbers very near the coast. Because the seismic surveys will be conducted at least 12 miles (25 km) offshore, impacts to subsistence uses of bowheads are not anticipated. However, SOI will establish ''communication stations'' in the villages to monitoring impacts. Gray whales, which will be abundant in the northern Chukchi Sea from spring through autumn, are not taken by subsistence hunters.

Plan of Cooperation (POC)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. SOI notes in its IHA application that POC meetings occurred in Barrow and Nuiqsut on October 16 and 17, 2006, and follow-up meetings are planned for the period May or June 2007 in these communities. SOI is working with all public and private organizations to hold a series of meetings in Kaktovik during 2006/2007. The communities of Point Hope, Point Lay and Wainwright have met with SOI to discuss the results of the 2006 survey activities in the Chukchi Sea, followed by another series of POC meetings in May or June 2007. Following those meetings, a POC report will be prepared.

SOI hopes that a CAA will result from these meetings. The CAA will incorporate all appropriate measures and procedures regarding the timing and areas of the operator's planned activities (e.g., times and places where seismic operations will be curtailed or moved in order to avoid potential conflicts with active subsistence whaling and sealing); a communications system between operator's vessels and whaling and hunting crews (i.e., the communications center will be located in strategic areas); provision for marine mammal observers/Inupiat communicators aboard all project vessels; conflict resolution procedures; and provisions for rendering emergency assistance to subsistence hunting crews. If requested, post season meetings will also be held to assess the effectiveness of the 2007 CAA, to address how well conflicts (if any) were resolved; and to receive recommendations on any changes (if any) might be needed in the implementation of future CAAs.

It should be noted that NMFS must make a determination under the MMPA that an activity would not have an unmitigable adverse impact on the subsistence needs for marine mammals. While this includes usage of both cetaceans and pinnipeds, the primary impact by seismic activities is expected to be impacts from noise on bowhead whales during its westward fall feeding and migration period in the Beaufort Sea. NMFS has defined unmitigable adverse impact as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met (50 CFR 216.103).

However, it should be understood that while a signed CAA assists NMFS in making a determination that the activity will not have an unmitigable adverse impact on the subsistence use of marine mammals, if one or both parties fail to sign the CAA, then NMFS will make the determination that the activity will or will not have an unmitigable adverse impact on subsistence use of marine mammals. This determination may require that the IHA contain additional mitigation measures in order for this decision to be made.

Proposed Mitigation and Monitoring

As part of its application, SOI has proposed implementing a marine mammal mitigation and monitoring program during SOI's seismic and shallow-hazard survey activities. In conjunction with monitoring during SOI's exploratory drilling program (subject to a separate notice and review), monitoring will provide information on the numbers of marine mammals potentially affected by these activities and permit real time mitigation to prevent injury of marine mammals by industrial sounds or activities. These goals will be accomplished by conducting vessel- , aerial-, and acoustic-monitoring programs to characterize the sounds produced by the seismic airgun arrays and related equipment and to document the potential reactions of marine mammals in the area to those sounds and activities. Acoustic modeling will be used to predict the sound levels produced by the seismic, shallow hazards and drilling equipment in the U.S. Beaufort and Chukchi seas. For the seismic program, acoustic measurements will also be made to establish zones of influence (ZOIs) around the activities that will be monitored by observers. Aerial monitoring and reconnaissance of marine mammals and recordings of ambient sound levels, vocalizations of marine mammals, and received levels should they be detectable using bottom-founded acoustic recorders along the Beaufort Sea coast will be used to interpret the reactions of marine mammals exposed to the activities. The components of SOI's mitigation and monitoring programs are briefly described next. Additional information can be found in SOI's application.

Proposed Mitigation Measures

On February 7, 2007, SOI submitted its proposed mitigation and monitoring program for SOI's seismic programs in the Chukchi and Beaufort seas. SOI notes that the proposed seismic exploration program incorporates both design features and operational procedures for minimizing potential impacts on cetaceans and pinnipeds and on subsistence hunts. Seismic survey design features include: (1) Timing and locating seismic activities to avoid interference with the annual fall bowhead whale hunts; (2) configuring the airgun arrays to maximize the proportion of energy that propagates

downward and minimizes horizontal propagation; (3) limiting the size of the seismic energy source to only that required to meet the technical objectives of the seismic survey; and (4) conducting pre-season modeling and early season field assessments to establish and refine (as necessary) the appropriate 180 dB and 190 dB safety zones, and other radii relevant to behavioral disturbance. The potential disturbance of cetaceans and pinnipeds during seismic operations will be minimized further through the implementation of the following several ship-based mitigation measures.

Safety and Disturbance Zones

Safety radii for marine mammals around airgun arrays are customarily defined as the distances within which received pulse levels are ≤ 180 dB re 1 microPa (rms) for cetaceans and ≤190 dB re 1 microPa (rms) for pinnipeds. These safety criteria are based on an assumption that seismic pulses at lower received levels will not injure these animals or impair their hearing abilities, but that higher received levels might have some such effects.

SOI anticipates that monitoring similar to that conducted in the Chukchi Sea in 2006 will also be required in the Chukchi and the Beaufort seas in 2007. SOI plans to use marine mammal observers (MMOs) onboard the seismic vessel to monitor the 190 and 180 dB (rms) safety radii for pinnipeds and cetaceans, respectively and to implement appropriate mitigation as discussed below. SOI also plans to monitor the 160 dB (rms) disturbance zone with MMOs onboard the chase vessel in 2007 as was done in 2006. There has also been concern that received pulse levels as low as 120 dB (rms) may have the potential to disturb some whales. In 2006, there was a requirement in the IHA issued to SOI by NMFS to implement special mitigation measures if specified numbers of bowhead cow/calf pairs might be exposed to ≥120 dB rms or if large groups (>12 individuals) of bowhead or gray whales might be exposed to ≥160 dB rms . Monitoring of the 120 dB (rms) zone was required in the Chukchi Sea after 25 September. SOI anticipates that it will not be operating in the Chukchi Sea after 25 September, and it is likely, therefore, that SOI will not need to monitor the 120 dB (rms) zone in the Chukchi Sea in 2007. However, it is likely that SOI will be operating in the Beaufort Sea after 1 September in 2007, and SOI anticipates the need to monitor the 120 dB zone in that region.

If, as expected, the seismic acquisition equipment used in 2007 is the same as the equipment used during the 2006 field season, SOI plans to use the same safety radii developed during 2006 for marine mammal mitigation in the Chukchi Sea during 2007. Initial safety radii for the Chukchi and Beaufort seas were modeled and estimated by JASCO Research Ltd. prior to seismic exploration activities in 2006. Modeling of the sound propagation was based on the size and configuration of the airgun array and on available oceanographic data. (If the airgun array used in 2007 is different from the array used in 2006, JASCO will model and estimate new radii based on the specifications of the new array for both the Chukchi and Beaufort seas. Those safety zones will be used for mitigation purposes until direct measurements are available early during the seismic survey.) If the same seismic acquisition equipment used in 2006 is used during 2007, then measurements of the sound produced by the airgun array will only be conducted in the Beaufort Sea, where acoustic measurements were not conducted in 2006. An acoustics contractor will perform the direct measurements of the received levels of underwater sound versus distance and direction from the airgun arrays using calibrated hydrophones. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify (and if necessary adjust) the safety distances. The mitigation measures to be implemented will include ramp ups, power downs, and shut downs as described next.

Ramp-Up

A ramp up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. During the proposed seismic program, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (i.e., from a cold start after a shut down, when no airguns have been firing) will begin by firing a small airgun in the arrays. The minimum duration of a shut-down period, i.e., without air guns firing, which must be followed by a ramp up typically is the amount of time it would take the source vessel to cover the 180–dB safety radius. That depends on ship speed and the size of the 180–dB safety radius, which are not known at this time. SOI estimates that period to be about 8–10 minutes.

A full ramp up, after a shut down, will not begin until there has been a minimum of a 30–minute period of observation by MMOs of the safety zone to assure that no marine mammals are present. The entire safety zone must be visible during the 30–minute leading up to a full ramp up. If the entire safety zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety zone during the 30–minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for baleen whales and large odontocetes.

During periods of turn around and transit between seismic transects, at least one airgun will remain operational. The ramp-up procedure still will be followed when increasing the source levels from one air gun to the full arrays. However, keeping one air gun firing will avoid the prohibition of a cold start during darkness or other periods of poor visibility. Through use of this approach, seismic operations can resume upon entry to a new transect without a full ramp up and the associated 30–minute lead-in observations. MMOs will be on duty whenever the airguns are firing during daylight, and during the 30–min periods prior to ramp-ups as well as during ramp-ups. Daylight will occur for 24h/day until mid-August, so until that date MMOs will automatically be observing during the 30–minute period preceding a ramp up. Later in the season, MMOs will be called out at night to observe prior to and during any ramp up. The seismic operator and MMOs will maintain records of the times when ramp-ups start, and when the airgun arrays reach full power.

Power Downs and Shut Downs

A power down is the immediate reduction in the number of operating airguns from all guns firing to some smaller number. A shut down is the immediate cessation of firing of all airguns. The airgun arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full airgun arrays, but is outside the applicable safety zone of the single airgun. If a marine mammal is sighted within the applicable safety zone of the single airgun, the airgun array will be shut down (i.e., no airguns firing). Although observers will be located on the bridge ahead of the center of the airgun array, the shutdown criterion for animals ahead of the vessel

will be based on the distance from the bridge (vantage point for MMOs) rather than from the airgun array. For marine mammals sighted alongside or behind the airgun array, the distance is measured from the array.

Operations at Night and in Poor Visibility

When operating under conditions of reduced visibility attributable to darkness or to adverse weather conditions, infra-red or night-vision binoculars will be available for use. However, it is recognized that their effectiveness is limited. For that reason, MMOs will not routinely be on watch at night, except in periods before and during ramp-ups. Note that if one small airgun has remained firing, the rest of the array can be ramped up during darkness or in periods of low visibility. Seismic operations may continue under conditions of darkness or reduced visibility.

Proposed Marine Mammal Monitoring

SOI will implement a marine mammal monitoring program (MMMP) to collect data to address the following specific objectives: (1) improve the understanding of the distribution and abundance of marine mammals in the Chukchi and Beaufort sea project areas; (2) understand the propagation and attenuation of anthropogenic sounds in the waters of the project areas; (3) determine the ambient sound levels in the waters of the project areas; and (4) assess the effects of sound on marine mammals inhabiting the project areas and their distribution relative to the local people that depend on them for subsistence hunting.

These objectives and the monitoring and mitigation goals will be addressed by: (1) vessel-based marine mammal observers on the seismic source and other support vessels; (2) an acoustic program to predict and then measure the sounds produced by the seismic operations and the possible responses of marine mammals to those sounds; (3) an aerial monitoring and reconnaissance of marine mammals available for subsistence harvest along the Chukchi Sea coast; and (4) bottom-founded autonomous acoustic recorder arrays along the Alaskan coast and offshore in the Chukchi and Beaufort seas to record ambient sound levels, vocalizations of marine mammals, and received levels of seismic operations should they be detectable.

Vessel-based Visual Monitoring

Seismic Source Vessel Monitoring

SOI will have at least four observers (three trained biologists and at least one Inupiat observer/communicator) based aboard the seismic vessel. MMOs will search for and observe marine mammals whenever seismic operations are in progress and for at least 30 minutes before the planned start of seismic transmissions or whenever the seismic array's operations have been suspended for more than 10 minutes. These observers will scan the area immediately around the vessels with reticle binoculars during the daytime. Laser rangefinding equipment will be available to assist with distance estimation. After mid-August, when the duration of darkness increases, image intensifiers will be used by observers and additional light sources may be used to illuminate the safety zone.

The seismic vessel-based work will provide the basis for real-time mitigation (airgun power downs and, as necessary, shut downs), as called for by the IHAs; information needed to estimate the ''take'' of marine mammals by harassment, which must be reported to NMFS; data on the occurrence, distribution, and activities of marine mammals in the areas where the seismic program is conducted; information to compare the distances, distributions, behavior; movements of marine mammals relative to the source vessels at times with and without seismic activity; a communication channel to Inupiat whalers through the Communications Coordination Center in coastal villages; and continued employment and capacity building for local residents, with one objective being to develop a larger pool of experienced Inupiat MMOs.

The use of four observers allows two observers to be on duty simultaneously for up to 50 percent of the active airgun hours. The use of two observers increases the probability of detecting marine mammals, and two observers will be on duty whenever the seismic array is ramped up. Individual watches will be limited to no more than 4 consecutive hours to avoid observer fatigue (and no more than 12 hours on watch per 24 hour day). When mammals are detected within or about to enter the safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately. Details of the vessel-based marine mammal monitoring program are described in SOI's IHA application.

Chase Boat Monitoring

MMOs will also be present on smaller support vessels that travel with the seismic source vessel. These support vessels are commonly known as ''guard boats'' or ''chase boats.'' During seismic operations, a chase boat remains very near to the stern of the source vessel anytime that a member of the source vessel crew is on the back deck deploying or retrieving equipment related to the seismic array. Once the seismic array is deployed the chase boat then serves to keep other vessels away from the seismic source vessel and the seismic array itself (including hydrophone streamer) during production of seismic data and provide additional emergency response capabilities.

In the Chukchi and Beaufort seas in 2007, SOI's seismic source vessel will have one associated chase boat and possibly an additional supply vessel. The chase boat and supply vessel (if present) will have two MMOs onboard to collect marine mammal observations and to monitor the 160 dB (rms) disturbance zone from the seismic airgun array. MMOs on the chase boats will be able to contact the seismic ship if marine mammals are sited. To maximize the amount of time during the day that an observer is on duty, the two observers aboard the chase boat or supply vessel will rarely work at the same time. As on the source vessels, shifts will be limited to 4 hrs in length and 12 hrs total in a 24 hr period.

SOI plans to monitor the 160 dB (rms) disturbance radius in 2007 using MMOs onboard the chase vessel as was done in 2006. The 160 dB (rms)radius in the Chukchi Sea in 2006 was determined by Blackwell (2006) to extend approximately 8.4 km (5.2 mi) from the airgun source on the *Gilavar* and was monitored by MMOs onboard the *Kilabuk*. During monitoring of the 160 dB zone, the *Kilabuk* followed a zig-zag pattern about 6–8 km (3.7–5 mi) ahead of the *Gilavar*. MMOs onboard the *Kilabuk* searched the area ahead of the Gilavar within the 160 dB zone for marine mammals. Mitigation (i.e., power down or shut down of the airgun array) was to be implemented if a group of 12 or more bowhead or gray whales entered the 160 dB zone. SOI proposes to use this same protocol in the Beaufort Sea after the 160 dB radius has been determined by direct measurement.

Underwater Seismic Acoustic Measurement Program

As part of the IHA application process for similar seismic acquisition in 2006, SOI contracted to model the distances from WesternGeco's airgun array on the SOI source vessel, the *MV Gilavar*, to various broadband received levels of 190, 180, 170, 160, and 120 dB rms re 1 microPa. The model estimated the broadband received sound level in

water in relation to properties of the airgun array along with various environmental and physical characteristics. These modeled radii were used to define temporary safety radii that were used prior to and during measurements of the actual sounds produced by the airgun array at the beginning of the field season. These measured radii were used to establish actual safety radii that were used for mitigation during the 2006 seismic exploration activities in the Chukchi Sea. In 2007, SOI plans to again use the *Gilavar* as its seismic source vessel. Assuming that an airgun array identical to the one used in 2006 (WesternGeco's 3147 in^3 Bolt-Gun Array) is used during 2007, and that SOI's seismic acquisition during 2007 occurs in the same general location in the Chukchi Sea as the 2006 surveys, SOI does not plan to make empirical measurements of the airgun array in 2007 in the Chukchi Sea. For this scenario, SOI would use the same safety radii that were developed during 2006 for marine mammal mitigation during the 2007 field season. However, SOI proposes to measure the sound propagation of the airgun array if (1) an airgun array different from the array used during 2006 is used during the 2007 surveys, (2) the 2007 surveys in the Chukchi Sea are conducted in a different location than the surveys in 2006, or (3) if there is some other compelling reason to re-measure the sound propagation from the airgun array used during 2006.

SOI proposes to conduct measurements of the sound produced from the airgun array in the Beaufort Sea. This was not accomplished in 2006 due the presence of ice and other logistical considerations which precluded the Gilavar from entering the Beaufort Sea. Sound source measurements will be conducted by a qualified acoustics contractor in the general area where seismic activities are planned. Results of the measurements will be used to determine the actual safety radii to be used for mitigation during the seismic activities. Technical details on this program can be found in SOI's IHA application.

Aerial Survey Program

SOI proposes to conduct an aerial survey program in support of the seismic exploration program in the Beaufort Sea during summer and fall of 2007. The objectives of the aerial survey will be: (1) to advise operating vessels as to the presence of marine mammals in the general area of operation; (2) to collect and report data on the distribution, numbers, movement and behavior of marine mammals near the seismic operations with special emphasis on migrating bowhead whales; (3) to support regulatory reporting and Inupiat communications related to the estimation of impacts of seismic operations on marine mammals; (4) to monitor the accessibility of bowhead whales to Inupiat hunters and (5) to document how far west of seismic activities bowhead whales travel before they return to their normal migration paths, and if possible, to document how far east of seismic operations the deflection begins.

SOI proposes to implement different aerial survey designs during the summer (August) and fall (late August-October) periods because the numbers and distributions of marine mammal species of primary interest are different during those periods. During the early summer, few cetaceans are expected to be encountered in the Beaufort Sea, and those that are encountered are expected to be either along the coast (gray whales) or among the pack ice (bowheads and belugas) north of the area where seismic surveys and drilling activities are to be conducted.

During the late summer and fall, the bowhead whale is the primary species of concern, but belugas and gray whales are also present. Bowheads and belugas migrate through the Alaskan Beaufort Sea from summering areas in the central and eastern Beaufort Sea and Amundsen Gulf to their wintering areas in the Bering Sea. Small numbers of bowheads are sighted in the eastern Alaskan Beaufort Sea starting mid-August and near Barrow starting late August but the main migration does not start until early September.

The aerial survey procedures will be generally consistent with those during earlier industry studies (Miller *et al.*, 1997, 1998, 1999; Patterson *et al.*, 2007). This will facilitate comparison and pooling of data where appropriate. However, the specific survey grids will be tailored to SOI's operations and the time of year. Information on survey procedures can be found in SOI's IHA application.

Survey Design in the Beaufort Sea in Summer

The main species of concern in the Beaufort Sea is the bowhead whale but small numbers of belugas, and in some years, gray whales, are present in the Beaufort Sea during summer (see above). Few bowhead whales are expected to be found in the Beaufort Sea during early August; however, a reduced aerial survey program is proposed during the summer prior to seismic operations to confirm the distribution and numbers of bowheads, gray whales and belugas, because no recent surveys have been conducted at this time of year. The few bowheads that were present in the Beaufort Sea during summer in the late 1980s were generally found among the pack ice in deep offshore waters of the central Beaufort Sea (Moore and DeMaster 1998; Moore *et al.* 2000). Although gray whales were rarely sighted in the Beaufort Sea prior to the 1980's (Rugh and Fraker, 1981), sightings appear to have become more common along the coast of the Beaufort Sea in summer and early fall (Miller *et al.*, 1999; Treacy 1998, 2000, 2002; Patterson *et al.*, 2007) possibly because of increases in the gray whale population and/or reductions in ice cover in recent years. Because no summer surveys have been conducted in the Beaufort Sea since the 1980s, the information on summer distribution of cetaceans will be valuable for planning future seismic or drilling operations. The grid that will be flown in the summer will have more-widely-spaced lines than the grid that will be flown during the fall period and will extend farther offshore to document the offshore distribution of bowhead whales and belugas

Survey Design in the Beaufort Sea in Fall

Aerial surveys during the late August-October period will be designed to ensure that large aggregations of mother-calf bowheads do not approach to within the 120 dB re 1 microPa radius from the active seismic operation. At the same time, these surveys will obtain detailed data (weather permitting) on the occurrence, distribution, and movements of marine mammals, particularly bowhead whales, within an area that extends about 100 km to the east of the primary seismic vessel to a few km west of it, and north to about 65 km offshore. This site-specific survey coverage will complement the simultaneous MMS'Bowhead Whales Aerial Survey Program (BWASP) survey coverage. The proposed survey grid will provide data both within and beyond the anticipated immediate zone of influence of the seismic program, as identified by Miller *et al.* (1999). Miller *et al.* (1999) were not able to determine how far upstream and downstream (i.e., east and west) of the seismic operations bowheads began deflecting and then returned to their ''normal'' migration corridor. That is an important concern for the Inupiat whalers. SOI notes that the proposed survey grid is not able to address that concern because of the mitigation need to extend flights well to the east to detect mother-calf pairs before they are exposed to seismic

sounds greater than 120 dB re 1 microPa.

It is possible that the east-west extent of seismic surveys will change during the season due to ice or other operational restrictions. If so, SOI may need to modify the aerial survey grid to maintain observations to 100 km (62 mi) east of the seismic survey area, but the total km of survey that can be conducted each day are limited by the fuel capacity of the aircraft. The only alternative to ensure adequate aerial survey coverage over the entire area where seismic activities might influence bowhead whale distribution is to space the individual transects farther apart. For each 15–20 km (9.3–12.4 mi) increase in the east-west size of the seismic survey area, the spacing between lines will need to be increased by 1 km to maintain survey coverage from 100 km (62 mi) east to 20 km (12.4 mi) west of the seismic activities. Data from the easternmost transects of the proposed survey grid will document the main bowhead whale migration corridor east of the seismic exploration area and will provide the baseline data on the location of the migration corridor relative to the coast. SOI does not propose to fly a smaller ''intensive'' survey grid in 2007. In most previous years, a separate grid of 4–6 shorter transects was flown, whenever possible, to provide additional survey coverage within about 20 km (12.4 mi) of the seismic operations. This coverage was designed to provide additional data on marine mammal utilization of the actual area of seismic exploration and immediately adjacent waters. The 1996–98 studies showed that bowhead whales were almost entirely absent from the area within 20 km (12.4 mi) of the active seismic operation (Miller *et al.* 1997, 1998, 1999). Thus, the flying-time that (in the past) would have been expended on flying the intensive grid will be used to extend the coverage farther to the east and west of the seismic activity.

If seismic surveys of the Beaufort Sea end while substantial numbers of bowhead whales are still migrating west, aerial survey coverage of the area of most recent seismic operations will continue for several days after seismic surveys have ended. This will provide ''post-seismic'' data on whale distribution for comparison with whale distribution during seismic periods. These data will be used in analyses to estimate the extent of deflection during seismic activities and the duration of deflection after surveys end. Postseismic coverage will not be conducted if the bowhead migration has ended by that time, but it is expected that due to freeze-up, seismic operations will move out of the Beaufort Sea before the end of the bowhead whale migration.

Survey Grids: Two different aerial survey grids are proposed depending on whether surveys are being conducted during summer (July to late August) or fall (late August-October). During summer, four north-south lines spaced 48 km (30 mi)apart and centered on the planned seismic exploration area would be flown 2 times each week. They would extend from the barrier islands (or 10–m (32.8 ft) depth contour in areas with no barrier islands) north to about 72° N which may be well within the pack ice at that time of year. The proposed survey grid for late August-October consists of up to 18 north-south lines spaced 8 km (4.9 mi) apart and will extend to 100 km (62 mi) east of the then-current seismic exploration area. Lines will extend from the barrier islands (or 10–m (32.8 ft) contour) north to approximately the 100 m (328 ft) depth contour. As previously described, when the seismic program moves east or west, the aerial survey grids will also be relocated a corresponding distance along the coast. This grid will be flown 2 times each week until one week prior to the start of seismic surveys. They will then be flown daily until one week after the end of seismic surveys in the Beaufort Sea. The eastern boundary of the survey area will extend eastward beyond the 120 dB radius of seismic sounds in order to detect aggregations of mother-calf pairs approaching the seismic operation.

Depending on the distance offshore where seismic is being conducted, the survey grid that is shown may not extend far enough offshore to document whales deflecting north of the operation. In this case, the north ends of the transects will be extended farther north so that they extend 30–35 km (18.6–21.7 mi) north of the seismic operation and the two most westerly lines will not be surveyed. This will mean that the survey lines will only extend as far west as the seismic operation. It is not possible to move the survey grid north without surveying areas south of the seismic operation because some whales may deflect south of the seismic operation and that deflection must be monitored. During previous studies of offshore drilling operations, bowhead whales were documented migrating near the coast less than 20 km (12.4 mi) south of a drilling operation (Koski and Johnson, 1987). It would be desirable to monitor whale movements west of the seismic operation to document how far west bowheads move before returning to their normal migratory corridor. It is not possible, however, to monitor the 120 dB radius east of the seismic operation and obtain information on the distribution of whales west of the operation because of the large area that must be surveyed to the east.

The ''summer'' grid will total about 1000 km (621.4 mi) in length, requiring 4.6 hours to survey at a speed of 220 km/hr (120 nmi/hr), plus ferry time which will vary according to the location of the survey grid relative to the logistics base. The late August-October grid will total about 1300 km (807.8 mi) in length, requiring 6 h to survey at a speed of 220 km/h (120 nmi/hr), plus ferry time. Exact lengths and durations will vary somewhat depending on the east-west position of the seismic operations area and thus of the grid, the sequence in which lines are flown (often affected by weather), and the number of refueling/rest stops. As during previous studies, we propose that, while whaling is underway we will not survey the southern portions of survey lines over or near hunting areas unless the whalers agree that this can be done without interfering with their activities. This will reduce (but not eliminate) the potential for overflying whalers and whales that are being approached by whalers. Some of the autumn bowhead sightings in the region do occur in this ''nearshore'' area, and these whales will not be documented if the survey aircraft remains 15 or more km offshore in this area at all times. If SOI does not survey this area while whaling is occurring, it will reduce the potential for aircraft-whaler interactions at the expense of reducing our ability to assess seismic effects on bowheads, other marine mammals, and subsistence activities in that nearshore area.

Joint Industry Studies Program

This section describes studies that were undertaken in 2006 in the Chukchi Sea that will be continued during seismic operations in 2007. SOI plans to conduct aerial surveys consistent with the 2006 program along the Chukchi Sea coast. Additionally, an acoustic ''net'' array will be used to monitor industry sounds and marine mammals along the Chukchi Sea coast. This program may be modified to include recorders at different or additional locations depending upon the results obtained from the 2006 program. Once these results are available final determination of the numbers and placements of the recorders will occur in consultation with industry partners, agencies, and other stakeholders. In addition to the aerial and acoustical components of the study program in the Chukchi Sea, SOI plans to also establish an acoustic net array in the Beaufort Sea in 2007.

Chukchi Sea Coastal Aerial Survey

The only recent aerial surveys of marine mammals in the Chukchi Sea were conducted along coastal areas of the Chukchi Sea to approximately 20 nmi (37 km) offshore in 2006 in support of SOI' seismic exploration. These surveys, funded jointly by several industry groups, provided relatively sparse data on the distribution and abundance of marine mammals in nearshore waters of the Chukchi Sea, and the current distribution and densities of marine mammals there are unknown. Population sizes of several species found there may have changed considerably since earlier surveys were conducted and their distributions may have changed because of changes in ice conditions. SOI in cooperation with other industry groups, plans to conduct an aerial survey program in the Chukchi Sea in 2007 that will be similar to the 2006 program.

Alaskan Natives from several villages along the east coast of the Chukchi Sea hunt marine mammals during the summer and Native communities are concerned that offshore oil and gas development activities such as seismic exploration may negatively impact their ability to harvest marine mammals. Of particular concern are potential impacts on the beluga harvest at Point Lay and on future bowhead harvests at Point Hope, Wainwright and Barrow. Other species of concern in the Chukchi Sea include the gray whale, bearded, ringed, and spotted seals, and walrus. The gray whale is expected to be the most numerous cetacean species encountered during the proposed summer seismic activities, although beluga whales also occur in the area. The ringed seal is likely to be the most abundant pinniped species. The current aerial survey program will be designed to collect distribution data on cetaceans and will be limited in its ability to collect similar data on pinnipeds.

The aerial survey program will be conducted in support of the SOI seismic program in the Chukchi Sea during summer and fall of 2007. The objectives of the aerial survey will be (1) to address data deficiencies in the distribution and abundance of marine mammals in coastal areas of the eastern Chukchi Sea; and (2) to collect and report data on the distribution, numbers, orientation and behavior of marine mammals, particularly beluga whales, near traditional hunting areas in the eastern Chukchi Sea.

With agreement from hunters in the coastal villages, aerial surveys of coastal areas to approximately 20 nmi (37 km) offshore between Point Hope and Point Barrow will begin in early July and will continue until seismic operations in the Chukchi Sea are completed. Weather and equipment permitting, surveys will be conducted twice per week during this time period. In addition, during the 2007 field season, SOI will coordinate and cooperate with the aerial surveys conducted by MMS and any other groups conducting surveys in the same region. For a description of the aerial survey procedures, please see SOI's IHA application.

Three MMOs will be aboard the aircraft during surveys during key hunting periods. Two observers will be looking for marine mammals within 1 km (0.62 km) of the survey track line; one each at windows on either side of the aircraft. The third person will record data. When sightings are made, observers will notify the data recorder of the species or species class of the animal(s) sighted, the number of animals present, and the lateral distance (inclinometer angle) of the animals from the flight path of the aircraft. This information, along with time and location data from an onboard GPS, will be entered into a database. Environmental data that affect sighting conditions including wind speed, sea state, cloud cover or fog, and severity of glare will be recorded for each transect line or whenever conditions change substantially.

Acoustic ''Net'' Array: Chukchi Sea

The acoustic ''net'' array used during the 2006 field season in the Chukchi Sea was designed to accomplish two main objectives. The first was to collect information on the occurrence and distribution of beluga whales that may be available to subsistence hunters near villages located on the Chukchi Sea coast. The second objective was to measure the ambient noise levels near these villages and record received levels of sounds from seismic survey activities should they be detectable. If allowed by local villages, and equipment, ice and weather conditions permitting, an acoustic program in the Chukchi Sea from July-October will again be conducted.

A suite of autonomous seafloor recorders will be deployed in the Chukchi Sea to collect acoustic data from strategically situated sites. Figure 5 in SOI's application shows the locations of the acoustic arrays in 2006. The 2007 program may be similar but may also modify the locations and types of recorders used to attempt to answer specific questions about the movement of bowhead whales through the Chukchi Sea during fall. The acoustic contractor will provide technical personnel support and equipment for the field deployment, refurbishment and recovery of recorders. The basic plan will be to deploy Acoustic recorders at strategic locations within the Chukchi Sea in locations where they can deliver broad area information on the acoustic environment of this basin. The specific geometries and placements of the arrays are primarily driven by the objectives of (a) detecting the occurrence and approximate offshore distributions of beluga and possibly bowhead whales during the July to mid-August period and primarily bowhead whales during the mid-August to late October period, (b) measuring ambient noise, and c) measuring received levels of seismic survey activities.

Acoustic ''Net'' Array: Beaufort Sea

In addition to the continuation of the acoustic net array program in the Chukchi Sea in 2007, SOI plans to develop a similar acoustic component in the Beaufort Sea. The purpose of the array will be to further understand, define, and document sound characteristics and propagation resulting from offshore seismic and vessel-based drilling operations that may have the potential to cause deflections of bowhead whales from anticipated migratory pathways. Of particular interest will be the east-west extent of deflection (i.e. how far east of a sound source do bowheads begin to deflect and how far to the west beyond the sound source does deflection persist). Of additional interest will be the extent of offshore deflection that occurs.

In previous work around seismic and drill-ship operations in the Alaskan Beaufort Sea, the primary method for studying this question has been aerial surveys. Acoustic localization methods provide a possible alternative to aerial surveys for addressing these questions. As compared with aerial surveys, acoustic methods have the advantage of providing a vastly larger number of whale detections, and can operate day or night, independent of visibility, and to some degree independent of ice conditions and sea state-all of which prevent or impair aerial surveys. However, acoustic methods depend on the animals to call, and to some extent assume that calling rate is unaffected by exposure to industrial noise. Bowheads do call frequently in the fall, but there is some evidence that their calling rate may be reduced upon exposure to industrial sounds, complicating interpretation. Also, acoustic methods require development and deployment of instruments that are stationary (preferably mounted on the bottom) to

record and localize the whale calls. However, acoustic methods would likely be more effective for studying impacts related to a stationary sound source, such as a drilling rig that is operating within a relatively localized area, than for a moving sound source such as that produced by a seismic source vessel.

Bottom-founded acoustic recorders that have the ability to record calling whales will be deployed around SOI's seismic and drilling activities during the 2007 program. Figure 6 in SOI's application shows potential locations of the bottom-founded recorders and an array layout in relation to the proposed seismic and drilling locations. The actual locations of the bottom-founded recorders will depend on specifications of recording equipment chosen for the project, and on the acoustical characteristics of the environment. The results of these data will be used to determine the extent of deflection of migrating bowhead whales from the sound sources.

Reporting

Interim Report

The results of the 2007 SOI vessel-based monitoring, including estimates of take by harassment, will be presented in the ''90 day'' and final technical report as required by NMFS under IHAs. SOI proposes that these technical report(s) will include: (1) summaries of monitoring effort: total hours, total distances, and distribution through study period, sea state, and other factors affecting visibility and detectability of marine mammals; (2) analyses of the effects of various factors influencing detectability of marine mammals: sea state, number of observers, and fog/glare; (3) species composition, occurrence, and distribution of marine mammal sightings including date, water depth, numbers, age/size/gender categories, group sizes, and ice cover; (4) sighting rates of marine mammals versus operational state (and other variables that could affect detectability); (5) initial sighting distances versus operational state; (6) closest point of approach versus seismic state; (7) observed behaviors and types of movements versus operational state; (8) numbers of sightings/individuals seen versus operational state; (9) distribution around the drilling vessel and support vessels versus operational state; and (10) estimates of take based on (a) numbers of marine mammals directly seen within the relevant zones of influence (160 dB, 180 dB, 190 dB (if SPLs of that level are measured)), and (b) numbers of marine mammals estimated to be there based on sighting density during daytime hours with acceptable sightability conditions.

Comprehensive Report

Following the 2007 open water season a comprehensive report describing the proposed acoustic, vessel-based, and aerial monitoring programs will be prepared. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities and their impacts on marine mammals in the Beaufort Sea during 2007. The report will form the basis for future monitoring efforts and will establish long term data sets to help evaluate changes in the Beaufort Sea ecosystem. The report will also incorporate studies being conducted in the Chukchi Sea and will attempt to provide a regional synthesis of available data on industry activity in offshore areas of northern Alaska that may influence marine mammal density, distribution and behavior.

This comprehensive report will consider data from many different sources including two relatively different types of aerial surveys; several types of acoustic systems for data collection (net array, passive acoustic monitoring, vertical array, and other acoustical monitoring systems that might be deployed), and vessel based observations. Collection of comparable data across the wide array of programs will help with the synthesis of information. However, interpretation of broad patterns in data from a single year is inherently limited. Much of the 2007 data will be used to assess the efficacy of the various data collection methods and to establish protocols that will provide a basis for integration of the data sets over a period of years.

Endangered Species Act (ESA)

Under section 7 of the ESA, the MMS has begun consultation on the proposed seismic survey activities in the Beaufort and Chukchi seas during 2007. NMFS will also consult on the issuance of the IHA under section 101(a)(5)(D) of the MMPA to SOI for this activity. Consultation will be concluded prior to NMFS making a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

In 2006, the MMS prepared Draft and Final Programmatic Environmental Assessments (PEAs) for seismic surveys in the Beaufort and Chukchi Seas. Availability of the Draft and Final PEA was noted by NMFS in several **Federal Register** notices regarding issuance of IHAs to SOI and others. NMFS was a cooperating agency in the preparation of the MMS PEA.

On November 17, 2006 (71 FR 66912), NMFS and MMS announced that they were preparing a Draft PEIS. This PEIS is being prepared to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf Lands Act to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort seas off Alaska, and NMFS' authorizations under the MMPA to incidentally harass marine mammals while conducting those surveys.

On March 30, 2007 (72 FR 15135), the Environmental Protection Agency (EPA) noted the availability for comment of the NMFS/MMS Draft PEIS and on April 6, 2007 (72 FR 17117), NMFS and MMS announced its availability and times and locations for public hearings. On May 11, 2007 (72 FR 26788), based upon several verbal and written requests of additional time to review the Draft PEIS, NMFS announced an extension of the comment period until June 29, 2007. A copy of these NEPA documents are available upon request or online (see **ADDRESSES**).

Preliminary Conclusions

Based on the information provided in SOI's application, this document, and the MMS Final PEA, NMFS has preliminarily determined that the impact of SOI conducting seismic surveys in the northern Chukchi Sea and eastern and central Beaufort Sea in 2007 will have no more than a negligible impact on marine mammals and that there will not be any unmitigable adverse impacts to subsistence communities, provided the mitigation measures described in this document are implemented (see Mitigation).

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the U.S. Chukchi and Beaufort seas may result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise, this behavioral change is expected to have a negligible impact on the animals. While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, the number of potential harassment takings is estimated to be small. In addition, no take by death and/

or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document and required by the authorization. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

NMFS has preliminarily determined that the proposed seismic activity by SOI in the northern Chukchi Sea and central and eastern Beaufort Sea in 2007 will not have an unmitigable adverse impact on the subsistence uses of bowhead whales and other marine mammals. This determination is supported by the information in this **Federal Register** Notice, including: (1) Seismic activities in the Chukchi Sea will not begin until after July 15 by which time the spring bowhead hunt is expected to have ended; (2) that the fall bowhead whale hunt in the Beaufort Sea will either be governed by a CAA between SOI and the AEWC and village whaling captains or by mitigation measures contained in the IHA; (3) the CAA or IHA conditions will significantly reduce impacts on subsistence hunters to ensure that there will not be an unmitigable adverse impact on subsistence uses of marine mammals; (4) while it is possible that accessibility to belugas during the spring subsistence beluga hunt could be impaired by the survey, it is unlikely because very little of the proposed survey is within 25 km (15.5 mi) of the Chukchi Sea coast, meaning the vessel will usually be well offshore and away from areas where seismic surveys would influence beluga hunting by communities; and (5) because seals (ringed, spotted, bearded) are hunted in nearshore waters and the seismic survey will remain offshore of the coastal and nearshore areas of these seals where natives would harvest these seals, it should not conflict with harvest activities.

As a result of these preliminary determinations, NMFS proposes to issue an IHA to SOI for conducting a seismic survey in the northern Chukchi Sea and central and eastern Beaufort Sea in 2007, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Dated: May 30, 2007.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10953 Filed 6–6–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA43

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of a scientific research permit.

SUMMARY: Notice is hereby given that NMFS has issued Permit 1282 to Stillwater Sciences (Stillwater) in Arcata, CA. Permit 1282 affects threatened species of salmon and steelhead (see **SUPPLEMENTARY INFORMATION**). Permit 1282 will more effectively manage the resources of the named species and contribute to the support of the species through data assessment and consequent actions associated with data collection.

ADDRESSES: The application, permit, and related documents are available for review by appointment at: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 (ph: 707–575–6097, fax: 707–578–3435, e-mail at: *Jeffrey.Jahn@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at 707–575–6097, or e-mail: *Jeffrey.Jahn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally threatened Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*), endangered Central California Coast coho salmon (*O. kisutch*), threatened California Coastal Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Northern California steelhead (*O. mykiss*), threatened Central California Coast steelhead (*O. mykiss*), threatened California Central Valley steelhead (*O. mykiss*), threatened South-Central California Coast steelhead (*O. mykiss*), and endangered Southern California steelhead (*O. mykiss*).

Permit Issued

A notice of the receipt of an application for a scientific research permit (1282) was published in the **Federal Register** on January 22, 2007 (72 FR 2658). Permit 1282 was issued to Stillwater on May 1, 2007. Permit 1282 authorizes capture (by boat electrofishing, backpack electrofishing, beach seine, purse seine, rotary screw trap, pipe-trap, fyke-net trap, and trawl), handling, sampling (by collection of scales, fin-clips, or stomach contents), and marking (using fin-clips, passive integrated transponder (PIT) tags, visible implant elastomer (VIE) tags, or acoustic telemetry tags), and release of juvenile Southern Oregon/Northern California Coast coho salmon, Central California Coast coho salmon, California Coastal Chinook salmon, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Northern California steelhead, Central California Coast steelhead, California Central Valley steelhead, South-Central California Coast steelhead, and Southern California steelhead. Permit 1282 also authorizes capture (by boat electrofishing, backpack electrofishing, or beach seine), handling, and release of adult California Central Valley steelhead.

Permit 1282 is for research to be conducted in the following water bodies, listed by county, all within the State of California: Tillas Slough (Smith River Estuary) and Lake Earl/Lake Tolowa in Del Norte County; Stone Lagoon, Big Lagoon, Humboldt Bay, and Eel River estuary/lagoon in Humboldt County; Ten Mile River estuary/lagoon, Virgin Creek estuary/lagoon, Pudding

Creek estuary/lagoon, and numerous ponds in the vicinity of Manchester, California (including Davis Lake, Davis Pond, Hunter's Lagoon, and numerous unnamed water bodies in the lower Garcia River flood plain) in Mendocino County; Gualala River, Salmon Creek estuary/lagoon, and Estero Americano in Sonoma County; Estero de San Antonio, Walker Creek, Lagunitas Creek, and Rodeo Lagoon in Marin County; San Gregorio Creek estuary/lagoon, Pescadero Lagoon (Pescadero Creek/Butano Creek estuary/lagoon), and Arroyo de los Frijoles estuary/lagoon in San Mateo County; Laguna Creek estuary/lagoon, Baldwin Creek estuary/lagoon, Corcoran Lagoon, Aptos Creek estuary/lagoon, and Pajaro River estuary/lagoon in Santa Cruz County; Bennett Slough in Monterey County; Santa Paula Creek in Ventura County; Cow Creek in Shasta County; Battle Creek in Shasta and Tehama counties; Butte Creek in Glenn and Butte counties; Mokelumne River in Sacramento and San Joaquin counties; Sherman Island in Sacramento County; Napa River in Napa County; Tuolumne River in Stanislaus County; and Merced River in Merced County.

Permit 1282 authorizes average unintentional lethal take of juvenile ESA-listed salmonids of approximately 2 percent of ESA-listed salmonids captured. Permit 1282 does not authorize lethal take of adult ESA-listed salmonids or intentional lethal take of ESA-listed salmonids. The purpose of the research is to provide ESA-listed salmonid population, distribution, and habitat assessment data which will: (1) contribute to the general body of scientific knowledge pertaining to ESA-listed salmonids; (2) inform resource managers to further the conservation and recovery of ESA-listed salmonids; and (3) evaluate the effectiveness of past habitat restoration projects and guide future habitat restoration projects to best benefit ESA-listed salmonids. Permit 1282 expires on December 31, 2012.

Dated: May 30, 2007.

Angela Somma

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–10948 Filed 6–6–07; 8:45 am]

BILLING CODE 3510–22–S

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Plenary Teleconference Meeting for the Technical Guidelines Development Committee.

DATE AND TIME: Tuesday, July 3, 2007, 11:30 a.m. to 4:30 p.m. EDT.

PLACE: National Institute of Standards and Technology, 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900.

STATUS: This teleconference meeting will be Web cast to the public. Additional meeting information and URL Web link for the event will be available at *http://vote.nist.gov.* by June 19, 2007.

SUMMARY: The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary teleconference meeting for July 3, 2007. The Development Committee was established in 2004 to act in the public interest to assist the Executive Director of the U.S. Election Assistance Comission (EAC) in the development of voluntary voting system guidelines. The Development Committee has held nine previous plenary meetings. The proceedings of these plenary sessions are available at *http://vote.nist.gov.* The purpose of the tenth meeting of the Development Committee will be to review and approve a final draft of recommendations for future voluntary voting system guidelines to the EAC. The draft recommendations respond to tasks defined in resolutions passed at the previous Development Committee meetings as well as a review of a complete draft of recommendations presented at the May 2007 plenary meeting.

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary teleconference meeting for July 3, 2007. The Committee was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Care Requirements & Testing to gather information and review preliminary reports on issues pertinent to voluntary voting standard recommendations. At subsequent plenary sessions, additional resolutions were debated and adopted by the TGDC. The resolutions define technical work tasks for NIST that assist the TGDC in developing recommendations for voluntary voting system guidelines. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The recommendation were formally delivered to the EAC in May 2005 for their review. In September of 2005, the Development Committee began review of preliminary technical reports for the next iteration of voluntary voting system guidelines. The Committee will review, debate and approve a final draft of recommendations of the next iteration of voluntary voting system guidelines at the July 3, 2007 teleconference meeting.

FOR FURTHER INFORMATION CONTACT: Allan Eustis 301–975–5099. If a member of the public would like to submit comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, c/o NIST, 100 Bureau Drive, Mail Stop 8970, Gaithersburg, MD 20899 or to *voting@nist.gov.*

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–2839 Filed 6–4–07; 4:15 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

[OE Docket No. PP–305]

Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping; Montana Alberta Tie, Ltd.

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Department of Energy (DOE) announces its intention to prepare an EIS and to conduct scoping on the proposed Federal action of granting a Presidential permit to construct a new electric transmission line across the U.S.-Canada border in northwestern Montana. DOE has determined that issuance of a Presidential permit for the proposed project would constitute a major Federal action that may have a significant effect upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an EIS entitled ''The Montana Alberta Tie, Ltd. (MATL) 230-kV Transmission Line

Environmental Impact Statement'' (DOE/EIS–0399) to address potential environmental impacts from the proposed action and the range of reasonable alternatives. The EIS will be prepared in compliance with NEPA and applicable regulations, including DOE NEPA implementing regulations at 10 CFR part 1021. Because of the previous public participation activities, DOE does not plan to conduct additional scoping meetings for this EIS. Written comments on the scope of the EIS are invited.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Ellen Russell, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350; phone 202–586–9624, facsimile 202–586–8008, or by electronic mail at *Ellen.Russell@hq.doe.gov*. The MATL Presidential permit application, including associated maps and drawings, can be downloaded in its entirety from the DOE program Web site at *http://www.oe.energy.gov/permitting/electricity_imports_exports.htm*.

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until July 9, 2007. DOE will consider all comments received or postmarked by July 9, 2007 in defining the scope of this EIS.

ADDRESSES: Comments and suggestions on the scope of the EIS should be addressed to: Mrs. Ellen Russell, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350; or by electronic mail at *Ellen.Russell@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, operated, maintained, or connected at the U.S. international border. The E.O. provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest and after favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a Presidential permit is in the public interest, DOE considers the environmental impacts of the proposed project under NEPA, determines the project's impact on electric reliability (including whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions), and any other factors that DOE may also consider relevant to the public interest. The regulations implementing the E.O. have been codified at 10 CFR 205.320–205.329. Issuance of a Presidential permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

MATL has applied to DOE's Office of Electricity Delivery and Energy Reliability (OE) for a Presidential permit to construct a 230,000-volt electric transmission line across the U.S. border with Canada, and to the State of Montana Department of Environmental Quality (MDEQ) for a Linear Facilities construction permit. The proposed transmission line would originate at a new substation to be constructed northeast of Lethbridge, Alberta, Canada, cross the U.S.-Canada border, and terminate north of Great Falls, Montana, at an existing substation owned by NorthWestern Energy. The total length of the proposed transmission line would be 203 miles, with approximately 126 miles constructed inside the United States.

DOE originally considered an environmental assessment (EA) to be the appropriate level of review under NEPA and has been cooperating with the MDEQ in the preparation of a single environmental document that would serve as both a Montana State EIS under the Montana Environmental Policy Act and a DOE EA under NEPA.

Identification of Environmental Issues

On November 18, 2005, DOE published a ''Notice of Intent to Prepare an Environmental Assessment and to Conduct Public Scoping Meetings and Notice of Floodplain and Wetlands Involvement; Montana Alberta Tie, Ltd.'' (70 FR 69962). That notice opened a 45-day scoping period during which the public was invited to participate in the identification of potential environmental impacts that may result from construction of the MATL transmission line project and reasonable alternatives. DOE and MDEQ conducted 6 scoping meetings in the vicinity of the proposed project. Ten issues and concerns were identified as a result of the initial scoping opportunity. These issues and concerns are (1) impacts on farming, ranching and other land uses, (2) impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats, (3) impacts on floodplains and wetlands, (4) avian mortality, (5) impacts on cultural or historic resources, (6) impacts on human health and safety, (7) impacts on air, soil, and water, (8) visual impacts, (9) socioeconomic impacts, and (10) impacts from development of wind generation. An additional alternative also was developed by the agencies to address concerns raised by the public and interested agencies during the scoping period.

In March 2007, the MDEQ and DOE published a draft document that was the MDEQ Draft EIS and the DOE EA (March 2007 EA). The document was distributed for public comment and three public hearings were conducted to receive comments on the document during a 55-day public comment period. Based on comments received on the March 2007 EA relating to land use and potential effects on farming, DOE has determined an EIS to be the proper NEPA compliance document.

EIS Preparation and Schedule

In preparing the Draft EIS, DOE will consider comments that DOE and the State received at the 2005 scoping meetings as well as the comments received on the March 2007 EA. DOE is working with the MDEQ to address the comments received on the March 2007 EA and prepare responses to comments which will be set forth in the Draft EIS. Comments submitted on the March 2007 EA need not be resubmitted.

If the March 2007 EA does not require significant modifications to address the comments, DOE will issue, as the DOE Draft EIS, a copy of the March 2007 EA together with any corrections and updated information as errata, and with responses to comments. If extensive modifications are required to adequately address comments, DOE will issue as the DOE Draft EIS a new document that includes the responses to comments. After DOE issues the Draft EIS, DOE will then hold a public hearing and accept public comment on the Draft EIS. DOE will include all comments received on the Draft EIS, and responses to those comments, in the Final EIS.

DOE will provide a public comment period of at least 45 days from the Environmental Protection Agency's (EPA's) Notice of Availability (NOA) of the Draft EIS and will hold at least one public hearing during the public comment period. DOE may not issue a record of decision sooner than 90 days from EPA's NOA of the Draft EIS and no sooner than 30 days from EPA's NOA of the Final EIS.

Issued in Washington, DC, on June 1, 2007.

Kevin M. Kolevar,

Director, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–11010 Filed 6–6–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. 2007–OE–01, Draft Mid-Atlantic Area National Corridor; Docket No. 2007–OE–02, Draft Southwest Area National Corridor]

Office of Electricity Delivery and Energy Reliability; Draft National Interest Electric Transmission Corridor Designations

AGENCY: Department of Energy.

ACTION: Notice of errata and meetings.

SUMMARY: The Department of Energy (DOE) published notice of two draft National Interest Electric Transmission Corridors (National Corridors) under section 216 of the Federal Power Act in 72 FR 25838 on May 7, 2007. With regard to the draft Mid-Atlantic Area National Corridor (Docket No. 2007–OE–01), DOE is correcting an error in the text of the May 7, 2007 notice. There are six counties that were correctly included in the map of the draft Mid-Atlantic Area National Corridor, displayed in Figure VIII–21 at 72 FR 25908, but that were inadvertently omitted from the narrative description of the draft Corridor at 72 FR 25909. The six counties that should have been included in the list at 72 FR 25908 are: Monroe County, OH; Carbon County, PA; Cumberland County, PA; Kanawha County, WV; Mason County, WV; and Putnam County, WV. Further, DOE will be holding four additional public meetings on the draft National Corridors.

DATES: DOE has scheduled two new public meetings on Docket No. 2007–OE–01 (the draft Mid-Atlantic Area National Corridor) for the following dates:

June 12, 2007, 1 p.m. to 7 p.m., Rochester, NY; and

June 13, 2007, 1 p.m. to 7 p.m., Pittsburgh, PA.

DOE has scheduled two new public meetings on Docket No. 2007–OE–02 (the draft Southwest Area National Corridor) for the following dates:

June 20, 2007, 1 p.m. to 7 p.m., Las Vegas, NV; and

June 21, 2007, 1 p.m. to 7 p.m., Phoenix, AZ.

ADDRESSES: The locations for the public meetings are:

Rochester, NY—RIT Inn & Conference Center, 5257 West Henrietta Road, West Henrietta, NY 14586;

Pittsburgh, PA—National Energy Technology Laboratory, Building 922, Conference Center A, B, & C, 626 Cochrans Mill Road, Pittsburgh, PA 15236 (All attendees will be required to present valid government-issued photo identification, such as a driver's license, passport, or military ID, upon entrance to the National Energy Technology Laboratory campus);

Las Vegas, NV—Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, NV 89119; and

Phoenix, AZ—Crowne Plaza Hotel Phoenix Airport, 4300 East Washington, Phoenix, AZ 85034.

If you are interested in speaking at one of these meetings, please sign up at *http://www.energetics.com/NIETCpublicmeetings* or call 410–953–6250.

FOR FURTHER INFORMATION CONTACT: For technical information, David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov*. For legal information, Mary Morton, DOE Office of the General Counsel, (202) 586–1221, *mary.morton@hq.doe.gov*.

Issued in Washington, DC, on June 1, 2007.

Kevin M. Kolevar,

Director, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E7–11017 Filed 6–6–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–000, CP05–132–000; Docket No. CP05–131–000]

Dominion Cove Point LNG, LP; Dominion Transmission, Inc.; Notice of Availability of the Final Conformity Determination for Pennsylvania, Maryland, Virginia, West Virginia and New York—Cove Point Expansion Project

June 1, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Dominion Cove Point LNG, LP and Dominion Transmission, Incorporated (Dominion), referred to as the Cove Point Expansion Project, in the above-referenced docket.

This Final General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11000 Filed 6–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–66–000]

Invenergy Thermal LLC, Complainant, v. ISO New England, Inc., Respondent.; Notice of Complaint and Request for Fast Track

June 1, 2007.

Take notice that on May 31, 2007, Invenergy Thermal LLC (Invenergy) filed a formal complaint against ISO New England, Inc. (ISO–NE) pursuant to section 206 of the Federal Power Act, alleging that it was improper for ISO–NE to disqualify Invenergy's Sutton Energy Project from being further considered as a potential capacity supplier in ISO–NE's 2008 Forward Capacity Market auction on the grounds that Invenergy failed to post a Qualification Deposit by February 20, 2007. Invenergy requests that the Commission grant Invenergy a waiver of the February 20, 2007 deadline. Invenergy seeks fast track processing for this complaint.

Invenergy certified that it served a copy of the complaint on the contacts for the ISO–NE as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 14 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 June 8, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10998 Filed 6–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 1, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–98–000.
Applicants: James A. Goodman.
Description: Brick Power Holdings LLC submits an application requesting authorization and approval to transfer existing control over assets to himself in his anticipated capacity as the sole Managing Member.
Filed Date: 05/24/2007.
Accession Number: 20070531–0127.
Comment Date: 5 p.m. Eastern Time on Thursday, June 14, 2007.

Docket Numbers: EC07–99–000.
Applicants: Great Plains Energy Incorporated, Kansas City Power & Light Company, Aquila, Inc., and Black Hills Corporation.
Description: Great Plains Energy Inc., et al request for approval of a two-step transaction in which Aquila will sell its jurisdictional electric utility assets located in Colorado.
Filed Date: 05/25/2007.
Accession Number: 20070531–0175.
Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–576–001.
Applicants: Baltimore Gas and Electric Company.
Description: Baltimore Gas and Electric Company submits its responses to the information requested in FERC's Deficiency Letter dated 5/4/07.
Filed Date: 05/25/2007.
Accession Number: 20070531–0085.
Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–939–000.
Applicants: Columbia Utilities Power, LLC.
Description: Columbia Utilities Power, LLC's Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume No.1.
Filed Date: 05/25/2007.
Accession Number: 20070530–0121.
Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–941–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits notice of termination of the revised Service Agreement for Wholesale Distribution Service and Letter Agreement with Modesto Irrigation District.
Filed Date: 05/25/2007.
Accession Number: 20070530–0135.
Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–942–000.
Applicants: ISO New England Inc., New England Power Pool.
Description: ISO New England Power Pool Participants Committee et al submits its Market Rule 1 changes relating to support payments for the cost of Internet Based Communication System etc.
Filed Date: 05/29/2007.
Accession Number: 20070531–0101.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–943–000.
Applicants: Black Hills Power, Inc., Cheyenne Light Fuel & Power Company.
Description: Black Hills Power Inc and Cheyenne Light, Fuel and Power Co submit a Generation Dispatch and Energy Management Agreement.
Filed Date: 05/29/2007.
Accession Number: 20070531–0102.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–944–000, ER07–945–000.
Applicants: Florida Power & Light Company, FPL Energy Power Marketing, Inc.
Description: Florida Power & Light Co and FPL Energy Power Marketing, Inc submits proposed amendments to their market based rate tariffs.
Filed Date: 05/29/2007.
Accession Number: 20070531–0099.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–946–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits Second Revised Sheet No. 1 et al. of First Revised Rate Schedule FERC No. 226 with the City of Holton, Kansas.
Filed Date: 05/29/2007.
Accession Number: 20070531–0093.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–947–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits Second Revised Sheet No. 1 and First Revised Sheet No. 4 of First Revised Rate Schedule No. 235, a Wholesale Electric Service Agreement with the City of Sabetha, Kansas.
Filed Date: 05/29/2007.
Accession Number: 20070531–0097.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–948–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits Second Revised Sheet No. 1 et al. of First Revised FERC Rate Schedule No. 211, a Wholesale Electric Service Agreement with the City of Minneapolis, Kansas.
Filed Date: 05/29/2007.
Accession Number: 20070531–0098.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 19, 2007.

Docket Numbers: ER07–949–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc on behalf of Kansas Gas and Electric Co submits Third Revised Sheet No.1 et al of Rate Schedule FERC No. 152 with Missouri Public Service Co.
Filed Date: 05/25/2007.
Accession Number: 20070531–0100.
Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–950–000.
Applicants: Saracen Energy MB L.P.
Description: Saracen Energy MB, LP submits petition for acceptance of initial

rate schedule, waivers, and blanket authorization.

Filed Date: 05/25/2007.

Accession Number: 20070531–0094.

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–951–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised sheets to the Sunkist Wholesale Distribution Load Interconnection Facilities Agreement and the Service Agreement for Wholesale Distribution Service.

Filed Date: 05/25/2007.

Accession Number: 20070531–0095.

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–952–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits proposed revisions to its FERC OATT to reflect minor ministerial modifications to the sheets used to calculate the open access transmission charges.

Filed Date: 05/25/2007.

Accession Number: 20070531–0096.

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER07–954–000.

Applicants: American Transmission Company, LLC.

Description: American Transmission Company LLC submits an executed and amended Distribution-Transmission Interconnection Agreement with the City of Menasha dated 10/19/06.

Filed Date: 05/25/2007.

Accession Number: 20070531–0104

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER96–2495–029, ER97–4143–017, ER97–1238–024, ER98–2075–023, ER98–542–019.

Applicants: AEP Power Marketing Inc AEP Service Corporation; AEP Energy Partners, LP; CSW Energy Services, Inc. Central; and South West Services, Inc.

Description: AEP Power Marketing, Inc et al submit notice of Change in Status in connection with their authority to make sales at negotiated market-based rates.

Filed Date: 05/25/2007.

Accession Number: 20070531–0125.

Comment Date: 5 p.m. Eastern Time on Friday, June 15, 2007.

Docket Numbers: ER99–3426–007.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits a notice of change in status in connection with a net increase in its generation capacity pursuant to section 35.27(c) of FERC's Regulations.

Filed Date: 05/30/2007.

Accession Number: 20070531–0086.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10995 Filed 6–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM07–10–000; Docket No. AD06–11–000]

Transparency Provisions of Section 23 of the Natural Gas Act, Transparency Provisions of the Energy Policy Act of 2005; Notice of Workshop

June 1, 2007.

The staff of the Federal Energy Regulatory Commission (Commission) will hold an informal workshop in the above-referenced proceedings on July 24, 2007, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in Meeting Room 3M–2A&B from 9:30 a.m. until 5 p.m. (EST). The staff is holding this workshop to discuss various implementation and other technical issues associated with the proposals set forth in the Notice of Proposed Rulemaking (NOPR), *Transparency Provisions of Section 23 of the Natural Gas Act*, 72 FR 20791 (Apr. 26, 2007), FERC Stats. & Regs. ¶ 32,614 (2007). All interested persons are invited, and there is no registration fee to attend.

This notice is to alert you to the date of the workshop. A further notice will define the issues to be explored. This workshop will not be web-cast. Comments should be filed in Docket RM07–10–000, in accordance with the dates set in the rulemaking docket.

Questions about the conference should be directed to Lee Choo by e-mail at *lee-ken.choo@FERC.gov* or by phone at 202–502–6334.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–10999 Filed 6–6–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8322–3; EPA–HQ–OAR–2007–0238]

Biennial Determination of the Waste Isolation Pilot Plant's Compliance With Applicable Federal Environmental Laws for the Period 2004 to 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Based on documentation submitted by the U.S. Department of Energy (DOE) for the Waste Isolation Pilot Plant (WIPP), the U.S. Environmental Protection Agency (EPA or ''we'') determined that between 2004

and 2006, DOE operated the WIPP facility in compliance with applicable Federal statutes, regulations, and permit requirements designated in Section 9(a)(1) of the WIPP Land Withdrawal Act, as amended. The Secretary of Energy was notified of the determination via a letter from EPA Administrator Stephen L. Johnson dated May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Nick Stone; telephone number: (214) 665–7226; address: WIPP Project Officer, Mail Code 6PD–O, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0238; FRL–8322–3]. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy 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 Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

II. Background

EPA made this determination under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA). (Pub. L. 102–579 and 104–201.) Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, DOE shall comply with respect to WIPP with (1) regulations for the management and storage of radioactive waste (40 CFR part 191, subpart A); (2) the Clean Air Act; (3) the Solid Waste Disposal Act; (4) the Safe Drinking Water Act; (5) the Toxic Substances Control Act; (6) the Comprehensive Environmental Response, Compensation, and Liability Act; and (7) all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires DOE biennially to submit to EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in Section 9(a)(1). (DOE must also submit similar documentation of compliance with the Solid Waste Disposal Act to the State of New Mexico.) Section 9(a)(3) requires the Administrator of EPA to determine on a biennial basis, following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with the pertinent laws, regulations, and permit requirements, as set forth at Section 9(a)(1).

We determined that for the period 2004 to 2006, the DOE-submitted documentation showed continued compliance with 40 CFR part 191, subpart A, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. With respect to other applicable Federal laws pertaining to public health and safety or the environment, as required by Section 9(a)(1)(G), DOE's documentation also indicates that DOE was in compliance with the Clean Water Act, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and certain statutes under the jurisdiction of the Department of the Interior.

This determination is not in any way related to, or a part of, our certification decision regarding whether the WIPP complies with EPA's disposal regulations for transuranic radioactive waste at 40 CFR part 191.

Dated: May 31, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–11037 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8323–2]

Reproposal of the Reissuance of Two General NPDES Permits (GPs), One for Aquaculture Facilities in Idaho Subject to Wasteload Allocations Under Selected Total Maximum Daily Loads (Permit Number IDG–13–0000) and One for Fish Processors Associated With Aquaculture Facilities in Idaho (Permit Number IDG–13–2000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of additional modification of two draft general NPDES permits.

SUMMARY: On September 27, 2004, a general permit regulating the activities of aquaculture facilities in Idaho and associated on-site fish processors expired. On June 19, 2006, the Director, Office of Water and Watersheds, EPA Region 10, proposed to reissue three general permits to cover facilities covered under the previous permit. These general permits also will cover facilities currently operating under individual permits, thereby terminating the authorization to discharge under the individual permits. This additional public notice is to invite comments on revised limits for some of the covered facilities and revised requirements for pollutant trading among the facilities, as well as revised determinations on the effect on listed species under the Endangered Species Act.

DATES: Comments must be received or postmarked by July 9, 2007.

Public Comment: Interested persons may submit written comments on the changes to the draft permits to the attention of Sharon Wilson at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated.

After the expiration date of the Public Notice on July 9, 2007; the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the general permits. Response to comments from both comment periods will be published with the final permits. The proposed requirements contained in the draft general permits will become final 30 days after publication of the final permits in the **Federal Register**.

ADDRESSES: Comments on the proposed changes to the General Permits should be sent to Sharon Wilson, USEPA Region 10; 1200 Sixth Avenue, OWW–130; Seattle, Washington 98101 or by e-mail to *wilson.sharon@epa.gov*.

FOR FURTHER INFORMATION, CONTACT: Carla Fromm, 208–378–5755, *fromm.carla@epa.gov* or Sharon Wilson, 206–553–0325, *wilson.sharon@epa.gov*. Copies of the draft general permit and the fact sheets may be downloaded from the EPA Region 10 Web site at *http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/General+NPDES+Permits#Aquaculture*. They are also available upon request from Audrey Washington at (206) 553–0523, or e-mailed to *washington.audrey@epa.gov*.

SUPPLEMENTARY INFORMATION

Public Hearing

Written comments receive as much consideration as oral comments at a public hearing. Persons wishing to request a public hearing should submit their written request by July 9, 2007, stating the nature of the issues to be raised as well as the requester's name, address and telephone number to Sharon Wilson at the address above. If a public hearing is scheduled, notice will be published in the **Federal Register**. Notice will also be posted on the Region 10 Web site and will be mailed to all interested persons receiving notice of availability of the draft permits.

Administrative Record

The complete administrative record for the draft permit is available for public review at the EPA Region 10 office at the address listed above.

Other Legal Requirements

A. Endangered Species Act

EPA has determined that issuance of the General Permits is not likely to adversely affect threatened or endangered salmonids, designated critical habitat, or essential fish habitat. Issuance of the General Permits is likely to adversely affect threatened or endangered snail species or their designated critical habitat, due to possible impairment of the water quality needs of the snails through TSS and TP additions to receiving waters in the mid-Snake subbasin; this is a change from the determination for the previous public comment period. Issuance of the Wasteload Allocation Permit to four warm water facilities in Idaho is likely to affect the three listed snail species because of the increase in temperature of the receiving streams in the immediate vicinity of these facilities. EPA has determined that, due to location of the snails relative to the aquaculture facilities, the general permits for aquaculture facilities are not likely to adversely affect the Bruneau Hot Springsnail. EPA has determined that issuance of the General Permits will have no effect on any terrestrial threatened or endangered species or their designated critical habitat.

B. Executive Order 12866

EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, State, and local governments and the private sector. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA or the UMRA.

Dated: May 30, 2007.

Michael F. Gearheard,

Director, Office of Water & Watersheds, Region 10.

[FR Doc. E7–11033 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8323–5]

Notice of Final NPDES General Permit; Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

SUMMARY: EPA Region 6 today issues a final National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000). The general permit authorizes discharges from new sources, existing sources, and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A). The reissued permit will become effective October 1, 2007. The existing permit published in the **Federal Register**, at 69 FR 60150 on October 7, 2004, authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas. Today's action reissues the current permit which will expire on November 7, 2007.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 internet site: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–2145, or via e-mail to the following address: *smith.diane@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated entities.* EPA intends to use the reissued permit to regulate oil and gas extraction facilities located in the Outer Continental Shelf of the Western Gulf of Mexico, *e.g.*, offshore oil and gas extraction platforms, but other types of facilities may also be subject to the permit. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

Oil Spill Requirements. Section 311 of the Clean Water Act, (CWA or the Act),

prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are authorized by NPDES permits are excluded from the provisions of Section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

Endangered Species Act (ESA). As explained at 69 FR 39478 (June 30, 2004), EPA found that reissuance of the General Permit for the Outer Continental Shelf of the Western Gulf of Mexico (OCS general permit) was not likely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA requested written concurrence on that determination from the National Marine Fisheries Service (NMFS). In a letter dated July 12, 2004, NMFS provided such concurrence on the current OCS general permit. NMFS also previously concurred with that determination when the permit was reissued in 1991 and 1998 and when it was modified in 1993 and 2001. When proposing this reissued permit, EPA found that no changes were proposed that would decrease the level of protection the permit affords threatened or endangered species. The main changes included new intake structure requirements and more stringent whole effluent toxicity limits based on sub-lethal effects. Since those changes increase the level of protection, EPA again found that reissuance of the permit was not likely to adversely affect any listed threatened or endangered species or their critical habitat. Concurrence with this determination was requested from NMFS on December 21, 2006. NMFS has not yet concurred in that determination.

To prevent further delay in this permit action, EPA is reissuing the general permit at this time in accordance with Section 7(d) of the Endangered Species Act. To avoid an irreversible or irretrievable commitment of resources, the reissued permit includes a re-opener clause that will enable the Agency to modify the permit should further consultation reveal a need to formulate or implement reasonable and prudent alternative measures.

Ocean Discharge Criteria Evaluation. For discharges into waters of the territorial sea, contiguous zone, or oceans, CWA section 403(c) requires EPA to consider guidelines for determining potential degradation of the marine environment when issuing NPDES permits. These Ocean Discharge Criteria (40 CFR part 125, Subpart M) are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). EPA Region 6 has previously determined that discharges in compliance with the OCS general permit will not cause unreasonable degradation of the marine environment. EPA has also recently completed a study of the effects of produced water discharges on hypoxia in the northern Gulf of Mexico and found that these discharges do not have a significant impact. (See Predicted Impacts from Offshore Produced Water Discharges on Hypoxia in the Gulf of Mexico, Limno-Tech, Inc., 2006). Since this reissued permit contains limitations that will protect water quality and in general reduce the discharge of toxic pollutants to the marine environment, the Region finds that discharges authorized by the reissued general permit will not cause unreasonable degradation of the marine environment.

Coastal Zone Management Act. When the previous permit was issued, EPA determined that the activities that were authorized were consistent with the local and state Coastal Zone Management Plans. Those determinations were submitted to the appropriate State agencies for certification. Certification was received from the Coastal Management Division of the Louisiana Department of Natural Resources in a letter dated July 12, 2004 and from the Railroad Commission of Texas by a letter dated August 20, 2004. EPA has again determined that activities proposed to be authorized by this reissued permit are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination was submitted to the State of Louisiana and the State of Texas for interagency review at the time of public notice. Concurrence was received from the both Louisiana Department of Natural Resources and Railroad Commission of Texas. Both letters of concurrence were dated February 23, 2007.

Marine Protection, Research, and Sanctuaries Act. The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the transportation for dumping of materials into ocean waters and establishes permit programs for ocean dumping. The NPDES permit EPA reissues today does not authorize dumping under MPRSA.

In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate certain ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. The permit authorizes discharges incidental to oil and gas production from a facility which predates designation of the Flower Garden Banks National Marine Sanctuary as a marine sanctuary. EPA has previously worked extensively with NOAA to ensure that authorized discharges are consistent with regulations governing the National Marine Sanctuary.

State Water Quality Standards and State Certification. The permit does not authorize discharges to State waters; therefore, the state water quality certification provisions of CWA section 401 do not apply to this proposed action.

Executive Order 12866. Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to issuance.

Paperwork Reduction Act. The information collection required by this permit has been approved by the Office

of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Since this permit reissuance will not significantly change the reporting and application requirements from those of the previous Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000), the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for the reissued permit will be the same and will not be affected by this action.

However, the alternative to obtaining authorization to discharge under this general permit is to obtain an individual permit. The application and reporting burden of obtaining authorization to discharge under the general permit is expected to be significantly less than that under an individual permit.

Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit reissuance proposed today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that reissuance of this permit will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501, *et seq*, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See*, *e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law* * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the permit reissuance will not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

EPA also believes that the permit will not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit also will not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

National Environmental Policy Act. In connection with its oil and gas leasing programs under the Outer Continental Shelf Lands Act, the Minerals Management Service of the Department of Interior (MMS) has prepared and published draft and final environmental impact statements (EIS) on potential impacts of oil and gas operations in the Central and Western Gulf of Mexico for the 2007—2012 period. MMS published a Notice of Availability of the Final EIS (FEIS) at 72 FR 18667 (April 13, 2007). EPA was a cooperating agency on MMS's EIS and now relies on it in reissuing this permit. This final permit decision is thus also a Record of Decision completing National Environmental Policy Act (NEPA) review on reissuance of the OCS General Permit. It should be noted, however, that EPA's decision to reissue the permit precludes no potential MMS decision on its proposed lease sales.

Because EPA authority to include mitigation conditions in NPDES permits on the basis of NEPA review is limited by the Clean Water Act, the EIS was primarily useful in consideration of the two types of potential alternatives available to EPA. First, had the EIS revealed unacceptable environmental impacts would occur as a result of oil and gas operations in the western gulf, EPA might have denied the permit, effectively prohibiting future discharges from those operations. Such a permit denial would substantially disrupt continued oil and gas production on the OCS adjacent to the states of Louisiana and Texas. Without authorization to discharge pollutants, some OCS oil and gas operations would cease with corresponding effects on the Nation's oil and gas supply. Some operators, however, might develop means to transport pollutants they currently discharge offshore to onshore disposal facilities. Construction and operation of associated transportation facilities, *e.g.*, new pipelines to deliver produced water to onshore injection wells, would likely adversely affect the environment in coastal Texas and Louisiana. Additional onshore disposal capacity and attendant environmental consequences might also result from such a permit denial. In EPA's view, however, the FEIS reveals no unmitigated environmental impacts that outweigh the benefits of permit reissuance and continued offshore oil and gas production at current or increased levels. EPA has thus chosen to reissue the general permit with effluent limitations and requirements that minimize water quality related impacts to the marine environment.

Second, had the FEIS revealed unacceptable water quality impacts from offshore oil and gas operation discharges, EPA could have included more stringent effluent limitations in the permit than would otherwise have been necessary for compliance with CWA. The discharges to be regulated under the reissued permit and their effects are described in Section 4.1.1.4 (Operational Wastes Discharged Offshore) of the FEIS. Most water quality impacts from OCS discharges have been thoroughly examined in past NEPA reviews and it is not thus surprising that the latest MMS EIS reveals no clear need for more stringent

effluent limitations than the reissued permit imposes. The FEIS does, however, provide new information on one potential water quality impact, *i.e.*, the effect of OCS produced water discharges to the hypoxic zone in the Gulf. An EPA mandated study, summarized in Section 4.1.1.4.2 of the FEIS, indicates that produced water discharges may very slightly contribute to the hypoxia, but that any such contribution is insignificant, particularly in comparison to the volume of nutrients contributed by the Mississippi and Atchafalaya Rivers. EPA thus finds no hypoxia related reason to include nutrient limitations on produced water discharges to the hypoxic zone. Water quality impacts from discharges complying with the reissued permit will be minimal.

One comment on the FEIS was of arguable relevance to EPA's proposed permit limitations. In a letter dated May 14, 2007, the Louisiana Department of Natural Resources (LDNR) suggested the FEIS should have quantified the incremental amount of drilling wastes (*i.e.*, drilling fluids, drill cuttings, and produced sand) that must be disposed of onshore as a result of proposed MMS leasing actions. According to LDNR, the FEIS' conclusion that existing and proposed landfills provide adequate capacity for disposal of that waste is unsupported and that the FEIS thus fails to ''consider the cost of accommodating the waste to coastal communities and the ability of these communities to absorb that cost.''

EPA's permit limitations are, of course, a reason there is a need for onshore disposal of some offshore waste streams; the reissued permit and its predecessors have prohibited discharges of produced sand, oil-based drilling fluids, drilling fluids that cannot be discharged consistent with toxicity limitations, and cuttings derived from such drilling fluids. To a large extent, offshore operators have responded to those limitations by developing and using less toxic drilling fluids that may be discharged in compliance with the permits, but there continues to be a need for onshore disposal of drilling and production wastes generated offshore. Those wastes are generally not disposed of in municipal landfills, however, but at commercial facilities specializing in oil and gas waste, the largest of which is operated by U.S. Liquids in Bourg, Louisiana. Disposal capacity at those commercial facilities has historically increased to meet demands created by EPA's OCS permits and the Agency is unaware of any reason such market driven capacity increases would not continue to occur. If, however, sufficient capacity became unavailable, offshore oil and gas operators would presumably respond by foregoing operations requiring onshore disposal.

Although most direct costs associated with onshore disposal of offshore waste are privately borne (and passed on to consumers), indirect costs and the environmental impacts of the disposal may affect local communities. Such costs and impacts could be more effectively addressed through State regulation and local land use controls than by EPA's permit action. As pointed out above, denial of the permit might in some cases result in greater onshore costs and impacts and amending the draft permit to authorize pollutant discharges prohibited under prior permits and EPA effluent limitation guidelines is not a feasible alternative, given legal constraints imposed by the Clean Water Act.

The reissued permit includes several more stringent limitations than its predecessors. To avoid unreasonable degradation of the marine environment and for consistency with the Region's implementation strategy for whole effluent toxicity, the reissued permit contains more stringent produced water toxicity limitations based on sublethal effects. To ensure compliance with recently adopted technology-based guidelines, it likewise imposes new requirements on new offshore facilities that intake more than 2 million gallons per day of which at least 25% is used for cooling purposes. Information in the FEIS is consistent with imposition of those new requirements and they will reduce potentially adverse impacts to the marine environment.

Magnuson-Stevens Fisheries Conservation and Management Act. The Magnuson-Stevens Fisheries Conservation and Management Act requires that federal agencies proposing to authorize actions that may adversely affect essential fish habitat (EFH) consult with NMFS. The entire Gulf of Mexico has been designated EFH. EPA adopted the 2002 EFH analysis MMS prepared in connection with 2003–2007 Oil and Gas Lease Sales in the Central and Western Planning Areas of the Gulf of Mexico and found that reissuance of the permit would not adversely affect EFH. NMFS concurred with that determination by letter dated January 10, 2007. Subsequent analysis in MMS' 2007 FEIS reconfirms those views, concluding in section 4.2.2.1.11, that ''activities such as pipeline trenching and OCS discharge of drilling muds and produced water would cause negligible impacts and would not deleteriously affect fish resources or EFH.''

The permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited comments on NPDES general permit GMG290000 at 71 FR 76667 (December 21, 2006). Notice of the proposed permit modification was also published in the New Orleans Times Picayune and Houston Chronicle on December 22, 2006. The comment period closed on February 20, 2007.

EPA received comments from the Offshore Operators Committee (OOC), Gulf Restoration Network, MacDermid Offshore Solutions, the Department of Energy (DOE), Christy Mile, and Gilbert Cheramie.

EPA Region 6 has considered all comments received. In response to those comments the following changes were included in the final permit. Requirements to comply with new cooling water intake structure regulations were changed to allow expansion of the industry-wide study to include entrainment monitoring. Operators are only required to submit cooling water intake structure design information once per facility. Notification requirements have been added for operators of mobile offshore drilling units required to comply with cooling water intake structure conditions. An end-of-well sample is no longer required for sediment toxicity testing when using non-aqueous based drilling fluids. The toxicity testing frequency for sub-sea fluids has been decreased from once per batch to once per year. Toxicity testing is no longer required for miscellaneous discharges treated using hypochlorite. Minor corrections were made in the produced water whole effluent toxicity testing requirements. Other minor changes in wording were made to clarify EPA's intent regarding the permit's requirements.

Dated: May 31, 2007.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. E7–11035 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8323–3]

Final NPDES General Permit for Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Texas (TXG330000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of NPDES General Permit Reissuance.

SUMMARY: EPA Region 6 today issues a National Pollutant Discharge Elimination System (NPDES) general permit regulating discharges from oil and gas wells in the Coastal Subcategory in Texas and regulating produced water discharges from wells in the Stripper and Offshore Subcategories which discharge into coastal waters of Texas.

The general permit prohibits the discharge of drilling fluid, drill cuttings, produced sand and well treatment, completion and workover fluids. Produced water discharges are prohibited, except from wells in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas. Monitoring for oil and grease and total dissolved solids is required for those produced water discharges. Discharge of dewatering effluent is prohibited, except from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997. The discharge of deck drainage, formation test fluids, sanitary waste, domestic waste and miscellaneous discharges is authorized.

A copy of the Region's final permit may be obtained from the EPA Region 6 Internet site: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Water Quality Protection Division, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7191, or via e-mail at: *smith.diane@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated entities.* EPA intends to use the reissued permit to regulate oil and gas extraction facilities located in the coastal waters of Texas, *e.g.*, oil and gas extraction platforms, but other types of facilities may also be subject to the permit. The permit authorizes some produced water discharges from Stripper Subcategory wells to coastal waters. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

The permit contains limitations conforming to EPA's Oil and Gas extraction, Coastal and Stripper Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 as well as requirements assuring that regulated discharges will comply with Texas State Water Quality Standards. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited comments on NPDES general permit TXG330000 at 71 FR 78204 (December 28, 2006). Notice of the proposed permit modification was also published in the Houston Chronicle on December 30, 2006 and the Corpus Christi Caller on January 5, 2007. The comment period closed on February 20, 2007. No comments were received on the proposed permit; therefore, no changes have been made in the final permit.

Dated: May 31, 2007.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. E7–11034 Filed 6–6–07; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 14, 2007, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- May 10, 2007 (Open and Closed).

B. New Business

1. *Regulations*
   - Capital Adequacy-Basel Accord—12 CFR Part 615—Advance Notice of Proposed Rulemaking.
2. *Reports*
   - OMS Quarterly Report.
   - FCSBA Quarterly Report.

Closed Sesson

- OSMO Quarterly Report.

Dated: June 5, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 07–2867 Filed 6–5–07; 3:53 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, an agency 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. The FDIC is contemplating initiating a two-year pilot program relating to small-dollar lending by insured depository institutions. Institutions meeting threshold eligibility requirements may volunteer to participate in the pilot, and the collection at this first stage would provide certain basic information as to the institution and its current or proposed small-dollar lending program. Participating institutions would thereafter provide certain information to the FDIC about their ongoing experience with their small-dollar lending program. The collection at this second stage would provide information on the most effective and replicable business practices to incorporate affordable small-dollar loans into effective business models to reach out to underserved communities and to

develop new customers for mainstream banking services, whether consumers who take advantage of such loans migrate into other banking products, and whether a savings component provides a steady increase in savings.

DATES: Comments must be submitted on or before August 6, 2007.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.*
- *Mail:* Leneta Gregorie, Legal Division, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* 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. (EST).

All comments should refer to ''Pilot Study of Small Dollar Loan Programs.'' Copies of comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Interested members of the public may obtain additional information about the collection, including a copy of the proposed collection and related instructions, without charge, by contacting Leneta Gregorie at the address identified above or by calling 202–898–3719.

SUPPLEMENTARY INFORMATION:

Proposal To Seek OMB Approval for the Following New Collection of Information

Title: Pilot Study of Small-Dollar Loan Programs.

OMB Number: New collection (3064–xxxx).

Frequency of Response: Pilot study application—one-time; Program evaluation reports—quarterly for two years.

Affected Public: Insured depository institutions that apply for and are accepted to participate in the pilot study.

Estimated Number of Respondents: Pilot study application—40; Program evaluation reports—20 to 40.

Estimated time per response: Pilot study application: Estimated average of 2 hours per respondent. Program evaluation reports: Estimated average of 5 hours per respondent per quarter during study.

Estimated Total Annual Burden:

Pilot study application: 40 respondents times 2 hours per respondent = 80 hours.

Program evaluation reports: 20 to 40 respondents times 5 hours per respondent times 4 (quarterly) collections = 400 to 800 aggregate hours.

Total burden = 80 + 800 = 880 hours.

General Description of Collection

In recognition of the huge demand for small-dollar, unsecured loans, as evidenced by the proliferation around the country of payday lenders, the FDIC, on December 4, 2006, proposed and sought comment on guidelines for such products (*http://www.fdic.gov/news/news/press/2006/pr06107.html*). The proposed guidelines addressed several aspects of product development, including affordability and streamlined underwriting. Based on the comments received, the FDIC is in the process of revising the guidelines for issuance in final form. The FDIC's goal in issuing the guidance is to encourage state nonmember banks to offer small-dollar, unsecured loans in a safe and sound manner that is also cost-effective and responsive to customer needs.

To further encourage the development by insured depository institutions of small-dollar credit programs, the FDIC is contemplating conducting a pilot study to identify and evaluate the key components of small-dollar loan programs, with the goal of identifying the most effective and replicable business plans for bankers, determining the degree to which customers of such programs migrate into other banking products, assessing the extent to which a savings component results in increased savings, and identifying program features which can be deemed ''best practices.'' Programs selected for the pilot may be either already in existence at an insured institution or developed specifically for participation in the study. The pilot study will require collection of data from applicant institutions to determine eligibility as well as quarterly collection (for two years) of data from participating institutions, to the extent such data are not currently included in the Call Reports or other standard regulatory reports, to evaluate program success.

Pilot Study Application: Volunteers for the pilot program will be screened to ensure that they meet certain basic eligibility requirements. A volunteer will likely be asked to demonstrate, by certification or otherwise, that it meets the following threshold requirements: A composite ''1'' or ''2'' rating on its most recent Safety and Soundness examination and a Management rating of ''1'' or ''2''; satisfactory policies and procedures in all areas, including lending, audits, aggregate risk, internal controls, liquidity, interest rate risk, compliance, BSA/AML; a composite ''1'' or ''2'' rating on its most recent Compliance examination; at least a ''Satisfactory'' rating on its most recent Community Reinvestment Act (CRA) evaluation; the fact that it is not currently subject to a formal or informal enforcement action or the subject of an investigation or inquiry.

Each volunteer interested in participating in the study will also be asked to provide the following (or similar) information:

- Whether it already offers small-dollar loans and, if so, the terms of such loans;
- If it proposes to initiate a small-dollar loan program, the proposed structure of the program;
- The current or proposed size of the program;
- How it proposes to market the program;
- How it envisions the small-dollar loan application process;
- What it proposes as underwriting criteria; and
- Proposed interest rates and fees.

Key features of a preferred small-dollar lending program might include loan amounts of up to $1,000; amortization periods longer than a single pay cycle and up to 36 months for closed-end credit, or minimum payments which reduce principal (*i.e.*, do not result in negative amortization) for open-end credit; annual percentage rates (APR) below 36 percent; no prepayment penalties; origination and/or maintenance fees limited to the amount necessary to cover actual costs; and a savings component.

Descriptions provided by eligible volunteers will be reviewed by a FDIC selection panel. To provide more meaningful information about the pilot's success, the institutions selected to participate will likely consist of various sized institutions and in widely dispersed geographic locations.

Program evaluation reports: A volunteer must agree to the monitoring

and data collection aspects of the pilot program. For this purpose, the FDIC anticipates that the following (or similar) information will be collected from participating institutions on a quarterly basis for two years:

1. Information about the loans in the Program

a. The total number and total dollar amount of loans.

b. Average loan term and average dollar size of loans.

c. Average interest rates charged, average fees levied, and average calculations of APR (as required by the Truth-in-Lending Act).

d. Aggregate delinquency, charge off, and workout refinancing data.

2. Information about the business value of the Program

a. Profitability and/or break even data for the overall Program.

b. Profitability of the overall customer relationship (especially if the customer migrated into other products)

c. Information regarding whether customers of the Program migrated to other bank products.

3. Information about the benefit to consumers

a. The total number and total dollar amount of linked savings accounts opened as part of the Program.

b. Information as to duration and withdrawal rates of the linked savings accounts.

c. Information regarding whether customers of the Program continued to use payday loans or other high-cost debt products.

The preferred method for collecting these data is electronic submission through the existing FDIC*connect* data interface system to minimize burden on respondents, with participating institutions submitting the data within 40 calendar days of the end of each quarter. The study will conform to privacy rules and will not request any information that could be used to identify individual bank customers, such as name, address, or account number. All data from participating insured institutions will remain confidential. It is the intent of the FDIC to publish only general findings of the study.

Benefits to Institutions Participating in the Pilot

As indicated above, the study is being conducted on a volunteer basis. It is anticipated, however, that institutions participating in the study will realize some benefits. A state non-member bank that establishes a loan program that provides small, unsecured consumer loans that are consistent with the Affordable Small-Dollar Loan Guidelines would warrant favorable consideration by the FDIC under the CRA as an activity responsive to the credit needs of its community. It is anticipated that other institutions will also likely be entitled to similar favorable consideration after review by their primary federal regulator. Moreover, programs that transition low or moderate income borrowers from higher cost loans to lower cost loans are particularly responsive to community needs. Consequently, state non-member banks offering lower cost alternatives to such borrowers will also be viewed by the FDIC as particularly responsive in the CRA examination and similarly, other institutions upon review by their primary federal regulator.

Where small-dollar loan products are combined with a low-cost savings account, institutions may also qualify for favorable consideration for providing community development services. Institutions can potentially use the small-dollar loan pilot to tap into new markets by expanding relationships with individuals who currently may not be fully utilizing the mainstream financial system. An intangible benefit that may accrue to institutions participating in the small-dollar pilot is the community goodwill that will likely be created as a result of offering consumers credit products with significant savings over payday loan fees.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection 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 the information.

Dated at Washington, DC, this 1st day of June, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E7–11005 Filed 6–6–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011223–040.

Title: Transpacific Stabilization Agreement.

Parties: APL Co. PTE Ltd.; American President Lines, Ltd.; CMA–CGM S.A.; COSCO Container Lines Co., Ltd.; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would expand the geographic scope of the agreement to include the Indian Subcontinent.

Dated: June 4, 2007.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–11059 Filed 6–6–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

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 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 office 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 June 22, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Heys Edward McMath, III, Savannah, Georgia; to retain voting shares of First National Corporation, and thereby indirectly retain voting shares of First National Bank, both of Savannah, Georgia.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Wilson–Gardner Family Control Group, Jackson, Mississippi, which consists of Fred Gillaspy Wilson, individually and as trustee of the Gardner Trust, Jackson, Mississippi; Rufus K. Gardner, Winona, Mississippi, and Joseph E. Gardner, Austin, Texas, as trustees of the Gardner Trust; Alice King Harrison, Forrest City, Arkansas; John Frederick Wilson, Jackson, Mississippi; Margaret Gardner Wilson, Ridgeland, Mississippi; Margaret Wilson Ethridge, Madison, Mississippi; Ermis King Wilson, Sterlington, Louisiana; Edna Earl Douglas, Memphis, Tennessee; Alison Wilson Page, Sterlington, Louisiana; and Ermis M. Wilson, Sterlington, Louisiana; to retain control of Commerce Bancorp, Inc., and thereby indirectly retain voting shares of Bank of Commerce, both of Greenwood, Mississippi.

Board of Governors of the Federal Reserve System, June 4, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11009 Filed 6–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of ABN AMRO North America Holding Company, Chicago, Illinois, and thereby indirectly acquire voting shares of LaSalle Bank Corporation, Chicago, Illinois; LaSalle Bank Midwest National Assocation, Troy, Michigan; and LaSalle Bank National Association, Chicago, Illinois.

Board of Governors of the Federal Reserve System, June 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–10916 Filed 6–6–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Request for Ocular Irritancy Test Data From Human, Rabbit, and In Vitro Studies Using Standardized Testing Methods

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for submission of relevant data.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and NICEATM are collaborating with the European Centre for the Validation of Alternative Methods (ECVAM) to evaluate the validation status of *in vitro* test methods for assessing the ocular irritation potential of substances. On behalf of the ICCVAM, NICEATM requests data on substances tested for ocular irritancy in humans, rabbits, and/or in vitro. These data will be used to: (1) Review the state-of-the-science in regard to the availability of accurate and reliable *in vitro* test methods for assessing the range of potential ocular irritation activity, including whether ocular damage is reversible or not and (2) expand NICEATM's high-quality ocular toxicity database. *In vitro* test methods for which data are sought include, but are not limited to: (1) The Bovine Corneal Opacity and Permeability (BCOP) test, (2) the Isolated Rabbit Eye (IRE) test, (3) the Isolated Chicken Eye (ICE) test, and (4) the Hen's Egg Test—Chorioallantoic Membrane (HET–CAM).

DATES: Data should be received by July 23, 2007. Data received after this date will be considered as feasible.

ADDRESSES: Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov. Courier address:* NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709. Responses can be submitted electronically at the ICCVAM–NICEATM Web site: *http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm* or by e-mail, mail, or fax.

FOR FURTHER INFORMATION CONTACT: Other correspondence should be directed to Dr. William S. Stokes (919–541–2384 or *niceatm@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

In October 2003, the U.S. Environmental Protection Agency (EPA) submitted to ICCVAM a nomination with several activities related to reducing, replacing, and refining the use of rabbits in the current *in vivo* eye irritation test method (**Federal Register** Vol. 69, No. 57, pp 13859–13861, March 24, 2004). In response to this nomination, ICCVAM completed an evaluation of the validation status of the BCOP, ICE, IRE, and HET–CAM test methods for identifying severe (irreversible) ocular irritants/corrosives using the United Nations Globally

Harmonized System of Classification and Labeling of Chemicals (GHS), the EPA, and the European Union hazard classification systems. NICEATM and ICCVAM prepared a comprehensive background review document (BRD) on each of the four *in vitro* test methods. Each BRD included an analysis of test method performance (i.e., reliability and relevance) as compared to the *in vivo* rabbit eye reference test method, based on all available data. ICCVAM developed recommendations on the usefulness and limitations of these *in vitro* test methods for identifying ocular corrosives/severe irritants after considering the BRDs, comments received from the public and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM), and comments and recommendations received from an independent expert panel (**Federal Register** Vol. 70, No. 53, pp 13513–13514, March 21, 2005 and Vol. 70, No. 211, p 66451, November 2, 2005).

ICCVAM is now reviewing the validation status of these and other *in vitro* test methods for identifying nonsevere ocular irritants (i.e., those that induce reversible ocular damage) and non-irritants.

Request for Data

As part of the review process, NICEATM requests the submission of data from substances tested for ocular irritancy in humans, rabbits, and/or *in vitro*. Data received by July 23, 2007 will be compiled and added to the database maintained by NICEATM and utilized where appropriate in the evaluation of *in vitro* ocular irritation test methods. Data received after this date will also be considered and used where applicable for future evaluation activities. All information submitted in response to this notice will be made publicly available upon request to NICEATM.

When submitting substance and protocol information/test data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission for a substance should preferably include the following information, as appropriate:

- Common and trade name.
- Chemical Abstracts Service Registry Number (CASRN).
- Chemical and/or product class.
- Commercial source.
- *In vitro* test protocol used.
- Rabbit eye test protocol used.
- Human eye test protocol used.
- Individual animal/human or *in vitro* responses at each observation time (i.e., raw data).
- The extent to which the study complied with national/international Good Laboratory Practice (GLP) guidelines.
- Date and testing organization.

Additional information on the submission of data may be obtained at *http://iccvam.niehs.nih.gov/methods/ocutox/ivocutox.htm.*

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3, available at *http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. Additional information about ICCVAM and NICEATM is available on the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: May 25, 2007.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–10966 Filed 6–6–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institution for Occupational Safety and Health (NIOSH) Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board)

Correction: This notice was published in the **Federal Register** on May 22, 2007, Volume 72, Number 98, pages 28697–28698. The meeting was originally scheduled to be held at the Westin Westminster Hotel. The Committee will now convene at the Sheraton Denver West Hotel, 360 Union Boulevard, Lakewood, Colorado 80228, Phone 303.987.2000, Fax 303.969.0263.

Times and Dates:

9 a.m.–5 p.m., June 11, 2007.

8 a.m.–3 p.m., June 12, 2007.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513.533.6825, Fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 31, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E7–10987 Filed 6–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0466]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 9, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be

identified with the OMB control number ''0910–NEW'' and title, ''Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (OMB Control Number 0910–NEW)

Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(6))requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the statement is truthful and not misleading. The draft guidance document entitled ''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act'' is intended to describe the amount, type, and quality of evidence FDA recommends a dietary supplement manufacturer have to substantiate a claim under section 403(r)(6) of the act. This guidance does not discuss the types of claims that can be made concerning the effect of a dietary supplement on the structure or function of the body, nor does it discuss criteria to determine when a statement about a dietary supplement is a disease claim.

In the **Federal Register** of November 9, 2004 (69 FR 64962), FDA published a Notice of Availability of the draft guidance document with a 60-day notice requesting public comment on the collection of information provisions. We received a number of letters containing one or more comments, several of which responded to our request for comments on the proposed information collection.

(Comment 1) Several comments challenged the accuracy of the estimated number of hours it would take to prepare the information needed to substantiate a claim when that claim is widely known and accepted. We estimated it would take 1 hour because supporting material for such claims should be readily available in textbooks and reference books. Two comments asserted that the burden estimate was too low but did not propose an alternative estimate or provide information to support a higher estimate. One comment did provide such information. Based on a review of how long it took to assemble the supporting information for approximately 50 claims involving products containing from 1 to 3 herbs, the comment stated that, for these claims, it took 18 to 24 hours to assemble the supporting information and an additional 2 to 4 hours to have a qualified expert review the information. In addition, the comment stated that, for products with more complicated formulations, it took approximately 40 hours plus the expert review time to assemble the supporting information.

(Response) FDA has considered the information provided in the comment. Based on this information, we have increased our estimate of the burden of preparing the information needed to substantiate a claim on a dietary supplement when the claim is widely known and accepted from 1 hour to 44 hours.

(Comment 2) One comment disagreed with our statement that there are no capital, operating, or maintenance costs associated with this collection of information. The comment stated that they use staff support, copying and scanning equipment, and electronic and hard copy file storage when preparing substantiation files. The comment also stated that there is a capital cost to maintain a botanical library collection of historical references and current scientific journals. Finally, it stated there is an on-going cost associated with reviewing scientific literature for new scientific developments.

(Response) FDA believes that it is accurate to state that there are no capital, operating, or maintenance costs associated with this collection of information. Collecting the required information may generate some capital costs associated with using electronic equipment such as scanners and computers and using hard-copy file cabinets. However, we estimate that this cost is negligible because most firms probably already have this equipment, and the incremental cost of using this equipment for the purposes described would be very small. The few firms that do not own the necessary equipment could pay for access to scanners and computers for a minimal charge. Operating costs for this equipment would consist of the incremental cost of electricity for this equipment during the time it was used for the purposes described. Maintenance costs for this equipment would consist of the overall maintenance costs pro rated for the time the equipment was used for the purposes described. Both operating and maintenance costs would be minimal. Personnel costs associated with using this equipment have already been included as part of the burden hours that we presented in table 1 of this document. Further, we do not agree with the comment's assertion that a respondent would need to maintain a botanical library collection of historical references and current scientific journals. It is not necessary for a respondent to maintain a Botanical Library in order to access the requested information. In addition, the guidance does not recommend the firms continually update supporting material. We do not agree that the on-going cost of reviewing scientific literature for new scientific developments is a cost of this information collection. Therefore, FDA has not changed its assessment that there are no capital, operating, or maintenance costs associated with this collection of information.

FDA estimates the burden for this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL ONE-TIME REPORTING BURDEN[1]

Claim type	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Widely known, established	667	1	667	44	29,348
Pre-existing, not widely established	667	1	667	120	80,040
Novel	667	1	667	120	80,040

TABLE 1.—ESTIMATED ANNUAL ONE-TIME REPORTING BURDEN[1]—Continued

Claim type	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					189,428

[1] There are no capital costs associated with this collection of information.

Dietary supplement manufacturers will only need to collect information to substantiate their product's nutritional deficiency, structure/function, or general well-being claim if they chose to place a claim on their product's label. Gathering evidence on their product's claim is a one time burden; they collect the necessary substantiating information for their product as required by section 403(r)(6) of the act.

The standard discussed in the guidance for substantiation of a claim on the labeling of a dietary supplement is consistent with standards set by the Federal Trade Commission for dietary supplements and other health related products that the claim be based on competent and reliable scientific evidence. This evidence standard is broad enough that some dietary supplement manufacturers may only need to collect peer-reviewed scientific journal articles to substantiate their claims; other dietary supplement manufacturers whose products have properties that are less well documented may have to conduct studies to build a body of evidence to support their claims. It is unlikely that a dietary supplement manufacturer will attempt to make a claim when the cost of obtaining the evidence to support the claim outweighs the benefits of having the claim on the product's label. It is likely that manufacturers will seek substantiation for their claims in the scientific literature.

The time it takes to assemble the necessary scientific information to support their claims depends on the product and the claimed benefits. If the product is one of several on the market making a particular claim for which there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

FDA assumes that it will take 44 hours to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. We increased this estimated burden from 1 hour per claim to 44 hours per claim based on information received from industry, as noted in our response to comment 1. FDA believes it will take closer to 120 hours to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established. These are claims that may be based on emerging science, where conducting literature searches and understanding the literature takes time. It is also possible that references for claims made for some dietary ingredients or dietary supplements may primarily be found in foreign journals and in foreign languages or in the older, classical literature where it is not available on computerized literature databases or in the major scientific reference databases, such as the National Library of Medicine's literature database, all of which increases the time of obtaining substantiation.

In the final rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (structure/function final rule (65 FR 1000, January 6, 2000)), FDA estimated that there were 29,000 dietary supplement products marketed in the United States (65 FR 1000 at 1045). Assuming that the flow of new products is 10 percent per year, then 2,900 new dietary supplement products will come on the market each year. The structure/function final rule estimated that about 69 percent of dietary supplements have a claim on their labels, most probably a structure/function claim (65 FR 1000 at 1046). Therefore, we assume that supplement manufacturers will need time to assemble the evidence to substantiate each of the 2,001 claims (2,900 x 69 percent) made each year. If we assume that the 2,001 claims are equally likely to be pre-existing widely established claims, novel claims, or pre-existing claims that are not widely established, then we can expect 667 of each of these types of claims to be substantiated per year. Table 1 of this document shows that the annual burden hours associated with assembling evidence for claims is 189,428 (the sum of 667 x 44 hours, 667 x 120 hours, and 667 x 120 hours).

There are no capital costs or operating and maintenance costs associated with this information collection.

Dated: May 31, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–10911 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0201]

Determination That CEFOTAN (Cefotetan Disodium For Injection), Equivalent 1 Gram Base/Vial and 2 Grams Base/Vial, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that CEFOTAN (cefotetan disodium for injection), equivalent 1 gram (g) base/vial and 2 g base/vial, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cefotetan disodium for injection, equivalent 1 g base/vial and 2 g base/vial, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nam Kim, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852, 301–443–5537.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,''

which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, is the subject of approved NDA 50–588 held by AstraZeneca Pharmaceuticals LP (AstraZeneca). CEFOTAN (cefotetan disodium for injection) is indicated for the therapeutic treatment of urinary tract infections, lower respiratory tract infections, skin and skin structure infections, gynecologic infections, intra-abdominal infections, and bone and joint infections when caused by susceptible strains of the designated organisms described in the labeling. FDA approved the NDA for CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, on December 27, 1985. Beginning with the October 2006 update, FDA has listed CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, in the ''Discontinued Drug Product List'' of the Orange Book because AstraZeneca notified FDA that the product was no longer marketed.

B. Braun Medical Inc., submitted a citizen petition dated May 10, 2006 (Docket No. 2006P–0201/CP1), under 21 CFR 10.30, requesting that the agency determine whether CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial (NDA 50–588) was withdrawn from sale for reasons of safety or effectiveness. After considering the citizen petition (including comments submitted) and reviewing agency records, FDA has determined that CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, was withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate that CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, was withdrawn for reasons of safety or effectiveness.

For the reasons outlined in this document, FDA determines that CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to CEFOTAN (cefotetan disodium for injection), equivalent 1 g base/vial and 2 g base/vial, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: May 31, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–10959 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2007M–0109, 2007M–0006, 2007M–0007, 2007M–0032, 2007M–0049, 2007M–0038, 2007M–0058, 2007M–0086, 2007M–0107, 2007M–0084, 2007M–0108]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4010, ext. 152.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and

Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2007, through March 31, 2007. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2007, THROUGH MARCH 31, 2007

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P040051/2007M–0109	Stelkast Co.	STELKAST SURPASS ACETABULAR SYSTEM	May 12, 2006
P050037/2007M–0006	Bioform Medical, Inc.	RADIESSE 1.3 CC AND 0.3 CC	December 22, 2006
P050052/2007M–0007	Bioform Medical, Inc.	RADIESSE 1.3 CC AND 0.3 CC	December 22, 2006
P050018/2007M–0032	Angioscore, Inc.	ANGIOSCULPT SCORING BALLOON CATHETER	January 8, 2007
P060001/2007M–0049	EV3, Inc.	PROTEGE GPS AND PROTEGE RX CAROTID STENT SYSTEMS	January 24, 2007
H060004/2007M–0038	Fujirebio Diagnostics, Inc.	FUJIREBIO MESOMARK ASSAY	January 24, 2007
P050007(S1)/2007M–0058	Abbott Vascular Devices	STARCLOSE VASCULAR CLOSURE SYSTEM	February 2, 2007
P050013/2007M–0086	Tissue Seal, LLC.	HISTOACRYL & HISTOACRYL BLUE TOPICAL SKIN ADHESIVE	February 16, 2007
P980022(S15)/2007M–0107	Medtronic Minimed	GUARDIAN RT & PARADIGM REAL–TIME CONTIUOUS GLUCOSE MONITORING SYSTEMS	March 8, 2007
P050053/2007M–0084	Medtronic Sofamor Danek USA, Inc.	INFUSE BONE GRAFT	March 9, 2007
P060019/2007M–0108	Irvine Biomedical, Inc.	IBI THERAPY COOL PATH ABLATION CATHETER & IBI–1500T9 RF ABLATION GENERATOR	March 16, 2007

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: May 24, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–11002 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0208]

Science Board to the Food and Drug Administration; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Science Board to the Food and Drug Administration (Science Board). This meeting was originally announced in the **Federal Register** of May 21, 2007 (72 FR 28499). The amendment is being made to reflect a change in the *Agenda* and *Procedure* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Carlos Peña, Office of the Commissioner, Food and Drug Administration (HF–33), 5600 Fishers Lane, Rockville, Maryland, 20857, 301–827–6687, *carlos.peña@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2007, FDA announced that a meeting of the Science Board would be held on June 14, 2007. On page 28499, in the second and third columns, the *Agenda* and *Procedure* portions of document are amended to read as follows:

Agenda: The Science Board will hear about and discuss the agency's bioinformatics initiative and fellowship program. The Science Board will hear about and review the scientific validity of the agency's ''Interim Melamine and Analogues Safety/Risk Assessment'' (*http://www.cfsan.fda.gov/~lrd/fr070530.html*, Docket No. 2007N–0208). The Science Board will then continue its discussion of the review of both the agency's science programs and the National Antimicrobial Resistance Monitoring System (NARMS) Program, from the March 31, 2006, Science Board meeting. Discussions will first include a

subcommittee update to the Science Board on the progress of the review of the agency's science programs. The Science Board will then hear about and discuss the subcommittee review of the NARMS Program including the public meeting regarding the NARMS Program on April 10, 2007, and subsequent deliberations.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. We are extending the written submission deadline based upon the amended **Federal Register** notice. Written submissions may be made to the contact person on or before June 9, 2007. Two oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:45 p.m., and 3:15 p.m. and 4:15 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 9, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing sessions. The contact person will notify interested persons regarding their request to speak by June 9, 2007.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.2) and 21 CFR part 14, relating to the advisory committees.

Dated: June 1, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. 07–2829 Filed 6–4–07; 11:10 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007E–0010]

Determination of Regulatory Review Period for Purposes of Patent Extension; CHANTIX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CHANTIX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CHANTIX (varenicline tartrate). CHANTIX is indicated as an aid to smoking cessation treatment. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CHANTIX (U.S. Patent No. 6,410,550) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 26, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CHANTIX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CHANTIX is 2,401 days. Of this time, 2,219 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 15, 1999. The applicant claims September 15, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 15, 1999, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: November 10, 2005. FDA has verified the applicant's claim that the new drug application (NDA) for CHANTIX (NDA 21–928) was initially submitted on November 10, 2005.

3. *The date the application was approved*: May 10, 2006. FDA has verified the applicant's claim that NDA 21–928 was approved on May 10, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 545 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 6, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period by December 4, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 2, 2007.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7–10915 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998D–1232] (formerly 98D–1232)

Guidance for Industry and Food and Drug Administration Staff; Assayed and Unassayed Quality Control Material; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance for industry and FDA staff entitled ''Assayed and Unassayed Quality Control Material.'' The guidance describes FDA's current practices concerning assayed an unassayed quality control material, including information to include in a 510(k) for assayed quality control material, as well as labeling recommendations.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Assayed and Unassayed Quality Control Material'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Carol Benson, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0396.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document provides recommendations to manufacturers regarding preparation of premarket notifications and labeling for quality control (QC) material. These materials are intended to monitor reliability of a test system and help minimize reporting of incorrect test results. They are often the best source of ongoing feedback that a laboratory has to monitor whether results reported to physicians are sufficiently reliable. QC materials may be marketed together with a specific test system, or alternatively, for more general use.

Both assayed and unassayed QC materials are discussed in the guidance document. Both types of QC materials are subject to FDA's Quality System Regulation (part 820 (21 CFR part 820)) and labeling regulation (§ 809.10 (21 CFR 809.10)). However, most types of unassayed QC materials are exempt from premarket notification. (See ''Classification and Identification of QC Material'' of the guidance document for exceptions.) Although premarket notifications are number required for unassayed QC materials, some aspects of this guidance document concerning labeling, stability, and matrix effects are still relevant for these materials.

The draft version of this guidance was issued February 3, 1999. FDA received one set of comments on the draft guidance document during the comment period. The document reflects FDA's consideration of the comments and has also been updated to provide clarification as needed.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on assayed and unassayed quality control material. 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 guidance may do so by using the Internet. To receive ''Assayed and Unassayed Quality Control Material; Availability,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (2231) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.htm*l. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information 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 610 have been approved under OMB control number 0910–0206; the collections of information in 21 CFR part 807 have been approved under OMB control number 0910–0120; the collections of information in § 809.10

have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

V. Comments

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

Dated: May 31, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–10996 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0212]

Draft Guidance for Industry on Malaria: Developing Drug and Nonvaccine Biological Products for Treatment and Prophylaxis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Malaria: Developing Drug and Nonvaccine Biological Products for Treatment and Prophylaxis.'' This draft guidance addresses issues regarding the development of therapy for prophylaxis and treatment of malaria. Specific topics include recommendations for preclinical development, clinical trial study design, the use of microbiological testing during clinical trials, and statistical considerations.

DATES: Although you can comment on any guidance at any time (see 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 written or electronic comments on the draft guidance by September 5, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Leonard Sacks, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6178, Silver Spring, MD 20993–0002, 301–796–1600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Malaria: Developing Drug and Nonvaccine Biological Products for Treatment and Prophylaxis.'' Malaria is a major global problem with the greatest burden of disease and mortality occurring in developing countries. Although cases of malaria are uncommon in the United States, antimalarial drugs have significant public health importance in the United States: Antimalarial prophylaxis is used extensively by U.S. travelers and by U.S. citizens residing in or deployed to endemic areas (e.g., military personnel).

This guidance addresses the development of therapy for the prophylaxis and treatment of malaria. Overall aspects of a developmental program for antimalarial therapy are discussed. Specific topics include recommendations for preclinical development, clinical trial study design, the use of microbiological testing during clinical trials, and statistical considerations.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on developing drug and nonvaccine biological products for the treatment and prophylaxis of malaria. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/ohrms/dockets/default.htm* or *http://www.fda.gov/cder/guidance/index.htm*.

Dated: May 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11001 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Food Quality Indicator Device

AGENCY: Food and Drug Administration, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the Food and Drug Administration, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the invention embodied in U.S. Patent 7,014,816, issued March 21, 2006, entitled ''Food Quality Indicator Device'' [E–093–1997/0–US–03] and foreign counterparts; to Litmus, LLC, having a place of business in Little Rock, AR. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the manufacture, use, distribution and sale of the Food Quality Indicator Device as claimed in the licensed patent rights.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before August 6, 2007 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments,

and other materials relating to the contemplated exclusive license should be directed to: Adaku Nwachukwu, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; E-mail: *madua@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology relates to an effective way to monitor food quality and freshness in real time. The major factor for food spoilage is the release of volatile bases due to the action of enzymes contained within the food or produced by microorganisms, such as bacteria, yeasts and molds growing in the food. The rate of release of such bases depends on food's storage history. In this technology, a reactive dye locked in a water-repellent material reacts with the bases released during food decomposition, and changes color. Thus a rapid and informed decision can be made about quality of food and its shelf life under the storage conditions used. Since the detection is based on biological processes that are the root cause for food spoilage, these indicators are much more reliable.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 21, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–10963 Filed 6–6–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substances 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 (SAMSHA) 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 SAMSHA Reports Clearance Officer on (240) 276–1243.

Project: Community Mental Health Services Block Grant Application Guidance and Instruction, FY 2008–2010 (OMB No. 0930–0168)—Revisions

Sections 1911 through 1920 of the Public Health Service Act (42 U.S.C. 300x through 300x–9) provide for annual allotments to assist States to establish or expand an organized, community-based system of care for adults with serious mental illnesses and children with serious emotional disturbances. Under these provision of the law, States may receive allotments only after an application is submitted and approved by the Secretary of the Department of Health and Human Services.

For the FY 2008–2010 Community Mental Health Services Block Grant application cycle, SAMSHA will provide States guidance and instructions to guide development of comprehensive State applications/plans and implementation reports. Proposed revisions to the guidance include:

(1) The integration of mental health transformation as a guiding principle in the development of State mental health plans. State plans for FY 2008–2010 will describe State mental health transformation efforts and activities within the context of the five (5) legislative criteria, identify mental health transformation activities funded by the MHBG and other State funding sources, identify activities of the State mental health planning council that contribute to and support State transformation efforts, include one State transformation performance indicator in the plan, and include a description of the services provided to older adults under criterion 4 of the State's plan.

(2) The introduction of the Web Block Grant Application System (WebBGAS). WebBGAS enables States to submit applications/plans, and implementation reports electronically thus reducing the burden of paperwork required for submission, revision, and reporting purposes. In FY 2008, all States and Territories will be encouraged to submit State plans using WebBGAS. Other advantages to using WebBGAS include:

- Eliminating redundancy in data entry by pre-populating the States' previous year data in the current year's plans and implementation reports.
- Standardizing Mental Health Block Grant data for reporting and quantitative analysis.
- Allowing the States' mental health planning councils to have access to state plans and implementation reports throughout the FY as a means to enable councils to meet their Federal mandate of reviewing the plans and providing recommendations to the State.
- Adhering to the Federal Government's e-governments and e-grants initiatives, where applicable.

(3) A requirement for States to report nine CMHS National Outcome Measures (NOMS) for mental health. All nine measures are derived from tables in the Uniform Reporting System (URS) which was developed in collaboration with the States. Four (4) of the nine measures were established, in concert with OMB PART, to support the long-term goals of the Mental Health Block Grant program and SAMSHA's Government Results and Performance Act (GPRA) measures. The nine CMHS measures are:

- Increased access to services
- Reduced utilization of psychiatric inpatient beds for 30 and 180 days
- Number of evidenced-based practices and number of persons served in these programs
- Client perception of care
- Increased/retained employment or returned to/stayed in school
- Decreased criminal justice involvement
- Increased stability in housing
- Increased social supports and social connectedness, and
- Improved level of functioning.

Two of the NOMS, Increased Social Supports and Social Connectedness, and Improved Functioning, are currently under development at SAMSHA. States that are unable to report data on these or other indicators will be required to describe their current reporting capacity and efforts underway to make collection of the data possible.

(4) Revisions to tables in the Uniform Reporting System (URS). Since FY 2001, States have reported annual data on the public mental health system to the MHBG Program through 21 tables in the URS. For the past three years, CMHS worked collaboratively with States, using the Data Infrastructure Grant (DIG) process, to refine the data and make

reporting more meaningful to both States and CMHS. This effort resulted in a list of revisions to the basic and development tables in the FY 2005–2007 MHBG guidance. The revisions to the URS tables are described below:

REVISIONS TO TABLES IN THE UNIFORM REPORTING SYSTEM

Table description			
Table No.	Table name	Change	Proposed change
Table 1	Profile of State Population by Diagnosis	No Change	
Table 2	Total Unduplicated Served by Age, Gender & Race.	Minor	Combine Age 0–3 with Age 4–12.
Table 3	Total Served by Setting, by Age & Gender	No Change	
Table 4	Employment	Minor	Add Optional Table 4a. Reporting of Employment Status by 5 Diagnostic Groupings.
Table 5	Medicaid Status	No Change	
Table 6	Profile of Client Flow and Turnover	Minor	Add Column for Length of Stay for clients in facility more than 1 year.
Table 7	State MH Expenditures and Revenues	No Change	
Table 8	Profile of Community MHBG Expenditures	No Change	
Table 9	Public Mental Health Service System Inventory List (Deleted in 2005).	Major	New table added, ''Social Connectedness and Improved Functioning'' for SAMHSA's newest NOMS.
Table 10	Profile of Agencies receiving MHBG Funds	No Change	
Table 11	Consumer Evaluation of Care*	Minor	Add revisions to table and questions to clarify the survey instrument and methodology used to collect data for this domain if the recommended survey was not used.
Table 12	State Mental Health Agency Profile	No Change	
Table 13	Untreated Prevalence of Mental Illness	No Change	Continue as developmental until refined by DIG Workgroup.
Table 14	Adults with SMI & SED served by Age, gender, Race, & Ethnicity.	Minor	Combine Age 0–3 with Age 4–12.
Table 15	Living Situation Profile	No Change	
Table 16	EBPs	Minor	Add two questions at the end of each EBP: (1) Did the State use the SAMHSA Toolkit to guide implementation? (2) Has staff been specifically trained to implement the EBP?
Table 17	EBPs	Minor	Add two questions at the end of each EBP: (1) Did the State use the SAMHSA Toolkit to guide implementation? (2) Has staff been specifically trained to implement the EBP?
Table 18	Use of New Generation Atypical Antipsychotics	No Change	
Table 19	Outcomes: Criminal Justice & School Attendance	Minor	Add new questions for two CMHS NOMS: Arrests, and School Attendance.
Table 20	30 and 180 day state hospital readmissions	Minor	Combine Age 0–3 with Age 4–12.
Table 21	30 and 180 day readmission to any psych bed	Minor	Combine Age 0–3 with Age 4–12.

The future of the SAMHSA/CMHS State mental data reporting program continues to evolve with a related plan to implement a State Client level Initiative project with a few States to test the feasibility of implementing client level reporting in the States. Activities of this pilot in the next three years will include: (1) Identifying and documenting the States' most promising approaches to the collection of client-level data; (2) developing recommendations for expanding client-level data collection systems to incorporate the NOMs; and (3) pilot testing the most promising approaches with other interested States to determine their feasibility. SAMHSA expects that the results of this effort will improve the ability of States to report unduplicated client-level outcomes comparing Time 2 to Time 1. These data are expected to support the CMHS Block Grant in future PART reviews.

The following table summarizes the annual burden for the revised application.

Application	Number of respondents	Responses/ respondent	Burden response (hrs)	Total burden hours
Plan:				
1 year	44	1	180	7,920
2 year	6	1	150	900
3 year	9	1	110	990
Implementation Report	59	1	75	4,425
URS Tables	59	1	40	2,360
Total	59			16,595

Written comments and recommendations concerning the proposed information collection should be sent by July 9, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 1, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. 07–2851 Filed 6–6–07; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710/800–882–7272, (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180 (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS

66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Meriter Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225. (Formerly: General Medical Laboratories)

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010. (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521. (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E7–10974 Filed 6–6–07; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP).

OMB Number: 1660–0086.

Abstract: The MPPP is a mechanism used by lending institutions mortgage servicing companies, and others servicing mortgage loan portfolios to bring the mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973, as amended. Implementation of various requirements of the MPPP should result in mortgagors, following receipt of notification of the need for flood insurance, showing evidence of such a policy or purchasing the necessary insurance through their local insurance agent or appropriate Write Your Own (WYO) Company. It is intended that NFIP policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notification

required by the Program. The requirements of the MPPP are contained in 44 CFR 62.23(1)(1).

Affected Public: Individuals and households; businesses or other for-profit; not-for-profit institutions; farms; Federal agencies or employees; and State, local or tribal governments.

Number of Respondents: 6,273.

Estimated Time per Respondent: WYO—0.5 minutes; Lender/Services—0.5 minutes; WYO Company Policy—0.25 hours; New WYO Entrant—750 hours.

Estimated Total Annual Burden Hours: 2,386.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: May 25, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–10941 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1705–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1705–DR), dated May 25, 2007, and related determinations.

Effective Date: May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 25, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, flooding, and tornadoes during the period of May 5–7, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Cass, Fremont, Harrison, Ida, Mills, Montgomery, Page, Pottawattamie, Shelby, Taylor, and Union Counties for Individual Assistance.

Audubon, Cass, Clark, Crawford, Decatur, Fremont, Harrison, Ida, Mills, Monona, Montgomery, Page, Pottawattamie, Ringgold, Sac, Shelby, Taylor, and Union Counties for Public Assistance, including direct Federal assistance, if warranted.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10944 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

DATES: *Effective Date:* May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2007:

Clay, Cloud, Leavenworth, Lyon, Reno, Rice, Saline, and Shawnee Counties for Individual Assistance.

Comanche County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services

Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10933 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

EFFECTIVE DATE: May 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2007:

Comanche, Dickinson, Ellsworth, Jackson, Lincoln, Osage, Pottawatomie, and Wabaunsee Counties for Public Assistance.

Ottawa County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10940 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

DATES: *Effective Date:* May 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 18, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10952 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1699–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1699–DR), dated May 6, 2007, and related determinations.

DATES: *Effective Date:* May 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2007:

Barton, Osborne, Ottawa, and Phillips for Individual Assistance.

Barton County for Public Assistance.

Edwards, Pratt, and Stafford Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10955 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1703–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1703–DR), dated May 25, 2007, and related determinations.

DATES: *Effective Date:* May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 25, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, flooding, mudslides, and rockslides during the period of April 14–15, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jesse Munoz, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Carter, Floyd, Johnson, Knott, Lawrence, Leslie, Martin, Perry, and Pike Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10947 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1693–DR]

Maine; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1693–DR), dated April 25, 2007, and related determinations.

EFFECTIVE DATE: May 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 25, 2007:

Knox, Lincoln, Oxford, and Sagadahoc Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10934 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1693–DR]

Maine; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1693–DR), dated April 25, 2007, and related determinations.

DATES: *Effective Date:* May 16, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 25, 2007:

Washington County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations;

97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10954 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1701–DR]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–1701–DR), dated May 16, 2007, and related determinations.

EFFECTIVE DATE: May 16, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 16, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from severe storms and inland and coastal flooding during the period of April 15–25, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared major disaster:

Barnstable, Berkshire, Dukes, Essex, Franklin, Hampden, Hampshire, and Plymouth Counties for Public Assistance.

All counties within the Commonwealth of Massachusetts are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10936 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1694–DR]

New Jersey; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1694–DR), dated April 26, 2007, and related determinations.

EFFECTIVE DATE: May 16, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 2007:

Atlantic and Warren Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10937 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1704–DR]

Rhode Island; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–1704–DR), dated May 25, 2007, and related determinations.

EFFECTIVE DATE: May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 25, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Rhode Island resulting from severe storms and inland and coastal flooding during the period of April 15–16, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Rhode Island to have been affected adversely by this declared major disaster:

Newport County for Public Assistance.

All counties within the State of Rhode Island are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10942 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1702–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1702–DR), dated May 22, 2007, and related determinations.

EFFECTIVE DATE: May 22, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 22, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms, tornadoes, and flooding beginning on May 4, 2007, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justin A. Dombrowski, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Beadle, Brown, Clark, Davison, Hanson, Hutchinson, Miner, Sanborn, Spink, and Yankton Counties for Individual Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10935 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1702–DR]

South Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1702–DR), dated May 22, 2007, and related determinations.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of South Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 22, 2007:

Marshall County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10958 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1702–DR]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1702–DR), dated May 22, 2007, and related determinations.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include the Public Assistance program in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 22, 2007:

The counties of Aurora, Beadle, Bon Homme, Brown, Brule, Buffalo, Clark, Day, Hanson, Hutchinson, Jackson, Jerauld, Kingsbury, Lake, Marshall, McCook, Miner, Roberts, Sanborn, Spink, Tripp, and Yankton and those portions of the Pine Ridge Indian Reservation, Crow Creek Indian Reservation, and the Sisseton Wahpeton Indian Oyate that lie within the designated counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10967 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1697–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1697–DR), dated May 1, 2007, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 1, 2007:

Atascosa County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–10957 Filed 6–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

National Historic Oregon Trail Interpretive Center Advisory Board; Notice of Reestablishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reestablishment of the National Historic Oregon Trail Interpretive Center Advisory Board.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has reestablished the Bureau of Land Management's National Historic Oregon Trail interpretive Center Advisory Board. The purpose of the Advisory Board will be to advise the Bureau of Land Management's Vale District Manager regarding policies, programs, and long-range planning for the management use, and further development of the Interpretive Center; establish a framework for enhanced partnership and participation between the Bureau and the Oregon Trail Preservation Trust; ensure a financially secure, world-class historical and educational facility, operated through a partnership between the Federal Government and the community. This cooperative relationship enriches and maximizes visitor experiences in the region, and improves the coordination of advice and recommendations from the public served.

FOR FURTHER INFORMATION CONTACT: Douglas Herrema, National Landscape Conservation System (100), Bureau of Land Management, 1620 L Street, NW., Mail Stop 301, Washington, DC 20036, Telephone (202) 452–7787.

Certification Statement

I hereby certify that the reestablishment of the National Historic Oregon Trail Interpretive Center Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands,

resources, and facilities administered by the Bureau of Land Management.

Dated: May 29, 2007.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 07–2821 Filed 6–6–07; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
111394	Smithsonian's National Zoo	71 FR 4373, January 26, 2006	May 1, 2007.
146078	New York State Museum	72 FR 11375, March 13, 2007	May 11, 2007.
724540	Archie Carr Center for Sea Turtle Research, University of Florida.	72 FR 17929; April 10, 2007	May 11, 2007.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
118442	Lance Barrett-Leonard, North Gulf Oceanic Society, Alaska.	72 FR 13816; March 23, 2007	May 11, 2007.
147327	Donald M. Beam	72 FR 13816; March 23, 2007	April 30, 2007.

Dated: May 18, 2007.

Amy Brisendine,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–11040 Filed 6–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 9, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Hawthorn Corporation, Grayslake, Illinois, PRT–058670, 058734, 058735, 058738, 058739, 068240, 068353, 068239, 068350, 154232, 154233.

The applicant requests permits to export and re-import 11 captive born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 058670, Xena; 058734, Shakti; 058735, Sariska; 058738, Calcutta; 058739, Kushka; 068240, Jeeva; 068353, Pashawn; 068239, Sharm; 068350, Segal; 154232, Sirit; and 154233, Shakma. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine

mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: USGS, Alaska Science Center, Anchorage, AK, PRT–801652.

The applicant requests renewal and amendment of a permit to take walrus (*Odobenus rosmarus*) in Alaska and to import and export biological samples for the purpose of scientific research. The take activities include capture and release; tag, mark and radio collar; and collection of biometrics and biological samples. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Gregory L. Pope, Arroya Grande, CA, PRT–153572.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: John E. Stepan, Burnet, TX, PRT–154208.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Herbert Rudolf, Bonita Springs, FL, PRT–154555.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Terry Morgan, Lufkin, TX, PRT–154890.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: James W. Dusa, Yuba City, CA, PRT–154199.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Victor J. Mueller, Princeton, WI, PRT–154206.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Jim A. Schilling, Happy Valley, OR, PRT–154610.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: May 18, 2007.

Amy Brisendine,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–11039 Filed 6–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for the Union Pacific Railroad Alhambra Subdivision, City of Colton, County of San Bernardino, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Union Pacific Railroad (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the endangered Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) associated with the proposed double-tracking and rail and drainage improvements in the City of Colton, San Bernardino County, California. A conservation program to mitigate for the project activities would be implemented as described in the proposed Union Pacific Railroad Alhambra Subdivision Project Low Effect Habitat Conservation Plan (proposed HCP), which would be implemented by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a ''Low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and the associated Low Effect Screening Form, which are also available for public review.

DATES: Written comments should be received on or before July 9, 2007.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011. Written comments may be sent by facsimile to (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed HCP, and EAS should immediately contact the Service by telephone at (760) 431–9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office [see **ADDRESSES**].

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant is seeking a permit for take of the Delhi Sands flower-loving fly during the life of the permit. This species is referred to as the ''DSF'' in the proposed HCP.

The applicant proposes to construct a new mainline track segment on 1.72 acres of land located east of Pepper Avenue in the City of Colton, California. The purpose of constructing this new mainline segment is to reduce the curve angle of the track to increase the speed and safety for trains moving through

this area. We anticipate that all DSF would be lost within the 1.72 acres of DSF-occupied habitat. The project site does not contain any other rare, threatened or endangered species or habitat. No critical habitat for any listed species occurs on the project site.

The applicant proposes to mitigate the effects to the DSF associated with the covered activities by fully implementing the HCP. The purpose of the proposed HCP's conservation program is to promote the biological conservation of the DSF. UPRR proposes to mitigate impacts to the DSF through purchase of 3 acres of credit within the Colton Dunes Conservation Bank in the City of Colton, San Bernardino County, California.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to mitigate impacts of the project on the DSF. Two alternatives to the taking of the listed species under the Proposed Action are considered in the proposed HCP. Under the Curve Reduction Alternative, additional incidental take of DSF would be authorized and additional construction would be required. Under the No Action Alternative, no permit would be issued, and no construction would occur.

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the proposed HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

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.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, we will issue a permit to the Union Pacific Railroad for the incidental take of the Delhi Sands flower-loving fly from double tracking and rail and drainage improvements in the City of Colton, San Bernardino County, California.

Dated: June 1, 2007.

Jim A. Bartel,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. E7–10975 Filed 6–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for the Lytle Creek Turnout, County of San Bernardino, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The West Valley Water District (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for a 2-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the endangered San Bernardino kangaroo rat (*Dipodomys Merriami parvus*) associated with the proposed pipeline improvement and extension project of the City of Rialto and unincorporated San Bernardino County, California. A conservation program to minimize and mitigate for the project activities would be implemented as described in the proposed Lytle Creek Turnout Low Effect Habitat Conservation Plan (proposed HCP), which would be implemented by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a ''Low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and the associated Low Effect Screening Form, which are also available for public review.

DATES: Written comments should be received on or before July 9, 2007.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011. Written comments may be sent by facsimile to (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed HCP, and EAS should immediately contact the Service by telephone at (760) 431–9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant is seeking a permit for take of the San Bernardino kangaroo rat during the life of the permit. This species is referred to as the ''SBKR'' in the proposed HCP.

The applicant proposes to replace and extend water pipeline service on 1.7 acres of land located within the Lyle Creek Wash in the City of Rialto and unincorporated San Bernardino County, California. The purposes of the project are to (1) increase water delivery capacity of untreated surface water (State Water Project Water) from the San Gabriel Valley Water District's transmission pipeline system to the West Valley Water District and Fontana Water Company by replacing two 12-inch-diameter pipelines with one 30-inch-diameter pipeline and one 36-inch-diameter pipeline, (2) install a pipeline to deliver water to a CEMEX aggregate mining operation, and (3) install an emergency overflow pipeline that will discharge into existing spreading basins for groundwater recharge. We anticipate that some SBKR may be lost within the 1.7 acres of SBKR occupied habitat. The project is within designated critical habitat for the SBKR.

The applicant proposes to minimize and mitigate the effects to the SBKR associated with the covered activities by fully implementing the HCP. The purpose of the proposed HCP's conservation program is to promote the biological conservation of the SBKR. The HCP includes measures to minimize impacts to SBKR by containing the project footprint, minimizing activities that may directly impact individual SBKR, and promoting recovery of impacted habitat. Impacts to SBKR habitat would be temporary. The applicant proposes to mitigate impacts to the SBKR through purchase of 2 acres of credit within the Cajon Creek Conservation Bank in San Bernardino County, California.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to minimize and mitigate impacts of the project on the SBKR. Three alternatives to the taking of the listed species under the Proposed Action are considered in the proposed HCP. Under the No Action Alternative, no permit would be issued, and no construction or conservation would occur. Under the Reduce Project Alternative, impacts to SBKR and SBKR habitat would be reduced; however, the pipelines would not properly convey water to the final destinations. Under the Different Location Alternative, the pipelines would be relocated to avoid or reduce impacts to SBKR. This Alternative was not chosen because the project vicinity is generally occupied by SBKR and the cost of acquiring appropriate rights-of-way and constructing the larger project that would be necessary to reduce impacts to SBKR would be prohibitive.

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the proposed HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

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.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the West Valley Water District for the incidental take of the San Bernardino kangaroo rat from water pipeline improvements in the City of Rialto and unincorporated San Bernardino County, California.

Dated: June 1, 2007.

Jim A. Bartel,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. E7–10976 Filed 6–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Safe Harbor Agreement (SHA) for Northern Idaho Ground Squirrels, Adams County, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: environmental action statement (EAS); receipt of application for a permit to enhancement of survival (EOS) permit/SHA.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application for a 20-year EOS permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act), from Bob Mack and Carolyn Williams (applicants). The permit application includes a proposed 3-year SHA between the applicants and us. We are accepting comments on the SHA, permit application, and EAS.

DATES: Written comments should be received on or before July 9, 2007.

ADDRESSES: Address your comments to Carmen Thomas, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, ID 83709 (telephone: 208–378–5243; facsimile: 208–378–5262).

FOR FURTHER INFORMATION CONTACT: Carmen Thomas at the above address or by telephone at 208–378–5243.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours. The documents are also available electronically on the World Wide Web at *http://www.fws.gov/idahoes.*

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 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.

Background

Under SHAs, participating property owners voluntarily undertake

management activities on their properties to enhance, restore, or maintain habitat benefitting species listed under the Act (16 U.S.C. 1531 *et seq.*). SHAs encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for EOS permits through SHAs are in 50 CFR 17.22(c).

This proposed SHA would allow for management and conservation of the threatened northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) on approximately 9 acres (ac) (3.6 hectares (ha)) of private land owned by the applicants approximately 5.5 miles (mi) (8.9 kilometers (km)) northwest of New Meadows, Idaho. Northern Idaho ground squirrels currently occupy less than 2 of the 9 ac (3.6 ha). This 2-ac (0.8-ha) protected area would have a baseline greater than zero (0), and no incidental take would be authorized under the permit within this area. The SHA allows us to carry out a variety of conservation measures within the 2-ac (0.8-ha) protected area to benefit conservation of northern Idaho ground squirrels. Within the 7 ac (3.6 ha) outside of the 2-ac (0.8-ha) protected area, the permit would authorize the applicants to return to the existing baseline conditions of zero (0) northern Idaho ground squirrels. This SHA is intended to result in a net conservation benefit by enhancing northern Idaho ground squirrel habitat within the 2-ac (0.8-ha) protected area, and expanding the northern Idaho ground squirrel population to lands outside the protected area. Under the proposed SHA, the applicants would: (1) Protect 2 ac (0.8 ha) of occupied, suitable northern Idaho ground squirrel habitat from land use activities that may result in ''take'' of ground squirrels; (2) allow Service personnel access to the property to conduct ground squirrel conservation activities such as habitat enhancement, artificial feeding, ground squirrel surveys, and translocation of excess ground squirrels, should the current population expand beyond the 2-ac (0.8-ha) protected area; (3) if appropriate, in cooperation with the Service, develop signs to discourage shooting of ground squirrels; and (4) work cooperatively with the Service on other issues necessary to further the purposes of the SHA.

Threats to the northern Idaho ground squirrel include: habitat loss due to seral forest encroachment into suitable meadow habitats, competition from Columbian ground squirrels (*Spermophilus columbianus*), land use changes, recreational shooting, and naturally occurring events. The SHA is intended to provide a net conservation benefit to northern Idaho ground squirrels by providing measures for ground squirrel habitat protection and enhancement, managing competition from Columbian ground squirrels, and controlling recreational shooting. The biological goal of ground squirrel conservation measures in the SHA is to expand the northern Idaho ground squirrel population at this site beyond the 2-ac (0.8-ha) protected area by reducing threats to the species. The SHA is intended to contribute to recovery of northern Idaho ground squirrels by reducing threats and expanding the ground squirrel population at this site. Recovery of the species is intended to be enhanced by increasing the viability of the population at this site and potentially allowing ground squirrels to be translocated to other sites in need of population supplementation.

Consistent with the Service's Safe Harbor policy, under the SHA, we would issue a permit to the applicants authorizing incidental take of northern Idaho ground squirrels, as a result of activities on 7-ac (3.6-ha) of their property, outside the 2-ac (0.8-ha) protected area. These activities include use and maintenance of the applicants' house and garage; operation and maintenance of a well, underground power and telephone lines, septic system/drainfield, and other required utilities; and operation of cars and trucks on the driveway and all-terrain vehicles on the property outside the protected area. The maximum level of incidental take authorized under the proposed SHA may never be realized. The level of incidental take would be dependent on if, and how rapidly, northern Idaho ground squirrels expand beyond the 2-ac (0.8-ha) protected area.

We have made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. We explain the basis for this determination in an EAS, which also is available for public review.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for the National Environmental Policy Act (NEPA) (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed SHA and issue an EOS permit under section 10(a)(1)(A) of the Act to the applicants for take of northern Idaho ground squirrels incidental to otherwise lawful activities in accordance with the terms of the SHA. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: June 1, 2007.

Jeffery L. Foss,

Field Office Supervisor, Fish and Wildlife Service, Boise, Idaho.

[FR Doc. E7–10978 Filed 6–6–07; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–601]

In the Matter of Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof; Notice of Commission Decision Not to Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

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 an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting complainants'' motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. 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 April 23, 2007, based on a complaint filed by InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Deleware (collectively, ''InterDigital''). 72 FR 21049. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 3G wideband code division multiple access (WCDMA) handsets and components thereof by reason of infringement of claims 1, 2, 7–10, 14, 15, 21, 22, 24, 30–32, 34, 35, 46, 47, 49, 59, and 60 of U.S. Patent No. 7,117,004; claims 7 and 10 of U.S. Patent No. 6,674,791; and claims 1–4 of U.S. Patent No. 6,693,579. The complaint further alleges the existence of a domestic industry as required by section 337(a)(2). The notice of investigation named Samsung Electronics Co., Ltd. of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Telecommunications America LLC of Richardson, Texas (collectively, ''Samsung'') as respondents.

On May 4, 2007, InterDigital moved to amend the complaint and notice of investigation to add allegations of infringement of claims 1, 3, and 6–12 of U.S. Patent No. 7,190,966. On May 14, 2007, the Commission investigative attorney filed a response supporting the motion. Samsung did not oppose the motion.

On May 15, 2007, the ALJ issued an ID (Order No. 3) granting InterDigital's motion, finding that there was good cause to amend the complaint and notice of investigation. No party petitioned for review of the ID. The Commission has determined not to review this 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 sections 210.14 and 210.42(c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c).

Issued: June 1, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10938 Filed 6–6–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–409 (Final)]

Low Enriched Uranium From France

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: On May 25, 2007, the Department of Commerce published notice in the **Federal Register** of an amended final negative determination pursuant to final court decision, rescission of administrative review, and revocation of the countervailing duty order in connection with the subject investigation (72 FR 29301). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the five-year review concerning the countervailing duty order on imports of low enriched uranium from France (investigation No. 701–TA–409 (Review)) is terminated.

DATES: *Effective Date:* May 25, 2007.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: May 31, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10950 Filed 6–6–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Development of a Contract Detention Facility To House Persons in the Custody of the U.S. Department of Justice

The contract detention facility is proposed to be located within a 75-mile radius of the Lloyd D. George U.S. Courthouse located at 333 Las Vegas Boulevard, Las Vegas, Nevada.

AGENCY: U.S. Department of Justice, Office of the Federal Detention Trustee.

ACTION: Notice of Intent to Prepare a Draft Impact Statement.

SUMMARY: The United States Department of Justice, Office of the Federal Detention Trustee (OFDT), intends to prepare a Draft Environmental Impact Statement (DEIS) for development of a contract detention facility to house persons in the custody of the U.S. Department of Justice. The contract detention facility is proposed to be located within a 75-mile radius of the Lloyd D. George U.S. Courthouse located at 333 Las Vegas Boulevard, Las Vegas, Nevada.

Background Information

The Office of the Federal Detention Trustee (OFDT) was established on December 20, 2000, when the President signed the Department of Justice Appropriations Act of 2001, Public Law 106–553. Public Law 106–553 provides for necessary expenses for the OFDT who shall exercise all power and functions authorized by law relating to the detention of federal prisoners in non-federal institutions, or otherwise in the custody of the United States Marshals Service (USMS); and the detention of aliens in the custody of the U.S. Department of Homeland Security, Immigration and Customs Enforcement (DHS/ICE). The OFDT has responsibility over construction of detention facilities or for housing related to such detention; the management of funds appropriated to the U.S. Department of Justice for the exercise of any detention functions, and the direction of the USMS and the DHS/ICE involving detention policies and operations for the U.S. Department of Justice. Detention consumes a significant and growing portion of the Department's budget with responsibility for detainees divided among several agencies.

At the present time, the OFDT is seeking to obtain contract detention services to house persons in the custody of the USMS in the Las Vegas, Nevada region. The comprehensive detention

services would serve a population principally consisting of individuals charged with federal offenses and detained while awaiting trial or sentencing, a hearing on immigration status, or deportation. The OFDT intends to award a contract to accommodate approximately 1,000 to 1,500 detainees.

During the past 20 years, the federal detainee population has experienced unprecedented growth as a result of expanded federal law enforcement initiatives and resources. During this time, the detainee population has increased by over 1,000 percent, from approximately 3,000 in 1981 to over 55,000 today with continued growth in the federal detainee population expected for the foreseeable future. These prisoners are currently housed in a combination of local, state, federal and private facilities with the growth in the detainee population occurring at the same time that available space in local jails is decreasing. Local jail space is increasingly needed to house local offenders, leaving less space available for the contractual accommodation of federal detainees. These trends are projected to continue and present a major challenge for the OFDT and other federal agencies responsible for detaining prisoners. By contrast, the USMS is the nation's oldest and most versatile federal law enforcement agency. Created by the Judiciary Act of 1789, the same legislation that established the federal judicial system, the USMS have served the nation through a variety of vital law enforcement activities. The Director, Deputy Director and 94 U.S. Marshals (appointed by the President or the Attorney General) direct the activities of 95 district offices and personnel stationed at more than 350 locations throughout the 50 states and U.S. territories. The USMS occupies a uniquely central position in the federal justice system and is involved in virtually every federal law enforcement initiative. Approximately 4,000 Deputy Marshals and career employees perform a variety of nationwide, day-to-day missions.

Faced with severe bedspace shortages in state and local jails, especially in major metropolitan areas, the OFDT and USMS periodically contract for detention services. Such a situation has arisen in the Las Vegas area where, until recently, federal detainees were housed in locally-owned and operated facilities. In response, it has been determined that in order to house federal detainees within proximity to the U.S. Courthouse in Las Vegas, reliance would be placed upon a Contractor-owned/Contractor-operated detention facility. The proposed facility shall be located within a 75-mile radius of the Lloyd D. George U.S. Federal Courthouse which is located at 333 Las Vegas Boulevard South in Las Vegas, Nevada.

Proposed Action

The OFDT, in cooperation with the USMS, has determined that there is a need to house approximately 1,000 to 1,500 federal detainees within the Las Vegas, Nevada area. The high level of law enforcement activities of U.S. Department of Justice in the western United States in general and the Las Vegas, Nevada region in particular requires more beds than are readily available in local or state facilities. There is also a particular need for detention facilities to be located near federal courthouses because of the USMS responsibility to detain those individuals accused of violating federal laws and to make them available to the courts when necessary for trial or sentencing.

In response to this need, the OFDT, in cooperation with the USMS, is seeking to contract with a detention contractor to provide a contractor-owned and operated facility capable of housing approximately 1,000 to 1,500 detained individuals charged with federal offenses. Prospective contract detention facility sites within a 75-mile radius of the U.S. Courthouse located at 333 Las Vegas Boulevard in Las Vegas, Nevada have been offered to the OFDT and USMS for consideration. The sites are described as follows:

- Apex Industrial Use Zone Site (A)—Unincorporated Clark County, Nevada.
- Apex Industrial use Zone Site (B)—Unincorporated Clark County, Nevada.
- Dolan Springs Site—Dolan Springs, Mohave County, Arizona.
- 1600 East Mike Road Site—Pahrump, Nye County, Nevada.
- 2250 East Mesquite Avenue Site—Pahrump, Nye County, Nevada.
- 2871 East Mesquite Avenue Site—Pahrump, Nye County, Nevada.
- 8251 East Panaca Avenue/8500 East Huxley Avenue Site—Pahrump, Nye County, Nevada.
- 630 East Parque Avenue Site—Pahrump, Nye County, Nevada.
- Kingman Site—Kingman, Mohave County, Arizona.
- Moapa 80 Site—Moapa, Nevada.
- 6871 North Blagg Road Site—Pahrump, Nye County, Nevada.

Several of the sites listed above have been offered by more than one contractor and each site offered will be evaluated by the OFDT in a DEIS that will analyzed the potential impacts of detention facility construction and operation at the prospective sites.

The Process

In the process of evaluating prospective sites, many factors and features will be analyzed including, but not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, hazardous materials, visual and aesthetic resources, air and noise quality, among others.

Alternatives

In developing the DEIS, the No Action alternative and alternative sites for the proposed contract detention facility will be examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. Public Scoping Meetings will be held in and around communities under consideration for development of the contract detention facility at times, dates and at locations to be determined. The meeting locations, dates, and times will be well publicized and will be arranged to allow for the public as well as interested agencies and organizations to attend and formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Public Scoping Meetings are also being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

Availability of DEIS

Public notice will be given concerning the availability of the DEIS for public review and comment.

FOR FURTHER INFORMATION CONTACT: Scott P. Stermer, Assistant Federal Detention Trustee, Telephone: 202–353–4601/Facsimile: 202–353–4611/e-mail: *scott.stermer2@usdoj.gov.*

Dated: May 31, 2007.

Scott P. Stermer,

Assistant Federal Detention Trustee, Office of the Federal Detention Trustee.

[FR Doc. 07–2830 Filed 6–6–07; 8:45am]

BILLING CODE 4410–PE–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 25, 2007, a proposed Consent Decree in *United States* v. *Brown,* Civil Action No. 4:05–3586–RBH (D.S.C.), was lodged with the United States District Court for the District of South Carolina. The proposed Consent Decree resolves the United States' claim under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), relating to response costs incurred at the Henry Wood Superfund Site, located near Hemingway, Williamsburg County, South Carolina. The Consent Decree requires Hardy D. Brown to pay $140,000 to the United States in partial reimbursement of response costs EPA incurred at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resource 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 *United States* v. *Brown,* D.J. Ref. 90–11–3–08257.

The proposed Consent Decree may be examined at the Office of the Untied States Attorney, 1441 Main Street, Suite 500, Columbia, DC 29201 and at U.S. EPA Regional IV, 61 Forsyth Street, SW., Atlanta, GA 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decrees 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 no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4 (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 S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 07–2815 Filed 6–6–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with Department of Justice policy, notice is hereby given that on May 22, 2007, a proposed consent decree (''Consent Decree'') in *United States* v. *Capital Tax Corporation, et al.*, Civil Action No. 04–cv–04138, was lodged with the United States District Court for the Northern District of Illinois.

The Consent Decree would resolve claims against two of the four defendants—Steve Pedi and Frank Pedi (''Pedi Defendants'')—for (i) unreimbursed past response cost incurred by the United States related to the removal action at the National Lacquer and Paint Superfund Site (''Site'') in Chicago, Illinois; (ii) penalties and punitive damages for failure to comply with Environmental Protection Agency orders related to the Site; and (iii) fraudulent transfers of real property. Under the Consent Decree, the Pedi Defendants would pay a total of $330,000 in past response costs by December 31, 2007. This amount was determined based on Steve Pedi's ability to pay a judgment as calculated by a Department of Justice financial analyst.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box No. 7611 Washington, DC 20044–7611, and should refer to *United States* v. *Capital Tax Corporation, et al.*, Civil Action No. 04–cv–04138, D.J. Ref. 90–11–2–08218.

The Consent Decree may be examined at the Office of the United States Attorney, 219 S. Dearborn Street, Suite 500, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514-0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (31 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 07–2819 Filed 6–6–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 21, 2007, proposed Consent Decrees in *United States and the State of Indiana* v. *General Motors Corp., et al.,* Civil Action No. 3:07CV239RL (''Generator Consent Decree''), and in *United States* v. *David N. Lindsay,* Civil Action No. 3:07CV240RL (''Lindsay Consent Decree'') were lodged with the United States District Court for the Northern District of Indiana, South Bend Division.

In these related actions, the United States sought to recover response costs that it had incurred at or in connection with the Lakeland Disposal Service, Inc., Superfund Site in Kosciusko County, Indiana (the ''Site''), against alleged generators of hazardous waste disposed of at the Site (''Generator Consent Decree'') and against Mr. David Lindsay, an alleged former owner and operator of the Site (''Lindsay Consent Decree''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a). The United States also sought injunctive relief, pursuant to Section 106 of CERCLA, 42 U.S.C. 9606, against alleged generators of hazardous waste disposed of at the Site (''Generator Consent Decree''), requiring that the alleged generators take action to abate conditions at or near the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of

hazardous substances into the environment at or from the Site. Additionally, the United States and the State of Indiana sought recovery of damages for injury to, loss of, or destruction of natural resources at or near the Site against alleged generators of hazardous waste disposed of at the Site (''Generator Consent Decree''), pursuant to Section 107(f) of CERCLA, 42 U.S.C. 9607(f).

The Generator Consent Decree would resolve the United States' cost recovery and injunctive relief claims with regard to the Site against Settling Defendants under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) through Settling Defendants' payment to the Superfund of $1.12 million in past response costs through costs through November 30, 2005, and Settling Defendants' financing and performing the remaining work under the Record of Decision to complete the remedy at the Site. The Generator Consent Decree would also resolve the United States' and the State of Indiana's claim for damages to natural resources at or near the Site against Settling Defendants through Settling Defendants' Reimbursement of $50,000 in assessment costs ($35,000 to the U.S. Department of Interior (DOI) and $15,000 to the State of Indiana), and payment of $200,000 into the Natural Resource Damage Assessment and Restoration Fund to fund DOI and State Co-Trustee sponsored restoration projects.

As a condition of settlement under the Generator Consent Decree, Settling Defendants would relinquish all claims or causes of action with respect to the Site or natural resource damages against the United States or the States of Indiana. In return, the Settling Defendants would receive contribution protection and a covenant not to sue from the United States under Section 106 and 107(a) with regard to the Site, and from the United States and the State of Indiana under Section 107(f) of CERCLA for natural resource damages at or near the Site, Subject to certain reservations of rights.

The Lindsay Consent Decree would resolve the United States' cost recovery claims with regard to the Site against Mr. Lindsay under Section 107(a) of CERCLA through a reimbursement to the Superfund of $3,000. This payment amount is based upon a documented limited ability to pay. As a condition of settlement under the Lindsay Consent Decree, Mr. Lindsay would relinquish all claims or causes of action with respect to the Site against the United States. In return, Mr. Lindsay would receive contribution protection and a covenant not to sue from the United States under Section 106 and 107(a) with regard to the Site, subject to certain reservations of rights.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Generator Consent Decree and Lindsay Consent Decree. 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 either: *United States and the State of Indiana* v. *General Motors Corp., et al.,* Civil Action No. 3:07CV239RL (''generator Consent Decree''), D.J. Ref. 90–11–3–531A; or *United States* v. *David N. Lindsay,* Civil Action No. 3:07CV240RL (''Lindsay Consent Decree''), D.J. Ref. 90–11–3–531/9.

The Generator and Lindsay Consent Decrees may be examined at the Office of the United States Attorney for the Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, Indiana, and at U.S. EPA Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the Consent Decrees 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 copies from the Consent Decree Library, please enclose a check, payable to the U.S. Treasury, in the amount of $16.75 (25 cents per page reproduction cost) for the Generator Consent Decree, $6.25 for the Lindsay Consent Decree, or $23.00 for copies of both the Generator and Lindsay Consent Decrees, or, if by e-mail or fax, forward a check in the applicable amount to the consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2816 Filed 6–6–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

Notice if hereby given that on May 14, 2007, a proposed consent decree in *United States* v. *Linder & Associates,* Civil Action No. 07–3152 MMM (FMOx), was lodged with the United States District Court for the Central District of California.

The consent decree settles claims against the management company of residential properties containing approximately 500 units located in Los Angeles, Victorville, North Hills and Inglewood, California. The claims were brought on behalf of the Department of Housing and Urban Development, (''HUD''), and the Environmental Protection Agency, (''EPA'') under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in the complaint that the defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the consent decree, Linder will certify that it is complying with residential lead paint notification requirements. The defendant has inspected all of its non-studio apartments for lead-based paint and will inspect 254 studio units within thirty (30) days of entry of the consent decree. Linder has agreed to abate any lead found to be in fair or deteriorating condition and will apply interim controls to any paint found to be in intact condition. All window units will be replaced in every unit found to contain lead, regardless of whether it is a studio unit or not. The timing of window replacement varies from four (4) to six (6) years, depending on whether the unit is a studio unit and whether the unit houses a child or children under six years of age.

In addition, the defendant will pay an administrative penalty of $7,700 to the United States and $2,300 in costs to the State of California.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division 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 *United*

States v. *Linder & Associates,* D.J. #90–5–1–1–07223/1.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of General Counsel, 451 7th St., NW., Room 9262, Washington, DC 20410; at the office of the United States Attorney for the Central District of California, 300 North Los Angeles Street, Room 7516, Los Angeles, California 90012; and at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (25 cents per page reproduction costs), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in the amount to the Consent Decree Library at the stated address.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–2817 Filed 6–6–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application Numbers: D–11393 and D–11394]

Proposed Individual Exemptions for Paul Niednagel IRAs and Lynne Niednagel IRAs (Collectively, the IRAs), Located in Laguna Niguel, CA

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

On June 1, 2007, the Department published in the **Federal Register** (72 FR 30637) a Notice of Proposed Exemption (the Notice) which would permit the purchase (the Purchase) by the respective IRAs of Paul and Lynne Niednagel (the Account Holders) of certain ownership interests (the Units) from Pacific Island Investment Partners, LLC (Pacific Island) (the issuer of the Units), an entity which is indirectly controlled by Daniel and Stephen Niednagel (the Principals), both of whom are lineal descendents of the Account Holders and therefore disqualified persons with respect to the IRAs. The Notice was filed on behalf of the Account Holders.

With respect to the information contained in the Summary of Facts and Representations section of the Notice, footnote number 4 located at the bottom of the second column on page 30638 should be corrected to read as follows:

''* * The Department notes that a divergence of interests may develop over time between (1) the IRAs and the IRA fiduciaries in their capacities as individuals, or (2) the IRAs and other persons in which the IRA fiduciaries, in their individual capacities, may have an interest. In the event that such a divergence of interests develops, the IRA fiduciaries would be required to take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.''

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge or Mr. Laurence Lux, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC at (202) 693–8339 or (202) 693–8555, respectively (these are not toll-free numbers).

Signed at Washington, DC, this 1st day of June, 2007.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–10917 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–29–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 Division 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, Division of Trade Adjustment Assistance, at the address shown below, not later than June 18, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 18, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of May 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX–AA

[Petitions instituted between 5/21/07 and 5/25/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61544	Bodiform, Inc. (Wkrs)	Hialeah, FL	05/21/07	05/16/07
61545	Bell Sponging Company, Inc. (UNITE)	Allentown, PA	05/21/07	05/18/07
61546	Sportable Scoreboards (Wkrs)	Murray, KY	05/21/07	05/18/07
61547	McMurray Fabrics, Inc. (Wkrs)	Lincolnton, NC	05/21/07	05/16/07

APPENDIX–AA—Continued

[Petitions instituted between 5/21/07 and 5/25/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61548	CS Tool Engineering (Comp)	Cedar Springs, MI	05/21/07	05/18/07
61549	Molex, Inc. (State)	Downers Grove, IL	05/21/07	05/17/07
61550	Linq Industrial Fabrics, Inc. (Comp)	Summerville, SC	05/21/07	04/30/07
61551	Tech-Pak, Inc. (Wkrs)	Hudson, NC	05/21/07	05/17/07
61552	Hershey Chocolate and Confectionary Corp. (State).	Oakdale, CA	05/22/07	05/21/07
61553	Honeywell Resins and Chemicals (Comp)	Anderson, SC	05/22/07	05/21/07
61554	SemiTool (State)	Kalispell, MT	05/22/07	05/18/07
61555	National Braid Manufacturing Company (UNITE).	Long Island City, NY	05/22/07	05/15/07
61556	Lexington Home Brand #Plant 98 (Wkrs)	Thomasville, NC	05/22/07	05/17/07
61557	Alcoa ATS (USW)	Auburn, IN	05/22/07	05/26/07
61558	Seagate Technology, LLC (Comp)	Longmont, CO	05/22/07	05/21/07
61559	Thunder Bay Manufacturing Corporation (Comp).	Alpena, MI	05/22/07	05/21/07
61560	Arvin Meritor (UAW)	Heath, OH	05/23/07	05/15/07
61561	R-Tis-Tic Mold Incorporated (Comp)	St. Clair, MI	05/23/07	05/16/07
61562	Quebecor World Chicago (Union)	Elk Grove, IL	05/23/07	05/15/07
61563	Carrier Access Corporation (Wkrs)	Bethel, CT	05/23/07	05/22/07
61564	Metal Powder Products (Wkrs)	St. Mary's, PA	05/23/07	05/15/07
61565	Avon Automotive (Comp)	Manton, MI	05/23/07	05/22/07
61566	Borg-Warner (UAW)	Muncie, IN	05/23/07	05/22/07
61567	Oregon Woodworking Company (Comp)	Bend, OR	05/23/07	05/21/07
61568	Tenneco Inc., Walker Manufacturing (Comp)	Harrisonburg, VA	05/23/07	05/18/07
61569	Dura Automotive (Comp)	Milan, TN	05/23/07	05/11/07
61570	HDM Furniture Industries, Inc. (Wkrs)	High Point, NC	05/23/07	05/17/07
61571	Bristol Babcock Inc. (State)	Watertown, CT	05/24/07	05/23/07
61572	Meggit Defense Systems (State)	Minneapolis, MN	05/24/07	05/23/07
61573	MTD Southwest Inc. (Comp)	Tempe, AZ	05/24/07	05/23/07
61574	Century Truss Company (State)	Brighton, MI	05/24/07	05/23/07
61575	Herman and Company, Inc. (Wkrs)	Lebanon, PA	05/24/07	05/17/07
61576	Paper Magic Group, Inc. (Comp)	Scranton, PA	05/24/07	05/17/07
61577	J.P. Morgan Chase (Wkrs)	Belleville, MI	05/24/07	05/22/07
61578	Visteon (IUECWA)	Connersville, IN	05/24/07	05/23/07
61579	Jockey International, Inc. (Comp)	Millen, GA	05/25/07	03/22/07
61580	Comau, Inc. (Comp)	Southfield, MI	05/25/07	05/24/07
61581	Keykert USA Inc. (State)	Webberville, MI	05/25/07	05/24/07
61582	Xyratex International Ltd (Wkrs)	Scotts Valley, CA	05/25/07	05/23/07
61583	Margaret O'Leary Inc. (Wkrs)	San Francisco, CA	05/25/07	05/22/07
61584	Randstad Inhouse Services (Wkrs)	Newton, IA	05/25/07	05/21/07
61585	Hunter Douglas (aka HD Window Fashions, Inc.) (State).	Los Angeles, CA	05/25/07	04/23/07
61586	Reis Associated Co. Inc. (Comp)	Ballwin, MO	05/25/07	05/15/07
61587	Sun Spring America, Inc. (Wkrs)	Henderson, KY	05/25/07	05/16/07

[FR Doc. E7–11021 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,270]

CNH America LLC, Belleville Manufacturing Plant, Including On-Site Leased Workers From Armstrong's, CNH Meridian, FBG Service Corporation, Industrial Distribution Group, Jim Buch's Repair Services, Jon Industrial Lube, Kelly Services, UTI Integrated Logistics, Anixter Fasteners and Rhodes Welding Belleville, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 2, 2007, applicable to workers of CNH America LLC, Belleville Manufacturing Plant, including on-site leased workers from Armstrong's, CNH Meridian, FBG Service Corporation, Industrial Distribution Group, Jim Buch's Repair Services, Jon Industrial Lube, Kelly Services, and UTI Integrated Logistics, Belleville, Pennsylvania. The notice was published in the **Federal Register** on May 17, 2007 (72 FR 27855). The certification was amended on May 14, 2007 to include leased workers of Anixter Fasteners working on-site at the subject firm. The notice was published in the **Federal Register** on May 24, 2007 (72 FR 29279)

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of agricultural machinery, specifically front-end loaders, hay and forage equipment (conditioners, rakes, forage harvesters, headers, and windrowers), bale wagons, and spreaders).

New information shows that leased workers of Rhodes Welding were employed on-site at the Belleville, Pennsylvania location of CNH America LLC, Belleville Manufacturing Plant.

Based on these findings, the Department is amending this certification to include leased workers of Rhodes Welding working on-site at CNH America LLC, Belleville Manufacturing Plant, Belleville, Pennsylvania.

The intent of the Department's certification is to include all workers employed at CNH America LLC, Belleville Manufacturing Plant, Belleville, Pennsylvania who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–61,270 is hereby issued as follows:

All workers of CNH America LLC, Belleville Manufacturing Plant, including on-site leased workers of Armstrong's, CNH Meridian, FBG Service Corporation, Industrial Distribution Group, Jim Buch's Repair Services, Jon Industrial Lube, Kelly Services, UTI Integrated Logistics, Anixter Fasteners, and Rhodes Welding, Belleville, Pennsylvania, who became totally or partially separated from employment on or after April 9, 2006, through May 2, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of May 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11031 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,018]

International Truck and Engine Corporation Truck Development and Technical Center, Ft. Wayne, IN; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated May 7, 2007, the United Auto Workers Local 2911 requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on April 4, 2007, and was published in the **Federal Register** on April 24, 2007 (72 FR 20370).

The workers of International Truck and Engine Corporation, Truck Development and Technical Center, Ft. Wayne, Indiana were certified eligible to apply for Trade Adjustment Assistance (TAA) on April 4, 2007.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the petitioner provided sufficient information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of International Truck and Engine Corporation, Truck Development and Technical Center, Ft. Wayne, Indiana, who became totally or partially separated from employment on or after February 22, 2006 through April 4, 2009, are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of May, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11028 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,835, TA–W–60,835A, TA–W–60,835B, TA–W–60,835C, TA–W–60,835D, TA–W–60,835E]

Kimberly Clark Corporation, Kimberly Clark World-Wide, Neenah, WI; Kimberly Clark Global Sales, Roswell, GA; Kimberly Clark World-Wide, Roswell, GA; Kimberly Clark Global Sales, Knoxville, TN; Kimberly Clark World-Wide, Knoxville, TN; Kimberly Clark Global Sales, Irving, TX; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated April 30, 2007, counsel for Kimberly Clark Corporation (the subject firm) requested administrative reconsideration by the Department of Labor (Department) of the

Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of the subject firm. The Department's negative determination was issued on March 30, 2007. The Department's Notice of determination was published in the **Federal Register** on April 10, 2007 (72 FR 17938). Workers provided administrative support to various affiliated facilities.

The initial investigation found that a majority of the administrative work done by the petitioning worker groups is not directed toward support of production taking place at certified affiliated production facilities and that a preponderance of the separations are the result of the subject firm's decision to outsource positions outside of the corporation.

The negative determination stated that worker separations are not caused by imports but by the subject firm's decision to outsource administrative support positions, and stated that the separations cannot be directly attributed to imports or a shift in production of an article.

In the request for reconsideration, counsel alleged that the petitioning worker groups either had a ''direct link to'' or directly supported production at affiliated certified production facilities.

The Department has carefully reviewed the request for reconsideration and has determined that further investigation is appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 29th day of May 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11025 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,962 and TA–W–60,962A]

Mitchel Manufacturing, a Division of Quaker Lace, Honea Path, SC; Mitchel Manufacturing, a Division of Quaker Lace Showroom/Sales Office, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 23, 2007, applicable to workers of Mitchel Manufacturing, a division of Quaker Lace, Honea Path, South Carolina. The notice was published in the **Federal Register** on March 8, 2007 (72 FR 10561).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of lace curtains and tablecloths.

New information shows that a worker separation occurred at the Showroom/Sales Office, New York, New York facility of the subject firm. The New York, New York location served as the showroom/sales office for the subject firms' production facility in Honea Path, South Carolina.

Based on these findings, the Department is amending the certification to include a worker of the Showroom/Sales Office, New York, New York location of Mitchel Manufacturing, a division of Quaker Lace.

The intent of the Department's certification is to include all workers of Mitchel Manufacturing, a division of Quaker Lace, Honea Path, South Carolina and the Showroom/Sales Office, New York, New York who were adversely affected by increased company imports.

The amended notice applicable to TA–W–60,962 is hereby issued as follows:

All workers of Mitchel Manufacturing, a division of Quaker Lace Honea Path, South Carolina (TA–W–60,962) and Mitchel Manufacturing, a division of Quaker Lace, Showroom/Sales Office, New York, New York (TA–W–60,962A), who became totally or partially separated from employment on or after February 6, 2006, through February 23, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of May 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11027 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,129]

Romar Textile Co., Inc., Wampum, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked April 16, 2007, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was issued on March 29, 2007 and published in the **Federal Register** on April 10, 2007 (72 FR 17938).

The initial investigation resulted in a negative determination based on the finding that workers of the subject firm do not produce an article or support production of an article within the meaning of Section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 25th of May, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11029 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,822]

Shiloh Industries, Parma, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Shiloh Industries, Parma, Ohio. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,822; Shiloh Industries, Parma, Ohio (May 22, 2007).

Signed at Washington, DC, this 24th day of May 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–11023 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,827]

Sun Microsystems, Inc., Louisville, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated April 16, 2007, a worker requested administrative reconsideration by the Department of Labor (Department) of the Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers and former workers of the subject firm. The negative determination was issued on March 14, 2007. The Department's Notice of determination was published in the **Federal Register** on March 30, 2007 (72 FR 15168). The workers supported production at an affiliated facility in Puerto Rico.

The negative determination was based on the Department's findings that, during the relevant period, the subject firm did not shift work performed in Louisville, Colorado abroad and did not shift production work from Puerto Rico to a foreign country. The determination also stated that the subject firm sold the Puerto Rico facility to another company.

In the request for reconsideration, the workers alleged that the subject firm shifted production and support functions abroad.

Following the issuance of the negative determination, the Department received new information regarding activities at the subject firm and the affiliated Puerto Rico production facility.

Following a careful review of the workers' request for reconsideration and the above-referenced new information, the Department has determined that further investigation is appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 25th day of May 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11024 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,568]

Tenneco Inc., Walker Manufacturing, Harrisonburg, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 23, 2007 in response to a petition filed by a company official on behalf of workers at Tenneco Inc., Walker Manufacturing, Harrisonburg, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of May, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11020 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,879]

Via Information Tools, Inc., Troy, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Via Information Tools, Inc., Troy, Michigan. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,879; Via Information Tools, Inc., Troy, Michigan (May 22, 2007).

Signed at Washington, DC this 24th day of May 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–11026 Filed 6–6–07; 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 and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of May 21, 2007 through May 25, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or

an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–61,173; Viking Tool and Drill, Inc., St Paul, MN: March 22, 2006.

TA–61,181; Pine River Plastics, Inc., Westminster, SC: March 22, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–61,209; Reum Corporation, On-Site Leased Workers of QPS Companies and Aerotek Staffing, Waukegan, IL: March 28, 2006.

TA–61,340; Tube Specialties Co., Inc., Troutdale, OR: April 18, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

TA–61,389; Vaungarde Acquisition, LLC, Owosso, MI: April 18, 2006.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–61,434; Judith Leiber LLC, New York, NY: April 18, 2006

TA–61,439; Rugg Manufacturing Company, Inc., Greenfield, MA: May 1, 2006.

TA–61,460; Lozier Corporation, On-Site Lease Workers From Gregg Staffing Services, Pittsburgh, PA: May 4, 2006.

TA–61,478; Royal Home Fashions, a subsidiary of Croscill Inc., Plant 8, Oxford, NC: May 28, 2007.

TA–61,543; KMC Holding LLC, dba Kennedy Manufacturing Company, On-Site leased workers of Manpower, Van Wert, OH: May 10, 2006.

TA–61,224; Opportunity, Inc., Medical Division, Highland Park, IL: April 2, 2006.

TA–61,313; Circa 1801 Doblin, a subsidiary of Joan Fabrics Corp., EBM Textiles, LLC Division, Connelly Springs, NC: April 13, 2006.

TA–61,350; Amsea, Inc., Fenton, MI: April 1, 2006.

TA–61,449; Delphi Corporation, Automotive Holding Group, On-Site Leased Workers of Securitas, Bartech etc., Wichita Falls, TX: April 30, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–61,231; AAA Human Capital and Staffmark Investment, LLC, Working On-Site at Lego Systems, Inc., Enfield, CT: March 30, 2006.

TA–61,316; Associated Furniture Manufacturers, Inc., a wholly owned subsidiary of Sklar Peppler of America, Portland, OR: April 13, 2006.

TA–61,325; Metro Furniture, Metal Frame Department and Upholstery

Department, Oakland, CA: April 17, 2006.

TA–61,326; Torque Traction Manufacturing Technologies, Inc., a subsidiary of Dana Corporation, Automotive Systems Group, Syracuse, IN: April 12, 2006.

TA–61,354; J.A.M. Plastics, Inc., (Formerly CIPI, Inc.), Anaheim, CA: April 17, 2006.

TA–61,402; Advanced Decorative Systems, Inc., dba Kaumagraph Flint Corporation, Millington, MI: April 26, 2006.

TA–61,470; General Motors Corporation, General Motors Springhill Mfg., Springhill, TN: May 4, 2006.

TA–61,471; Bond Cote Corporation, Fiber Loc Plant #2, Knitting Department, Dublin, VA: May 1, 2006.

TA–61,527; Fleetwood Travel Trailers of Kentucky, Inc., Travel Trailer Division, Campbellsville, KY: May 17, 2006.

TA–61,534; Merkle Korff Industries, Inc., Richland Center Plant, Richland Center, WI: May 16, 2006.

TA–61,558; Seagate Technology, LLC, Longmont Division, Longmont, CO: May 21, 2006.

TA–61,337; MYOB US, Product Development, Denville, NJ: April 18, 2006.

TA–61,380; Briggs and Stratton Corporation, Engine Power Products Groups, On-Site Leased Workers of From Adecco, Murray, KY: March 30, 2006.

TA–61,393; Best Artex, LLC, Highland, IL: April 26, 2006.

TA–61,395; Federal Mogul Corporation, Systems Protection Group, On-Site Leased Workers from Kelly Services, Exton, PA: April 27, 2006.

TA–61,428; Dana Corporation, Heavy Vehicle Technologies And System Operations, Product Service Center, Statesville, NC: April 30, 2006.

TA–61,516; Best Textiles International, Ltd., Best Artex, LLC, West Point, MS: May 15, 2006.

TA–61,523; Central Brass Manufacturing Co., Currently Known as C.B.N. Supply, Cleveland, OH: April 27, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–61,312; Ashdale Foam, Inc., Conover, NC: April 10, 2006.

TA–61,401; Victor Plastics, Inc., Kalona Division, On-Site Leased Workers of Kelly Services, Kalona, IA: April 26, 2006.

TA–61,491; Decor Originals, Inc., Conover, NC: May 9, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–61,173; Viking Tool and Drill, Inc., St. Paul, MN.

TA–61,181; Pine River Plastics, Inc., Westminster, SC.

TA–61,209; Reum Corporation, On-Site Leased Workers of QPS Companies and Aerotek Staffing, Waukegan, IL.

TA–61,340; Tube Specialties Co., Inc., Troutdale, OR.

TA–61,389; Vaungarde Acquisition, LLC, Owosso, MI.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–61,135; Williamson and Company, Greer, SC.

TA–61,444; Biltbest Products, Inc., Sainte Genevieve, MO.

TA–61,525; Ametek, Commercial Motor Division, Racine, WI.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–61,189; Analog Devices, Inc., Sunnyvale, CA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–61,256; E.B.I. Holding, Inc., a subsidiary of Biomet, Inc., Allendale, NJ.

TA–61,317; Spacelabs Healthcare LLC, Spacelabs Medical, aka Delmar Reynolds Medical, Inc., Irvine, CA.

TA–61,358; Masonite Door Fabrication Services, Inc., a subsidiary of Masonite International, Toledo, OH.

TA–61,374; Seaswirl Boats, Inc., a subsidiary of Genmar Holdings, Inc., Culver, OR.

TA–61,227; Acument Global Technologies Camar, Decorah, IA.

TA–61,436; U.P. Plastics, Inc., Baraga, MI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–61,382; Tandem Enterprises, Inc., Weslaco, TX.

TA–61,473; ICT Group, Inc., Dubois, PA.

TA–61,488; Webb Furniture Plant #1, Galax, VA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of May 21 through May 25, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 1, 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–11022 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,232]

Wheatland Tube Co., Wheatland, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Wheatland Tube Co., Wheatland, Pennsylvania. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–61,232; Wheatland Tube Co., Wheatland, Pennsylvania (May 22, 2007).

Signed at Washington, DC this 24th day of May 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–11030 Filed 6–6–07; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400–LR; ASLBP No. 07–855–02–LR–BD01]

Carolina Power & Light Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29,1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Unit 1)

A Licensing Board is being established pursuant to a March 20, 2007 Notice of Opportunity for Hearing (72 FR 13,139) regarding the November 16, 2006 application for renewal of Operating License No. NPF–63, which authorizes the Carolina Power & Light Company to operate the Shearon Harris Nuclear Power Plant, Unit 1 at 2900 megawatts thermal. The Carolina Power & Light Company renewal application seeks to extend the current operating license for the facility, which expires on October 24, 2026, for an additional twenty years. This proceeding concerns the May 18, 2007 petition for leave to intervene and request for hearing filed by John D. Runkle, Esquire, on behalf of the North Carolina Waste Awareness and Reduction Network, Inc., and the Nuclear Information and Resource Service, Inc.

The Board is comprised of the following administrative judges:

Ann Marshall Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Alice C. Mignerey, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 31st day of May 2007.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E7–11004 Filed 6–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387–OLA and 50–388–OLA; ASLBP No. 07–854–01–OLA–BD01]

PPL Susquehanna LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29,1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding: PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2).

This proceeding concerns a May 11, 2007 Petition to Intervene/Request for Hearing submitted by Eric Joseph Epstein in response to a March 13, 2007 Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing (72 FR 11,383, 11,392). The Petition to Intervene/Request for Hearing challenges the request of PPL Susquehanna LLC to amend the operating license for the Susquehanna Steam Electric Station, Units 1 and 2, to increase thermal power to 3,952 megawatts thermal, which is 20% above the original rated thermal power of 3,293 megawatts thermal, and approximately 13% above the current rated thermal power of 3,489 megawatts thermal.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, III, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Lester S. Rubenstein, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 31st day of May 2007.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E7–11008 Filed 6–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9; EA–07–124]

In the Matter of Department of Energy—Idaho Operations Office Fort Saint Vrain Power Station Independent Spent Fuel Storage Installation; Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of order imposing fingerprinting and criminal history check requirements for unescorted access to certain spent fuel storage facilities.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD

20852. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *lrw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Fort Saint Vrain Power Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to the Department of Energy, Idaho Operations Office (DOE–ID), authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954 as amended, and Title 10 of the Code of Federal Regulations (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149, of the AEA, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, which the Commission determines to be of such significance to the public health and safety or the common defense and security, as to warrant fingerprinting and background checks. The Commission has determined that spent fuel storage facilities meet the requisite threshold warranting these additional measures. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this particular requirement by Order, in part, prior to the completion of the rulemaking because a deliberate malevolent act by an individual with unescorted access to spent fuel storage facilities has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorable decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Also, individuals who have been fingerprinted and granted access to Safeguards Information (SGI) by the reviewing official under the previous fingerprinting order, (Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information((EA–06–298) do not need to be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Interim Compensatory Measures (ICMs) and Additional Security Measures (ASMs) for certain radioactive material. The requirements imposed by these Orders and the measures licensees have developed to comply with these Orders, were designated by the NRC as SGI and were not released to the public. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals seeking unescorted access to spent fuel storage facilities. ''Access'' means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, as set forth in the Order for all individuals allowed unescorted access to protected areas, secure areas, and critical target areas, for certain spent fuel facility licensees. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

II

Accordingly, pursuant to Sections 51, 53, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, *It is hereby ordered*, effective immediately, that your specific license is modified as follows:

A. DOE–ID shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order, for unescorted access to spent fuel storage facilities.

B. DOE–ID shall, in writing, within twenty (20) days from the date of this Order, notify the Commission: (1) Of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in the Attachment, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide DOE–ID's justification for seeking relief from, or variation of, any specific requirement.

C. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' only an NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to spent fuel storage facilities. Fingerprinting and the FBI identification and criminal history records check are not required for individuals who are exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have had a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to DOE–ID's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official, under the NRC's Order No. EA–06–298 do not need to be fingerprinted again for purposes of authorizing unescorted access. No person may have access to SGI or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to radioactive material or property subject to regulation by the NRC.

E. DOE–ID may allow any individual who currently has unescorted access to spent fuel storage facilities, in accordance with the ICM and ASM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to spent fuel storage

facilities. DOE–ID shall complete implementation of the requirements of the Attachment to this Order within ninety (90) days from the date of issuance of this Order.

DOE–ID responses to Condition B. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensee responses are security-related information or official use only and shall be properly marked.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by DOE-ID.

III

In accordance with 10 CFR 2.202, DOE–ID must, and any other person adversely affected by this Order, may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time, to either submit an answer, or request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law for which DOE–ID, or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to DOE–ID, if the answer or hearing request is by an individual other than DOE–ID. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov*. If a person other than DOE–ID requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by DOE–ID or an individual whose interest is adversely affected, the Commission will issue an Order designating the time and place of a hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), DOE–ID may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated: May 29, 2007.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access To Spent Fuel Storage Facilities

General Requirements

Licensees shall comply with the following requirements of this Attachment.

1. Each licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to the spent fuel storage facility. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this Attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this Attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61 for unescorted access, has had a favorably decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to the spent fuel storage facility associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ICM and ASM Security Orders, in making a determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the spent fuel storage facility.

7. The licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

Prohibitions

A licensee shall not base a final determination to deny an individual access to the spent fuel storage facility solely on information received from the FBI, involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history records check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to the spent fuel storage facility, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or via e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees, who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual, the contents of any criminal records, obtained from the FBI, for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record, to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary, in accordance with the information supplied by that agency. The licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final determination for unescorted access to the spent fuel storage facility based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to the spent fuel storage facility, the licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to the spent fuel storage facility shall not be granted to an individual.

Protection of Information

1. Each licensee that obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the spent fuel storage facility. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the licensee holding the criminal history record receives the individual's written request to redisseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics, for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to the spent fuel storage facility. After the required three (3) year period, these documents shall be destroyed by a method that will prevent

reconstruction of the information in whole, or in part.

[FR Doc. E7–11006 Filed 6–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20; EA–07–124]

In the Matter of Department of Energy—Idaho Operations Office Three Mile Island Unit 2 Independent Spent Fuel Storage Installation Modifying License (Effective Immediately); Nuclear Regulatory Commission

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Unescorted Access to Certain Spent Fuel Storage Facilities.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. *Telephone:* (301) 492–3316; *fax number:* (301) 492–3348; *e-mail: lrw@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Three Mile Island Unit 2 (TMI–2) Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to the Department of Energy, Idaho Operations Office (DOE–ID), authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954 as amended, and Title 10 of the Code of Federal Regulations (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149, of the AEA, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, which the Commission determines to be of such significance to the public health and safety or the common defense and security, as to warrant fingerprinting and background checks. The Commission has determined that spent fuel storage facilities meet the requisite threshold warranting these additional measures. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this particular requirement by Order, in part, prior to the completion of the rulemaking because a deliberate malevolent act by an individual with unescorted access to spent fuel storage facilities has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorable decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Also, individuals who have been fingerprinted and granted access to Safeguards Information (SGI) by the reviewing official under the previous fingerprinting order, ''Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information'' (EA–06–298) do not need to be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Interim Compensatory Measures (ICMs) and Additional Security Measures (ASMs) for certain radioactive material. The requirements imposed by these Orders and the measures licensees have developed to comply with these Orders, were designated by the NRC as SGI and were not released to the public. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals seeking unescorted access to spent fuel storage facilities. ''Access'' means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, as set forth in the Order for all individuals allowed unescorted access to protected areas, secure areas, and critical target areas, for certain spent fuel facility licensees. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

II

Accordingly, pursuant to Sections 51, 53, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, it is hereby ordered, effective immediately, that your specific license is modified as follows:

A. DOE–ID shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order, for unescorted access to spent fuel storage facilities.

B. DOE–ID shall, in writing, within twenty (20) days from the date of this Order, notify the Commission: (1) Of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in the Attachment, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide DOE–ID's justification for seeking relief from, or variation of, any specific requirement.

C. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' only an NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to spent fuel storage facilities. Fingerprinting and the FBI identification and criminal history records check are not required for individuals who are exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have had a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to DOE–ID's reviewing official), have satisfied the EPAct

fingerprinting requirement and need not be fingerprinted again.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official, under the NRC's Order No. EA–06–298 do not need to be fingerprinted again for purposes of authorizing unescorted access. No person may have access to SGI or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to radioactive material or property subject to regulation by the NRC.

E. DOE–ID may allow any individual who currently has unescorted access to spent fuel storage facilities, in accordance with the ICM and ASM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to spent fuel storage facilities. DOE–ID shall complete implementation of the requirements of the Attachment to this Order within ninety (90) days from the date of issuance of this Order.

DOE–ID responses to Condition B. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensee responses are security-related information or official use only and shall be properly marked.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by DOE–ID.

III

In accordance with 10 CFR 2.202, DOE–ID must, and any other person adversely affected by this Order, may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time, to either submit an answer, or request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law for which DOE–ID, or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to DOE–ID, if the answer or hearing request is by an individual other than DOE–ID. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov*. If a person other than DOE–ID requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by DOE–ID or an individual whose interest is adversely affected, the Commission will issue an Order designating the time and place of a hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), DOE–ID may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of May 2007.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material, Safety and Safeguards.

Attachment

Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to Spent Fuel Storage Facilities

General Requirements

Licensees shall comply with the following requirements of this Attachment.

1. Each licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to the spent fuel storage facility. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this Attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this Attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61 for unescorted access, has had a favorably decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to the spent fuel storage facility associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ICM and ASM Security Orders, in making a determination whether to grant, or continue to allow,

unescorted access to the spent fuel storage facility.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the spent fuel storage facility.

7. The licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

Prohibitions

A licensee shall not base a final determination to deny an individual access to the spent fuel storage facility solely on information received from the FBI, involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history records check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to the spent fuel storage facility, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or via e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees, who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual, the contents of any criminal records, obtained from the FBI, for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record, to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary, in accordance with the information supplied by that agency. The licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final determination for unescorted access to the spent fuel storage facility based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to the spent fuel storage facility, the licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to the spent fuel storage facility shall not be granted to an individual.

Protection of Information

1. Each licensee that obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the spent fuel storage facility. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the licensee holding the criminal history record receives the individual's written request to redisseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics, for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to the spent fuel storage facility. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

[FR Doc. E7–11007 Filed 6–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1; EA–07–124]

In the Matter of General Electric Company GE Morris Operation Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Unescorted Access to Certain Spent Fuel Storage Facilities.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project

Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *lrw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of GE Morris Operation (GEMO) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to the General Electric Company (GE), authorizing storage of spent fuel, in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and Title 10 of the Code of Federal Regulations (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149, of the AEA, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, which the Commission determines to be of such significance to the public health and safety or the common defense and security, as to warrant fingerprinting and background checks. The Commission has determined that spent fuel storage facilities meet the requisite threshold warranting these additional measures. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this particular requirement by Order, in part, prior to the completion of the rulemaking because a deliberate malevolent act by an individual with unescorted access to spent fuel storage facilities has a potential to result in significant adverse impacts to the public health and safety or the common defense and security.

Those exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorably decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearance (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Also, individuals who have been fingerprinted and granted access to Safeguards Information (SGI) by the reviewing official under the previous fingerprinting order, ''Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information'' (EA–06–298) do not need to be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Interim Compensatory Measures (ICMs) and Additional Security Measures (ASMs) for certain radioactive material. The requirements imposed by these Orders and the measures licensees have developed to comply with these Orders, were designated by the NRC as SGI and were not released to the public. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals seeking unescorted access to spent fuel storage facilities. ''Access'' means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, as set forth in the Order for all individuals allowed unescorted access to protected areas, secure areas, and critical target areas, for certain spent fuel facility licensees. These requirements will remain in effect until the Commission determines otherwise. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

II

Accordingly, pursuant to Sections 51, 53, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, it is hereby ordered, effective immediately, that your specific license is modified as follows:

A. GE shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order, for unescorted access to spent fuel storage facilities.

B. GE shall, in writing, within twenty (20) days from the date of this Order, notify the Commission: (1) Of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in the Attachment, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide GE's justification for seeking relief from, or variation of, any specific requirement.

C. In accordance with the NRC's ''Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,'' only an NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to spent fuel storage facilities. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have had a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to GE's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official, under the NRC's Order No. EA–06–298 do not need to be fingerprinted again for purposes of authorizing unescorted access. No person may have access to SGI or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to radioactive material or property subject to regulation by the NRC.

E. GE may allow any individual who currently has unescorted access to spent fuel storage facilities, in accordance with the ICM and ASM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check, and a

trustworthiness and reliability determination) that the individual may continue to have unescorted access to spent fuel storage facilities. GE shall complete implementation of the requirements of the Attachment to this Order within ninety (90) days from the date of issuance of this Order.

GE responses to Condition B. shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensee responses are security-related information or official use-only and shall be properly marked.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by GE.

III

In accordance with 10 CFR 2.202, GE must, and any other person adversely affected by this Order, may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days from the date of this Order. Where good cause is shown, consideration will be given to extending the time, to either submit an answer, or request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law for which GE, or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to GE, if the answer or hearing request is by an individual other than GE. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov.* If a person other than GE requests a hearing, that person shall set forth, with particularity, the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by GE or an individual whose interest is adversely affected, the Commission will issue an Order designating the time and place of a hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), GE may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of May 2007.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment

Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to Spent Fuel Storage Facilities

General Requirements

Licensees shall comply with the following requirements of this Attachment.

1. Each licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to the spent fuel storage facility. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this Attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this Attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61 for unescorted access, has had a favorably decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to the spent fuel storage facility associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ICM and ASM Security Orders, in making a determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the spent fuel storage facility.

7. The licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

Prohibitions

A licensee shall not base a final determination to deny an individual access to the spent fuel storage facility solely on information received from the FBI, involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history records check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the

Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to the spent fuel storage facility, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or via e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees, who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual, the contents of any criminal records, obtained from the FBI, for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that the record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record, to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary, in accordance with the information supplied by that agency. The licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final determination for unescorted access to the spent fuel storage facility based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to the spent fuel storage facility, the licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to the spent fuel storage facility shall not be granted to an individual.

Protection of Information

1. Each licensee that obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the spent fuel storage facility. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee if the licensee holding the criminal history record receives the individual's written request to redisseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics, for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to the spent fuel storage facility. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

[FR Doc. E7–11011 Filed 6–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability; Draft NUREG–1574, Revision 2, ''Standard Review Plan on Transfer and Amendment of Antitrust License Conditions and Antitrust Enforcement''

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard Review Plan.

SUMMARY: The NRC is seeking public comment on draft NUREG–1574, Revision 2, entitled ''Standard Review Plan on Transfer and Amendment of Antitrust License Conditions and Antitrust Enforcement.'' This standard review plan (SRP) documents procedures and guidance to be used by the staff to analyze license transfer applications and license amendment applications involving existing antitrust license conditions, to report to the Attorney General information indicating that a licensee's use of atomic energy appears to have violated the antitrust laws, and to take appropriate enforcement action for a licensee's violation of its antitrust license conditions. Because the SRP describes internal agency procedures and is based on existing Commission guidance in this area, the SRP is being published for interim use. However, the Commission is inviting public comment on the SRP and is interested in possible improvements to it. Public comments will be considered in evaluating the NRC review process in this area.

DATES: The public is invited to submit comments on the SRP by July 9, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date. On the basis of the submitted comments, the Commission will determine whether to modify the SRP before issuing it in final form.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or electronic form will be made available for public inspection. Mail comments to: Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Hand deliver comments, addressed to the above, to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Publicly available documents may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. The public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS) through the agency's public Web site at *http://www.nrc.gov.* This web site provides text and image files of the 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 Public Document Room (PDR) Reference Staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Steven R. Hom, Office of Nuclear Reactor Regulation, Division of Policy and Rulemaking, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1537, e-mail *srh@nrc.gov.*

SUPPLEMENTARY INFORMATION: The draft NUREG–1574, Revision 2, entitled ''Standard Review Plan on Transfer and Amendment of Antitrust License Conditions and Antitrust Enforcement'' [ML070160586] reflects the Energy Policy Act of 2005's removal of the NRC's antitrust review responsibilities for applications for licenses under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The SRP provides guidance on the appropriate disposition of antitrust license conditions during license transfers and for the review of applications to amend antitrust license conditions outside of license transfers. The SRP also provides guidance regarding the NRC's responsibility to refer certain antitrust matters to the Attorney General, and regarding the NRC's enforcement of antitrust license conditions. The SRP supersedes NUREG–1574, Standard Review Plan on Antitrust Reviews, published December 1997, in its entirety.

Dated at Rockville, Maryland, this 29th day of May, 2007.

For the Nuclear Regulatory Commission.

Michael J. Case,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E7–10945 Filed 6–6–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Normal Cost Percentages

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of revised normal cost percentages for employees covered by the Civil Service Retirement System (CSRS).

DATES: The revised normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2007.

ADDRESSES: Send or deliver requests for actuarial assumptions and data to the Board of Actuaries, care of Gregory Kissel, Manager, Office of Actuaries, Strategic Human Resources Policy Division, Office of Personnel Management, Room 4307, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jessica Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Most Federal employees hired before 1984 are under the Civil Service Retirement System (CSRS). Section 8334 of title 5, United States Code, provides for the mandated percentage of basic pay as an employee deduction and agency contributions that are paid into the Civil Service Retirement and Disability Fund (Fund) for CSRS. The ''normal cost'' is the percentage of salary that must be contributed at the time service is performed in order to pay the full cost of retirement benefits, assuming that the contributions begin at first creditable employment, and that the system will continue. The normal cost percentages change from time to time based upon changes in the underlying economic assumptions. To fully fund the retirement system, the normal cost percentage of basic pay must be paid into the Retirement Fund at the time service is performed. Under CSRS, the employee deductions and agency contributions are statutorily mandated and unlike FERS, CSRS is not fully funded. The normal costs for CSRS reflect the percentage of basic pay that would have to be contributed to the Fund for CSRS to be fully funded. Additionally, there are a few entities that must pay the full normal cost for their CSRS employees.

CSRS offset refers to those employees who are simultaneously covered by the Old Age, Survivors, and Disability Insurance (OASDI) tax and CSRS. Section 8334(k) of title 5, United States Code, and subpart J of part 831 of title 5, Code of Federal Regulations, describe the employee deductions and agency contributions for CSRS offset. Normal cost percentages are different for regular CSRS and CSRS offset because of differences in their benefit structures.

Recently, the Board of Actuaries of the Civil Service Retirement System approved a revised set of economic assumptions for use in the dynamic actuarial valuations of CSRS. These assumptions were adopted after the Board reviewed statistical data prepared by the OPM actuaries and considered trends that may affect future experience under the System.

Based on its analysis, the Board concluded that it would be appropriate to assume a rate of investment return of 6.25 percent, with no difference from the current rate of 6.25 percent. The Board increased the anticipated inflation rate from 3.25 percent to 3.50 percent, and increased the projected rate of General Schedule salary increases from 4.00 percent to 4.25 percent. These salary increases are in addition to assumed within-grade increases that reflect past experience.

The new assumptions anticipate that, over the long term, the annual rate of investment return will exceed inflation by 2.75 percent and General Schedule salary increases will exceed inflation by .75 percent a year, as compared to 3 percent and .75 percent, respectively, under the previous assumptions.

The normal cost calculations depend on both the economic and demographic assumptions. The demographic assumptions are determined separately for each of a number of special groups, in cases where separate experience data is available. Based on the new economic assumptions and the change in the demographic assumption concerning the rate of early retirements, OPM has determined the normal cost percentage for each category of employees. The Government wide normal cost percentages for CSRS, without offset,

including the employee contributions, are as follows:

	Percent
Members	29.4
Congressional employees	34.9
Law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers and employees under section 302 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees	42.5
Air traffic controllers	38.9
All other employees, without offset	25.2

The Government wide normal cost percentages for CSRS offset, including the employee contributions, are as follows:

	Percent
Members offset	27.1
Congressional employees offset	29.9
Law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers and employees under section 302 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees offset	38.0
Air traffic controllers offset	34.6
All other employees, with offset	19.5

These normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2007.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E7–11082 Filed 6–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees under the Civil Service Retirement System (CSRS) who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage and to retiring employees who elect the alternative form of annuity, owe certain redeposits based on refunds of contributions for service before October 1, 1990, or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System.

DATES: *Effective Date:* The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2007.

ADDRESSES: Send requests for actuarial assumptions and data to the Board of Actuaries, care of Gregory Kissel, Manager, Office of Actuaries, Strategic Human Resources Policy Division, Office of Personnel Management, Room 4307, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jessica Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of CSRS require reduction of annuities on an actuarial basis. Under each of these provisions, OPM is required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that OPM will publish a notice in the **Federal Register** whenever it changes the factors used to compute the present values of these benefits.

Section 831.2205(a) of title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8343a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under section 831.2205(a) of title 5, Code of Federal Regulations.

Section 831.303(c) of title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction to complete payment of certain redeposits of refunded deductions based on periods of service that ended before October 1, 1990, under section 8334(d)(2) of title 5, United States Code.

Section 831.663 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage under section 8339(j)(5)(C) or (k)(2) of title 5, United States Code. Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump-sum payment or installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law and translate it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8343a of title 5, United States Code.

Subpart F of part 847 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106.

The present value factors currently in effect were published by OPM (69 FR 52944) on August 30, 2004. Elsewhere in today's **Federal Register**, OPM published a notice to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, based on changed economic assumptions and demographic factors adopted by the Board of Actuaries of the CSRS. Those changed economic assumptions require corresponding changes in CSRS normal costs and present value factors used to produce actuarially equivalent benefits when required by the Civil Service Retirement Act. The revised factors will become effective in October 2007 to correspond with the changes in CSRS normal cost percentages. For alternative forms of annuity and redeposits of employee contributions, the new factors will apply to annuities that commence on or after October 1, 2007. See 5 CFR 831.2205 and 831.303(c). For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2007. See 5 CFR 831.663(c) and (d). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under section 847.603 of title 5, Code of Federal Regulations, is on or after October 1, 2007. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 8339(J) OR (K) OR SECTION 8343A OF TITLE 5, UNITED STATES CODE, OR UNDER SECTION 1043 OF PUBLIC LAW 104–106 OR FOLLOWING A REDEPOSIT UNDER SECTION 8334(D)(2) OF TITLE 5, UNITED STATES CODE

Age	Present value factor
40	289.1
41	285.5
42	282.1
43	278.8
44	275.3
45	271.4
46	267.2
47	262.9
48	258.6
49	253.6
50	248.6
51	244.1
52	239.7
53	234.9
54	229.8
55	224.6
56	219.4
57	214.2
58	209.1
59	203.9
60	198.8
61	193.2
62	187.4
63	181.7
64	176.0
65	170.2
66	164.5
67	159.0
68	153.4
69	147.7
70	142.0
71	136.3
72	130.5
73	124.9
74	119.4
75	113.8
76	108.6
77	103.6
78	98.2
79	92.8
80	87.6
81	82.2
82	76.6
83	71.8
84	67.7
85	63.4
86	58.8
87	54.7
88	51.2
89	47.9
90	43.6

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 1043 OF PUBLIC LAW 104–106 (FOR AGES AT CALCULATION BELOW 40)

Age at calculation	Present value of a monthly annuity
17	336.3
18	334.7
19	333.0
20	331.3
21	329.5
22	327.7
23	325.8
24	323.9
25	321.9
26	319.8
27	317.6
28	315.5
29	313.3
30	310.9
31	308.5
32	306.1
33	303.5
34	300.8
35	298.1
36	295.4
37	292.5
38	289.5
39	286.4

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E7–11085 Filed 6–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage, and to retiring employees who elect the alternative form of annuity or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System.

DATES: The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2007.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of Actuaries, Strategic Human Resources Policy Division, Office of Personnel Management, Room 4307, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jessica Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of the Federal Employees' Retirement System (FERS) require reduction of annuities on an actuarial basis. Under each of these provisions, OPM is required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that OPM will publish a notice in the **Federal Register** whenever it changes the factors used to compute the present values of these benefits.

Section 842.706(a) of title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under 5 CFR 842.706(a).

Section 842.615 of title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage or divorce under 5 U.S.C. 8416(b), 8416(c), or 8417(b). Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 312, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump-sum payment or installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law and translate it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8420a of title 5, United States Code.

Subpart F of part 847 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the

deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106, 110 Stat. 186.

OPM published the present value factors currently in effect on August 30, 2004, at 69 FR 52944. Elsewhere in today's **Federal Register**, OPM published a notice to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, based on changed economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. Under 5 U.S.C. 8461(i), those changed economic assumptions require corresponding changes in the present value factors used to produce actuarially equivalent benefits when required by the FERS Act. The revised factors will become effective in October 2007 to correspond with the changes in FERS normal cost percentages. For alternative forms of annuity, the new factors will apply to annuities that commence on or after October 1, 2007. See 5 CFR 842.706. For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2007. See 5 CFR 842.615(b). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under 5 CFR 847.603 is on or after October 1, 2007. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

Table I.—FERS Present Value Factors for Ages 62 and Older

[Applicable to annuity payable following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
62	174.9
63	170.0
64	165.0
65	159.9
66	154.9
67	150.0
68	145.0
69	139.9
70	134.8
71	129.7
72	124.4
73	119.3
74	114.3
75	109.2
76	104.3

Table I.—FERS Present Value Factors for Ages 62 and Older—Continued

[Applicable to annuity payable following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
77	99.7
78	94.7
79	89.6
80	84.8
81	79.7
82	74.4
83	69.9
84	66.0
85	61.9
86	57.5
87	53.5
88	50.2
89	47.0
90	42.9

Table II.A.—FERS Present Value Factors for Ages 40 Through 61

[Applicable to annuity payable when annuity is not increased by cost-of-living adjustments before age 62 following an election under 5 U.S.C. 8416(b), 8416(c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
40	185.2
41	184.9
42	184.8
43	184.7
44	184.5
45	184.2
46	183.8
47	183.4
48	183.0
49	182.3
50	181.5
51	181.2
52	180.9
53	180.5
54	179.9
55	179.3
56	178.8
57	178.4
58	178.1
59	177.9
60	177.9
61	177.7

Table II.B.—FERS Present Value Factors for Ages 40 Through 61

[Applicable to annuity payable when annuity is increased by cost-of-living adjustments before age 62 following an election under 5 U.S.C. 8416(b), 8416 (c), 8417(b), or 8420a, or under section 1043 of Pub. L. 104–106]

Age	Present value factor
40	252.8
41	250.4
42	247.8
43	245.1
44	242.3
45	239.5
46	236.5
47	233.4
48	230.2
49	226.9
50	223.4
51	219.8
52	216.1
53	212.2
54	208.2
55	204.1
56	199.8
57	195.4
58	190.9
59	186.3
60	181.6
61	176.8

Table III.—FERS Present Value Factors for Ages at Calculation Below 40

[Applicable to annuity payable following an election under section 1043 of Pub. L. 104–106]

Age at calculation	Present value of a monthly annuity
17	291.0
18	290.0
19	288.9
20	287.8
21	286.6
22	285.4
23	284.1
24	282.8
25	281.4
26	280.0
27	278.5
28	277.0
29	275.4
30	273.7
31	272.0
32	270.3
33	268.4
34	266.5
35	264.5
36	262.5
37	260.4
38	258.2
39	255.9

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E7–11083 Filed 6–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Retirement System; Normal Cost Percentages

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of revised normal cost percentages for employees covered by the Federal Employees' Retirement System (FERS) Act of 1986.

DATES: The revised normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2007. Agency appeals of the normal cost percentages must be filed no later than December 7, 2007.

ADDRESSES: Send or deliver agency appeals of the normal cost percentages and requests for actuarial assumptions and data to the Board of Actuaries, care of Gregory Kissel, Manager, Office of Actuaries, Strategic Human Resources Policy Division, Office of Personnel Management, Room 4307, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jessica Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Public Law 99–335, created a new retirement system intended to cover most Federal employees hired after 1983. Most Federal employees hired before 1984 are under the older Civil Service Retirement System (CSRS). Section 8423 of title 5, United States Code, as added by the FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees' contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as ''normal cost,'' is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement and Disability Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practices and standards (using dynamic assumptions). Subpart D of part 841 of title 5, Code of Federal Regulations, regulates how normal costs are determined.

Recently, the Board of Actuaries of the Civil Service Retirement System approved a revised set of economic assumptions for use in the dynamic actuarial valuations of FERS. These assumptions were adopted after the Board reviewed statistical data prepared by the OPM actuaries and considered trends that may affect future experience under the System.

Based on its analysis, the Board concluded that it would be appropriate to assume a rate of investment return of 6.25 percent, with no difference from the current rate of 6.25 percent. The Board increased the anticipated inflation rate from 3.25 percent to 3.50 percent, and increased the projected rate of General Schedule salary increases from 4.00 percent to 4.25 percent. These salary increases are in addition to assumed within-grade increases that reflect past experience.

The new assumptions anticipate that, over the long term, the annual rate of investment return will exceed inflation by 2.75 percent and General Schedule salary increases will exceed inflation by .75 percent a year, as compared to 3 percent and .75 percent, respectively, under the previous assumptions. In addition, the Board found changes in all the demographic assumptions listed as factors under § 841.404(a) of title 5, Code of Federal Regulations.

The normal cost calculations depend on both the economic and demographic assumptions. The demographic assumptions are determined separately for each of a number of special groups, in cases where separate experience data is available. Based on the new economic assumptions and the change in the demographic assumption, OPM has determined the normal cost percentage for each category of employees under § 841.403 of title 5, Code of Federal Regulations. The Governmentwide normal cost percentages, including the employee contributions, are as follows:

	Percent
Members	18.6
Congressional employees	17.1
Law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers and employees under section 302 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees	26.2
Air traffic controllers	25.8
Military reserve technicians	14.8
Employees under section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (when serving abroad)	17.0
All other employees	12.0

Under section 841.408 of title 5, Code of Federal Regulations, these normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2007.

The time limit and address for filing agency appeals under sections 841.409 through 841.412 of title 5, Code of Federal Regulations, are stated in the **DATES** and **ADDRESSES** sections of this notice.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E7–11084 Filed 6–6–07; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27843; 813–306]

Stephens Inc., et al.; Notice of Application

May 29, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited liability companies and other entities (''Companies'') formed for the benefit of key employees of Stephens Inc. (''Stephens'') and its affiliates from certain provisions of the Act. Each Company will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

APPLICANTS: Stephens; Stephens Investment Partners 2001 LLC, Stephens Investment Partners 2001A LLC, Stephens Investment Partners 2001B LLC, Stephens Investment Partners 2001C LLC, Stephens Investment Partners 2003 LLC, Stephens Investment

Partners 2003A LLC, Stephens Investment Partners 2003B LLC, Stephens Investment Partners 2004 LLC, Stephens Investment Partners 2004A LLC, Stephens Investment Partners 2004B LLC, Stephens Investment Partners 2006 LLC, Stephens Investment Partners 2006A LLC, and Stephens Investment Partners 2006B LLC (collectively, the ''Initial Companies'').

FILING DATES: The application was filed on October 4, 2000, and amended on February 22, 2007 and April 27, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 25, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 111 Center Street, Suite 2300, Little Rock, AR 72201.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. Stephens is an investment banking firm organized under the laws of the State of Arkansas. Stephens is a wholly owned subsidiary of SI Holdings Inc., a holding company for a limited number of financial and insurance related companies. Stephens engages in municipal underwriting, mergers and acquisitions, corporate underwriting, private placements, trading, discretionary portfolio management, and offers a full range of investment banking services. Stephens is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). Stephens and its ''affiliates,'' as defined in rule 12b–2 under the Exchange Act, are referred to collectively as the ''Stephens Group'' and each entity within the Stephens Group is referred to individually as a ''Stephens Group Entity.''

2. Stephens has established the Initial Companies as limited liability companies organized under the laws of the state of Arkansas and may in the future establish additional pooled investment vehicles identical in all material respects to the Initial Companies (other than investment objectives and strategies and form of organization) (the ''Subsequent Companies'' and collectively with the Initial Companies, the ''Companies'') for the benefit of current or former key employees, officers, directors and consultants of the Stephens Group and certain entities and individuals affiliated with employees of the Stephens Group (''Members''). The Companies are designed primarily to create capital building opportunities that are competitive with those at other investment banking firms for the Members and to facilitate the recruitment and retention of high caliber professionals.

3. Each Company will operate as a closed-end, management investment company and may be diversified or non-diversified. The Initial Companies are organized in a ''master-feeder'' structure, in which several feeder Companies invest all of their assets in a master Company (''Master Company'') that invests directly or indirectly in portfolio companies. Each Company, including the Master Company, will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. The investment objectives and policies for each Company may vary from Company to Company. Participation in the Companies is voluntary, except with respect to Plan Interest Holders (as defined below) who will receive an award of interests in the Companies on an involuntary basis (as described below).

4. The Initial Companies are managed by a committee of ten managers (collectively, the ''Managers''). Each Manager is a senior executive of Stephens and an Accredited Investor (as defined below) who is eligible to invest in a Company. It is currently anticipated that Subsequent Companies will be managed by the Managers, however, Stephens may in the future organize one or more Stephens Group Entities to serve as the Manager of one or more Subsequent Companies. The Managers will register as investment advisers under the Advisers Act, if required under applicable law.

5. Interests in the Companies (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or Regulation D under the Securities Act, and will be offered and sold only to (a) certain officers, directors, employees and ''Consultants'' [1] of the Stephens Group who meet the standards set forth below (''Stephens Employees''), and (b) trusts or other investment vehicles of which the trustees or grantors are Stephens Employees or Stephens Employees together with their Qualified Family Members (as defined below), trusts or other investment vehicles established solely for the benefit of Stephens Employees or their Qualified Family Members, or partnerships, corporations or other entities all of the voting power of which is controlled by Stephens Employees (''Qualified Investment Vehicles'' and collectively with Stephens Employees, ''Eligible Investors''). Qualified Family Members include any parent, child, spouse of a child, spouse, brother, sister or grandchild, and includes any step and adoptive relationships. Each Eligible Investor must have, in the reasonable belief of the Managers, the knowledge, sophistication and experience in business and financial matters to be capable of evaluating the merits and risks of investing in a Company and be able to bear the economic risk of such investment, and be able to afford a complete loss of the investment. In the future, Stephens Group Entities may invest in a Company and Interests in a Company may be offered and sold to Qualified Family Members.

6. To be a Stephens Employee, an individual must (a) meet the standards of an accredited investor under rule 501(a)(5) or 501(a)(6) of Regulation D under the Securities Act (an ''Accredited Investor'') or (b) be one of 35 Stephens Employees who (i) is a Managing Employee (as defined below) or (ii) has a minimum of three years business experience in management, consulting, accounting, finance, law or

[1] A ''Consultant'' is a person or entity whom a Stephens Group Entity has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with the Stephens Group and its employees.

investment banking; will have a reportable income from all sources (including any profit share or bonus) in the calendar year immediately preceding his or her admission as a Member of at least $100,000 and a reasonable expectation of reportable income of at least $100,000 in each year in which he or she invests in a Company; and has a graduate degree in business, law, finance or accounting (''Sophisticated Employee''); except that a Managing Employee who is an Accredited Investor is not counted toward the 35 employee limit referred to in (b) above. A Managing Employee is an employee of Stephens Group who meets the definition of ''knowledgeable employee'' in rule 3c–5(a)(4) under the Act (with the Company treated as though it were a ''Covered Company'' for purposes of the rule). Each Sophisticated Employee will not be permitted to invest in any year more than 10% of such person's income from all sources for the immediately preceding year in the aggregate in a Company and in all other Companies in which he or she has previously invested.

7. To be a Stephens Employee, an entity must (a) be a current or former Consultant of a Stephens Group Entity and (b) meet the standards of an accredited investor under rule 501(a) of Regulation D. To be a Qualified Family Member, a person must be an Accredited Investor. A Stephens Employee or a Qualified Family Member may purchase an Interest through a Qualified Investment Vehicle only if either (a) the Qualified Investment Vehicle is an accredited investor, or (b) the Qualified Investment Vehicle, which is not an accredited investor, (i) has a Stephens Employee or Qualified Family Member as the settlor [2] and principal investment decision-maker, and (ii) is counted toward the limit on the 35 non-accredited investors that may invest in a Company.

8. Certain employees of the Stephens Group who do not qualify as Eligible Investors may receive Interests from Stephens without payment as part of an employee benefit plan in order to reward and retain these employees (''Plan Interest Holders''). Interests awarded to Plan Interest Holders will not be registered under the Securities Act and, because these employees will not be investing their own funds and will not have discretion over whether or not they receive Interests, these employees will not meet the sophistication and salary requirements to which Eligible Investors are subject. Plan Interest Holders will receive Interests at no cost and will neither make, nor be permitted to make, any financial contribution in order to acquire Interests. Plan Interest Holders will not be permitted to elect to receive an equivalent cash payment or other compensation in lieu of Interests. Plan Interest Holders will have no control or input as to whether they are awarded Interests, and the Interests given to Plan Interest Holders will not replace any part of, or reduce in any manner, the compensation of, or other benefits provided to, the Plan Interest Holders.

9. The investment objectives and strategies for each Company will be set forth in offering documents relating to the Interests offered by the Company. Prior to being invited to participate in a Company or receiving an Interest in a Company, each Eligible Investor or Plan Interest Holder will receive a copy of the offering documents and the operating agreement (or other organizational document) of the Company or an offering memorandum, which will set forth all the terms of participation in the Company. The Managers will send an annual report to each Member not later than 120 days after the close of the fiscal year, which will contain financial statements of the Company that have been audited by independent accountants. In addition, the Members will receive at least annually all information necessary to enable the Members to prepare their federal and state income tax returns.

10. Interests in the Companies will be non-transferable by a Member except with the express consent of the Managers or to the Eligible Investor's estate in the event of his or her death. No person will be admitted as a Member of a Company unless the person is an Eligible Investor, a Plan Interest Holder, a Stephens Group Entity, a Qualified Family Member, or a Qualified Investment Vehicle, except that a legal representative may hold an Interest in order to settle the estate of a deceased Member or administer its property. No fee of any kind will be charged in connection with the sale of Interests.

11. A Member's Interests in a Company may be subject to a vesting schedule that will provide that such Interests will initially be unvested or only partially vested and will vest over time at specified percentages and specified intervals as set out in the Company's operating agreement or other constitutive document. A Member's Interests in a Company will be subject to repurchase or cancellation if: (a) The Member's employment relationship with the Stephens Group is terminated for cause, (b) the Member becomes a consultant to or joins any firm that the Managers determine, in their reasonable discretion, is competitive with any business of the Stephens Group, or (c) the Member voluntarily resigns from employment with the Stephens Group. Upon the occurrence of one of the events specified above, the relevant Company or a Stephens Group Entity will have the right to repurchase all of the terminating Member's Interests in exchange for a payment equal to the amount actually paid by the Member to acquire the Interests less the fair market value of any distributions received by that Member from the Fund, plus interest. This repurchase right also applies upon any attempted transfer of Interests (whether vested or not) in violation of the transfer restrictions. Following termination where the Company's repurchase option does not apply, the terminating Member (or, following the death of the Member, the Member's estate or beneficiary) has the right to continue to hold the Interests purchased or awarded prior to termination and to receive distributions on the same terms as other Interest holders in the relevant Companies.

12. Certain of the Companies may leverage their investments through loans from a Stephens Group Entity. Each such Company loan will be made at an interest rate no less favorable than that which could be obtained on an arm's length basis. The Companies will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Company (other than short-term paper). Any Company loan made to a Company will be non-recourse to the Members.

13. A Company will not acquire any security issued by a registered investment company if immediately after the acquisition, the Company would own more than 3% of the outstanding voting stock of the registered investment company.

14. The Managers may charge the Companies an administrative fee or a management fee, including a performance fee.[3] The Managers may receive reimbursement of their out-of-pocket expenses, including

[2] If a Qualified Investment Vehicle is an entity other than a trust, the reference to ''settler'' shall be construed to mean a person who created the vehicle, alone or together with others, and who contributed funds to the vehicle.

[3] Any performance fee payable by a Company to the Managers may be charged only to the extent permitted by rule 205–3 under the Advisers Act (in the case of Managers registered under the Advisers Act) or will comply with section 205(b)(3) of the Advisers Act (in the case of Managers exempt from registration under the Advisers Act), with the Company treated as a business development company solely for the purpose of that section.

reimbursement for the allocable portion of the salaries of the Stephens Group employees who participate in any of the Companies' affairs.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Companies from all provisions of the Act, except section 9 and sections 36 through 53 of the Act, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) A Stephens Group Entity, or an affiliated person of a Stephens Group Entity (''Stephens Affiliate''), acting as principal, to engage in any transaction directly or indirectly with any Company or any entity controlled by the Company; (b) a Company to invest in or engage in any transaction with any entity, acting as principal (i) in which the Company, any company controlled by the Company or any entity in which a Stephens Group Entity has invested or will invest or (ii) with which the Company, any company controlled by the Company, or a Stephens Group Entity is or will otherwise become affiliated; (c) a partner or other investor in any entity in which a Company invests, acting as principal, to engage in transactions directly or indirectly with a Company or any company controlled by a Company; or (d) a sale by a Company as a selling security holder in a public offering in which a Stephens Group Entity or a Stephens Affiliate acts as a member of the selling group.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Members in each Company will be informed of the possible extent of the Company's dealings with Stephens Group Entities and of the potential conflicts of interest that may exist. Applicants also state that, as professionals engaged in the investment banking business, the Members will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Members and Stephens will serve to reduce any risk of abuse in transactions involving a Company and a Stephens Group Entity.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Company, or affiliated persons of such persons, to participate in any joint arrangement in which the Company or an entity controlled by the Company is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Company because of its affiliation with the Stephens Group and Stephen Group's experience in investment and merchant banking. Applicants also submit that the types of investment opportunities considered by a Company often require each investor to make funds available in an amount that may be substantially greater than what a Company may make available on its own. Applicants contend that, as a result, the only way in which a Company may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Company will be primarily organized for the benefit of Members as an incentive for them to remain with the Stephens Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with the Stephens Group Entities are prohibited, the appeal of the Companies would be substantially eliminated.

7. Applicants state that the possibility that permitting co-investments by a Stephens Group Entity and a Company might lead to less advantageous treatment of the Company is mitigated by (a) the community of interest between the Stephens Group and the Members in the Company and (b) the fact that officers and directors of Stephens Group Entities will be investing in the Company. In addition, applicants assert that compliance with section 17(d) could cause a Company to forego attractive investment opportunities simply because an affiliated person of the Company has made, or may make, the same investment.

8. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a Stephens Group Entity, acting as agent or broker, to receive placement fees, advisory fees, or other compensation from a Company in connection with the purchase or sale by a Company of securities, subject to the requirement that the fees or other compensation must be deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a Stephens Group Entity will be deemed ''usual and customary'' only if (a) the Company is purchasing or selling securities alongside other unaffiliated third parties who also are similarly purchasing or selling securities, (b) the fees or compensation being charged to the Company are also being charged to the unaffiliated third parties, and (c) the amount of securities being purchased or sold by the Company does not exceed 50% of the total amount of securities being purchased or sold by the Company and the unaffiliated third parties. Applicants assert that, because the Stephens Group does not wish it to appear as if it is

favoring the Companies, compliance with section 17(e) would prevent a Company from participating in a transaction where the Company is being charged lower fees than the unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Company to a Stephens Group Entity will be the same as those negotiated at arm's length with unaffiliated third parties.

9. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined by section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) requires each Company to comply with the fund governance standards defined in rule 0–1(a)(7). Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Company to comply with the rule without having a majority of the Managers of the Company who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because the Managers of a Company will be deemed interested persons of the Company, without the relief requested, a Company could not comply with rule 17e–1(b). Applicants state that each Company will comply with rule 17e–1(b) by having a majority of the Managers take actions and make approvals as set forth in rule 17e–1. Applicants also request an exemption from rule 17e–1(c). Applicants state that each Company will otherwise comply with the requirements of rule 17e–1.

10. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1(a) to permit Stephens to act as custodian of a Company's assets without a written contract. Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants further request an exemption from rule 17f–1(c)'s requirement of transmitting to the Commission a copy of any contract executed pursuant to rule 17f–1. Applicants believe that, because of the community of interest between the Stephens Group and the Companies and the existing requirement for an independent audit, compliance with these requirements would be unnecessary. Applicants state that they will comply with rule 17f–1(d), provided that ratification by the Managers of any Company will be deemed to be ratification by a majority of the board of directors of that Company. Applicants state that each Company will comply with all other requirements of rule 17f–1.

11. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7). Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Company to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such action and make the determinations set forth in the rule. Specifically, each Company will comply with rule 17g–1 by having the Managers take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Managers will be interested persons of each Company, a Company could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Companies. The Managers will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agree that all such material will be subject to examination by the Commission and its staff. The Managers will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be give to the board of directors would be unnecessary as the Companies will not have boards of directors. The Companies will comply with all other requirements of rule 17g–1.

12. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Companies.

13. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Companies and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each Company to report annually to its Members. Applicants also request also an exemption from section 30(h) to the extent necessary to exempt the Managers of each Company and any other person who may be deemed to be a member of an advisory board of a Company from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in a Company. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

14. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies and procedures reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Each Company will comply with rule 38a–1(a), (c) and (d), except that (a) because the Companies

do not have boards of directors, the Managers of each Company will fulfill the responsibilities assigned to a Company's board of directors under the rule, and (b) because all Managers would be considered interested persons of the Companies, approval by a majority of disinterested directors required by rule 38a–1 will not be obtained.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction involving a Company otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder (each, a ''Section 17 Transaction'') will be effected only if the Managers determine that:

(a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Members and do not involve overreaching of the Company or its Members on the part of any person concerned; and

(b) the Section 17 Transaction is consistent with the interests of the Members, the Company's organizational documents and the Company's reports to its Members.

In addition, the Managers will record and preserve a description of all Section 17 Transactions, their findings, the information or materials upon which their findings are based, and the basis therefor. All such records will be maintained for the life of the Companies and at least six years thereafter, and will be subject to examination by the Commission and its staff. Each Company will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the Managers will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, before the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Companies, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The Managers of each Company will not invest the funds of any Company in any investment in which an Affiliated Co-Investor (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Company and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the Managers sufficient, but not less than one day's, notice of its intent to dispose of its investment and (b) refrains from disposing of its investment unless the Company has the opportunity to dispose of the Company's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' with respect to a Company means: (a) An ''affiliated person,'' as such term is defined in the Act, of the Company; (b) the Stephens Group; (c) an officer, director or employee of the Stephens Group; (d) an investment vehicle offered, sponsored or managed by the Stephens Group, or (e) an entity in which a member of the Stephens Group acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to Immediate Family Members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; or (c) when the investment is comprised of securities that are (i) listed on any national securities exchange registered under section 6 of the Exchange Act; (ii) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (iii) government securities as defined in section 2(a)(16) of the Act.

4. Each Company and its Managers will maintain and preserve, for the life of each Company and at least six years thereafter, all accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Members, and each annual report of such Company required to be sent to the Members, and agree that all such records will be subject to examination by the Commission and its staff.[4]

[4] Each Company will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

5. The Managers will send to each Member who had an Interest in the Company, at any time during the fiscal year then ended, Company financial statements that have been audited by that Company's independent accountants. At the end of each fiscal year, the Managers will make a valuation or have a valuation made of all of the assets of the Company as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Company. In addition, within 120 days after the end of each fiscal year of the Company or as soon as practicable thereafter, the Managers of the Company shall send a report to each person who was a Member at any time during the fiscal year then ended setting forth tax information necessary for the preparation by the Member of his or her federal and state income tax returns and a report of the investment activities of the Company during that year.

6. Whenever a Company makes a purchase from or sale to an entity that is affiliated with the Company by reason of a Stephens Group director, officer, or employee (a) serving as an officer, director, general partner or investment adviser of the entity or (b) having a 5% or more investment in the entity, that individual will not participate in the determination by the Managers of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10924 Filed 6–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55843; File No. SR–Amex–2004–27]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment Nos. 2 and 3 Thereto Relating to the Listing and Trading of Fixed Return Options

June 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. Amex filed Amendment No. 1 to the proposed rule change on September 26, 2006.[3] Amex filed Amendment No. 2 to the proposed rule change on April 19, 2007.[4] Amex filed Amendment No. 3 to the proposed rule change on May 23, 2007.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options having a fixed return in cash based on a set strike price (''Fixed Return Options'' or ''FROs'').

The text of the proposed rule change is available at Amex, from the Commission's Public Reference Room, and on Amex's Web site at *http://www.amex.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, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange proposes to list and trade options, called Fixed Return Options, having a fixed return in cash based on a set strike price.[6] The proposed Fixed Return Options would initially consist of two types as follows: (1) ''Finish High''SM—Each contract returns $100 if the underlying settlement value is above the strike price at expiration and (2) ''Finish Low''SM—Each contract returns $100 if the underlying settlement value is below the strike price at expiration. The Finish High and Finish Low FROs are similar to existing long calls and long puts traded on the Exchange.

The structure of the FRO is commonly referred to as a ''binary'' option.[7] Although FROs would be based on the same underlying securities and in the same framework as existing standardized options traded on Amex and the other options exchanges, the amount of the payout or profit of an FRO is based on whether the option is in the money, not by the degree it is in the money. As a result, the payout at expiration is an ''all-or-nothing'' occurrence. As with a standard European-style option, the payoff is based on the price of the underlying asset at expiration. However, unlike standard options currently traded on the Exchange, the payoff would be a fixed amount as of the writing of the option contract. In addition, an FRO would be automatically exercised at expiration if the price of the underlying security settles above the pre-defined strike price, in the case of a Finish High, or below the pre-defined strike price, in the case of a Finish Low.[8]

Binary options have been traded in the over-the-counter (''OTC'') market for many years.[9] However, OTC binary options have certain disadvantages. OTC binary options are typically offered by an institution on a non-fungible basis so the customer can purchase the option from or close out the option with only the particular institution that issued the option. As a result, OTC binary options lack both a trading market (liquidity) as well as transparency. The Exchange proposal to list and trade FROs is intended to provide the market for binary options with a standardized, fungible product without the credit risk of an individual issuer. By providing a listed or standardized market for a class of binary options named FROs, the Exchange seeks to attract investors who desire a binary option but at the same time prefer the certainty and safeguards of a regulated and standardized marketplace.

The FROs that the Exchange proposes to list and trade would be European-style[10] with expirations based on existing option cycles. Strike prices would be quoted based on existing intervals with minimum price variations (''MPVs'') expected to be $0.05 (except for those option classes that are part of the Penny Quoting Pilot Program, where the MPV would be $0.01). Strike prices initially would be established at approximate levels up to 20% above and below the price of the underlying asset. The Exchange is proposing in this filing to allow individual stocks and exchange-traded fund shares (''ETFs'') that meet the listing criteria set forth below to underlie an FRO.

Benefits and Uses

FROs are designed to be a simplified version of traditional, exchange-traded options. The inherent benefit of FROs is largely associated with the certainty provided writers and purchasers, *i.e.*, a known maximum payout or liability at the time the contract is entered into. For investors, Amex believes that three positive attributes relating to FROs are apparent: (i) Simplicity; (ii) risk transparency; and (iii) liquidity. First, an FRO is easier to understand and utilize than a traditional equity option largely based on the certain payment amount and cash settlement. Second, unlike traditional options where a writer has unlimited risk, the maximum obligation in connection with an FRO is known at $100. Third, as an exchange-traded option, the FRO would have the advantage of liquidity provided by specialists and market makers; therefore, spreads should be tighter than exists in the OTC market. In addition,

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] Amendment No. 2 replaces the original filing and Amendment No. 1 in their entirety.

[5] Amendment No. 3 made changes to the proposed rule text relating to minimum margin requirements.

[6] Patent Pending. The contract specifications for a FRO are set forth in *Exhibit A* to the proposal.

[7] A ''binary option'' is an option with a fixed, pre-determined payoff if the underlying security or index is in the money at expiration. The value of the payoff is not affected by the magnitude of the differenfce between the underlying and the strike price. A binary option is characterized by a discontinuous or non-linear payoff (*i.e.,* an ''all-or-nothing'' feature).

[8] Currently, the Exchange lists and trades Index Flex Options that are automatically exercised pursuant to Rule 1804(c) of The Options Clearing Corporation (''OCC''). Automatic exercise in this context refers to the fact that all in the money options are automatically exercised with the holder of such option having no choice to not exercise. This differs significantly from the ''Ex-by-Ex'' procedure (often inaccurately referred to as ''automatic exercise'') employed by OCC in OCC Rule 805, which always allows an OCC Clearing Member to effect a choice not to exercise an option that is in the money by the exercise threshold amount or more, or to exercise an option which has not reached the exercise threshold amount. The exercise threshold amount set forth in OCC Rule 805 is $0.25 per share in the money for customer accounts and $0.15 per share in the money for firm and market maker accounts. The exercise threshold amount employed in the ''Ex-by-Ex'' procedure triggers the automatic exercise only in the absence of contrary instructions from the Clearing Member. *See also* Amex Rule 980.

[9] As reported by the Bank for International Settlements (''BIS''), the worldwide OTC equity-linked derivatives market was estimated on a notional amount basis to be $6.8 trillion as of June 2006. As of the same time period, OTC equity-based options were estimated on a notional amount basis to amount to $5.3 trillion. *See* BIS, OTC Derivatives Market Activity in the First Half of 2006 (November 2006).

[10] A ''European style'' option is an option where the holder may exercise the contract only on the last business day prior to expiration.

the structure of an FRO eliminates the potential counterparty risk inherent in OTC products.

Amex believes that a significant benefit of an FRO is that the purchaser and writer of the FRO know the expected return at the time of purchase if the underlying security performs as expected. In contrast, the ''traditional'' option does not typically have a known return at the time of purchase, *i.e.*, the return cannot be accurately determined until the option is nearing expiration due to price movements. In addition, because the return on the FRO is a fixed amount, a buyer of the FRO would not need to determine the absolute magnitude of the underlying security's price movement relative to the strike price, as is the case with traditional options. Yet another benefit of the FRO is the limited risk/return to the writer/purchaser because of the payout being a known, fixed dollar amount. A systemic benefit provided by the FRO versus its OTC counterpart is the ability of standardized clearing and settlement systems to be programmed to recognize FROs based on their unique underlying symbols and segregation for particular treatment by systems used for calculating permissible margin as well as final payout amounts due at settlement.

Amex believes that investors will want to utilize FROs to earn additional income on securities they own. An ''FRO Call Writing'' strategy describes a situation where an investor is long stock and writes a Finish High FRO on that same security. In this instance, the writer has earned premium while risking a fixed and known portion of the upside should the stock close above the FRO strike price at expiration. The amount at risk is the difference between $100 and the premium received.

In contrast, if a holder of a long stock position employs a ''Call Writing'' strategy by writing a traditional call covered by the corresponding long stock position, up to 100% of the potential upside may be given up if the stock moves up beyond the option strike price. A holder of stock, particularly stock that has depreciated, may lock in a loss by selling traditional ''covered calls''—there is no potential for upside, beyond the premium received, if the stock moves up and closes above the strike at expiration.

With the ''FRO Call Writing'' strategy, an investor believing his long stock position would remain stagnant in the short term may further choose to write more than one Finish High FRO, increasing the short-term return potential by receiving more premium for the additional calls sold. The investor by engaging in this FRO Call Writing strategy would maintain certainty of stock ownership while knowing the total capital or funds at risk if the stock exceeds the strike price of the Finish Highs sold.

On the buy side, Amex believes that the decision process is made simpler for the investor with the advent of the FRO. To profit from buying a traditional call, an investor must be correct in his prediction that the underlying security will appreciate within a given period of time. In addition, due to the linear payoff nature of the traditional call, the investor must also be correct about the amount of time erosion or ''decay'' of the position in the time he holds the call. Thus, with a traditional long call purchase, if the investor is correct in his prediction that the stock will appreciate within a set period of time, there are still other factors, such as volatility and time premium, that could affect potential returns.

If the purchaser of a long FRO position is correct about the prediction that the stock will appreciate and also correct about the timeframe within which this appreciation will occur, he then has a known risk/return profile, due to the non-linear relationship between the Fixed Return Option payoff amount and the price of the underlying at expiration. This offers the investor the ability to make an exact risk/reward analysis of the investment if he is correct in his assumption on the underlying stock at expiration. In contrast, the traditional call buyer can make only estimates of risk/reward based on multiple assumptions.

The Exchange believes that FROs would also provide investors with an efficient way to establish various strategies and enhance portfolio performance. For example, the Finish High FRO has characteristics similar to a bull call spread; however, in the case of the FRO, an investor could accomplish the strategy with reduced execution cost. We believe that such unique uses for FROs would provide investors with greater opportunities to effectively use options as part of an investment strategy. In sum, the Exchange believes that the simple structure of FROs will attract investors to the benefits of options trading.

Standardization

The Exchange in proposing FROs is attempting to list a binary option in an exchange-traded environment.[11] In this manner, the Exchange intends, to the extent possible, to have FROs recognized and treated like existing standardized options. Standardized systems for listing, trading, transmitting, clearing, and settling options, including systems used by OCC, would be employed in connection with FROs. As a result, FROs would have symbology based on the current system so that symbols are created that represent the underlying security, the fact that the option is a ''Finish High'' or ''Finish Low'' FRO as opposed to a traditional put or call, the expiration date, the strike price, and the exchange trading FROs.

Options Contract Multiplier

The standardized option contract traded by all U.S. options exchanges typically is quoted in amounts that are multiplied by ''100'' due to the fact that the option represents rights associated with 100 shares of the underlying security upon exercise. The multiplier of 100 has also been carried over to index options. The Exchange has proposed to continue this industry convention for FROs. For example, an option that currently is quoted at $0.50 actually costs the investor $50.00 ($0.50 × 100).

Minimum Price Variation

Amex Rule 952 generally provides that the MPV for an option on a stock or ETF shall be: (i) For option issues quoted under $3 a contract, $0.05; (ii) for option issues quoted at $3 a contract or greater, $0.10. However, in connection with those options classes included within the Penny Quoting Pilot Program,[12] the MPV is as follows: (iii) For option issues quoted under $3 a contract, $0.01; (iv) for option issues quoted at $3 a contract or greater, $0.05. In addition, options on the Power Shares QQQ Trust (formerly, the QQQQ) trade at an MPV of $0.01 for all options premiums.

The MPV for FROs would be $0.05 (and $0.01 for those options classes in the Penny Quoting Pilot Program) because, by definition, an FRO would never be quoted over $1.00.

Maximum Bid/Ask Differentials

To contribute to the maintenance of a fair and orderly market, specialists and registered options traders (''ROTs'') are typically expected to bid and offer so as to create differences of no more than: (i) $0.25 between the bid and offer for each option contract for which the prevailing

[11] The Exchange to its knowledge is the first national securities exchange to propose the listing and trading of a binary option in a standardized environment. The Exchange has pending a patent application for trading binary options in an exchange-traded environment.

[12] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 5738 (February 1, 2007).

bid is less than $2; (ii) $0.40 where the prevailing bid is $2 but does not exceed $5; (iii) $0.50 where the prevailing bid is more than $5 but does not exceed $10; (iv) $0.80 where the prevailing bid is more than $10 but does not exceed $20; and (v) $1 where the last prevailing bid is more than $20.[13] With respect to FROs, the Exchange believes that the maximum bid/ask differential should typically be $0.25. However, due to the non-linear payoff nature of FROs, we believe that during the last day of trading prior to expiration, the maximum bid/ask differential should be $0.50.[14]

In terms of the maximum bid-ask differential, existing options with a prevailing bid of $1 equate to the $100 value of an FRO and, therefore, a maximum bid-ask differential of $0.25 or $25.00 ($0.25 × 100). Accordingly, Amex believes, consistent with existing rules, that the maximum bid-ask differential for FROs should generally be $0.25.

Expiration Cycles and Strike Price Intervals

Pursuant to Amex Rule 903, the Exchange generally opens up to four expiration months for each options class upon the initial listing of such class for trading. Upon expiration of the near-term month, the Exchange will then list an additional expiration month. FROs would use the same expiration cycle as currently is the case for traditional options listed on the Exchange, consistent with Amex Rule 903.

Strike price intervals in connection with FROs also would employ the same procedure as exists for traditional options under Amex Rule 903 and related commentaries. Specifically, the interval between strike prices of series of options on individual stocks may be (i) $2.50 or greater where the strike price is $25 or less, provided that the Exchange may not list $2.50 intervals below $20 (*e.g.*, $12.50, $17.50) for any class included within the $1 Strike Price Pilot Program, if the addition of $2.50 intervals would cause the class to have strike price intervals that are $0.50 apart; (ii) $5 or greater where the strike price is greater than $25 but less than $200; or (iii) $10 or greater where the strike price is greater than or equal to $200. For series of options on ETFs that satisfy the criteria set forth in Commentary .06 to Amex Rule 915, the interval of strike prices would be $1 or greater where the strike price is $200 or less or $5 or greater where the strike price is over $200.[15]

The Exchange proposes that securities underlying options classes that currently are part of the $1 Strike Price Pilot Program and the 2½ Point Strike Price Program also may underlie an FRO. Due to the heightened listing standards proposed by the Exchange in proposed Amex Rules 915FRO and 916FRO, the number of FROs available under these existing programs would be limited.[16] Accordingly, the Exchange proposes that the strike price intervals for FROs would be established under existing procedures as set forth in Amex Rule 903.

VWAP Settlement Pricing

To protect against any potential price manipulation that could occur at expiration due to the ''all-or-nothing'' nature of FROs, the Exchange has proposed that the expiration or settlement price for an underlying individual equity security be calculated as a ''volume weighted average price'' or ''VWAP.'' As provided below, FROs would be listed only on the most liquid and actively-traded equity securities. VWAP is a simple algorithm that is defined as the number of shares multiplied by the corresponding reported price of the security. The total number of shares reported divides the sum of these transactions during the time period used for the calculation. The VWAP calculation would be based on composite prices reported during regular trading hours for the underlying securities. In addition, the current value of the VWAP calculation for each series of FROs would be published and disseminated at least every 15 seconds throughout the trading day. The Exchange believes that a settlement price based on an ''all-day'' VWAP during the last trading day prior to expiration is appropriate for FROs based on individual stocks and ETFs. We believe that the use of an ''all-day'' VWAP for determining the settlement price of an FRO is sufficient to protect against concerns of manipulation, and that the publication and dissemination of intraday updates of the current VWAP calculation would add greater transparency.

For purposes of the VWAP calculation, the Exchange believes that composite prices should be used. Composite pricing is currently employed by OCC in connection with the settlement of equity options.[17]

The VWAP settlement price would be disseminated by the Exchange as the official settlement price for FROs and would be made publicly available through various market data vendors as well as on the Amex Web site at *http://www.amex.com*.

Underlying Closing Price Methodology

In the money amounts for any option, including FROs, are a function of the underlying security price. For traditional equity and ETF options, OCC as the issuer of the options uses the ''composite closing price'' (*i.e.*, the last reported sale price during regular trading hours) for the underlying security on the trading day immediately preceding the expiration date as reported by industry price vendors.[18] As noted above, the Exchange similarly believes, that for purposes of calculating the VWAP settlement price for FROs based on individual stocks and ETFs, ''composite prices'' should be used. As a result, the Exchange would use composite prices of the underlying securities to calculate the VWAP settlement price for FROs. In contrast to traditional options, the Exchange, not OCC, would determine the underlying security prices and calculate the VWAP settlement price.

In a case where the underlying security does not trade during regular trading hours on the last trading day prior to expiration or a last sale price is not obtainable either due to a trading halt or unreliable pricing, OCC has the discretionary authority to set a closing price on such basis as it believes appropriate under the circumstances.[19]

[13] If the bid/ask spread in the underlying security is greater than the bid/ask spread for the option, the permissible spread for any in the money option series may be identical to the underlying security market. We believe FROs should follow this existing practice for traditional options. *See* Amex Rule 958—ANTE(c).

[14] Where warranted by market conditions, the Exchange is proposing to be able to establish maximum bid/ask spreads other than those noted above for one or more series or classes of FROs.

[15] Commentaries .05 and .06 to Amex Rule 903 provide limited exceptions to the general strike price intervals in connection with the $1 Strike Price Pilot Program and the 2½ Point Strike Price Program.

[16] As of March 5, 2007, the number of underlying stocks available under the $1 Strike Price Pilot Program for FROs would be four, while the number of underlying stocks available under the 2½ Point Strike Price Program would be 39.

[17] *See* OCC Clearing Members Memorandum No. 18930 (May 29, 2003); and Securities Exchange Act Release No. 49045 (January 8, 2004), 69 FR 2377 (January 15, 2004).

[18] *Id.*

[19] OCC Rule 805(j) defines the term ''closing price'' to mean the last reported sale price for the underlying security on the trading day immediately preceding the expiration date on such national securities exchange or other domestic securities market as the Corporation shall determine. Notwithstanding the foregoing, if an underlying security was not traded on such market on the trading day immediately preceding the expiration date or if the underlying security was traded on such trading day but the Corporation is unable to obtain a last sale price, the Corporation may, in its discretion: (i) Fix a closing price on such basis as it deems appropriate in the circumstances

Continued

OCC currently performs this function for standardized options traded by all options exchanges. The Exchange believes that in most cases OCC will use the last sale price reported during regular trading hours on the most recent trading day for which a last sale price is available.

Listing Requirements

The Exchange proposes that, in addition to meeting the criteria set forth in Amex Rule 915 (Initial Listing), an FRO may be initially listed only on an individual stock issued by a company that has: (i) A market capitalization of at least $40 billion; (ii) minimum trading volume over the last 12 months of at least one billion shares; (iii) minimum average daily trading volume of at least four million shares; (iv) minimum average daily value traded of at least $200 million during the prior six months; and (v) the market price per share of the underlying security has been at least $10 during the five consecutive business days preceding listing. The underlying security price per share is measured by the closing price reported in the primary listed market in which the underlying security is traded.[20]

With respect to ETFs, the Exchange proposes that, in addition to meeting the criteria set forth in Amex Rule 915 (Initial Listing), an FRO may be listed only on an ETF that has: (i) A minimum trading volume over the last 12 months of at least one billion shares; (ii) a minimum average daily trading volume of at least four million shares; (iii) a minimum average daily value traded of at least $200 million during the prior six months; and (iv) the market price per share of the underlying security has been at least $10 during the five consecutive business days preceding listing.

To be eligible for additional FRO series, the Exchange proposes that, in addition to meeting the criteria set forth in Amex Rule 916 (Continued Listing),[21] an underlying stock have: (i) A market capitalization of at least $30 billion; (ii) a minimum trading volume over the last 12 months of at least one billion shares; (iii) a minimum average daily trading volume of four million shares; (iv) a minimum average daily value traded of $125 million during the prior six months; and (v) a market price per share of at least $5. For intra-day series additions, the market price of an underlying security is measured by the last reported trade in the primary listed market in which the underlying security trades at the time the Exchange determines to add these additional series. In the case of next-day or expiration series additions, the market price of an underlying security is measured by the closing price reported in the primary listed market on the last trading day before the series are added.

For additional FRO series based on ETFs, the Exchange proposes that, in addition to meeting the criteria set forth in Amex Rule 916 (Continued Listing), an underlying ETF have: (i) A minimum trading volume over the last 12 months of at least one billion shares; (ii) a minimum average daily trading volume of four million shares; (iii) a minimum average daily value traded of $125 million during the prior six months; and (iv) a market price per share of at least $5.

Proposed Amex Rules 915FRO and 916FRO detail these requirements. The Exchange believes that this proposal for listing FROs on individual stocks and ETFs is consistent with current requirements for traditional options. In connection with individual stocks, Amex believes that a higher standard is appropriate for such listings. By providing heightened listing standards for underlying securities that may be the basis for FROs—consisting of market capitalization, 12-month trading volume, average daily trading volume, average daily trading value, and a minimum market price per share—the Exchange believes that the potential and/or susceptibility of manipulation is greatly reduced. In the case of ETFs, Ames has proposed that only actively traded and well capitalized ETFs may underlie an FRO. Amex believes that, based on the proposed initial and continued listing standards, the susceptibility to manipulation is severely dampened.

Position and Exercise Limits

Amex proposes that an FRO based on an individual stock or ETF have a position limit of 25,000 contracts. Existing hedge exemptions found in Amex Rules 904 and 904C would not apply to FROs; however, the facilitation exemption to position limits currently available to members would apply in the case of FROs in connection with facilitating customer FRO orders. FROs would not be subject to exercise limits due to the fact that FROs are European-style options[22] and are automatically exercised only if the settlement price is in the money.

The Exchange believes that position limits for FROs should not be aggregated with the position limits of existing standardized options on the same underlying security. Amex believes that the non-linear (*i.e.*, ''all-or-nothing'') nature of FROs as well as the risk/return profile for FROs provides significant differences to existing standardized options that render aggregation of position limits inconsistent. In addition, the automatic exercise feature of an FRO also supports Amex's belief that an exercise limit should not be imposed because FROs by definition cannot be exercised over a five-day period.[23]

Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control. Similarly, exercise limits prohibit the exercise of more than a specified number of contracts on a particular instrument within five business days. Position limits on exchange-traded options are designed to: (i) Minimize the potential for mini-manipulations[24] as well as other forms of market manipulation; (ii) impose a ceiling on the position that an investor with inside corporate or market information can establish; and (iii) reduce the possibility of disruption in the options and underlying cash markets.

Amex believes that the structure of FROs—especially the ''all-day'' VWAP settlement pricing, heightened listing requirements for individual stocks and ETFs underlying FROs, and lower position limits—should allay regulatory concerns of potential manipulation. In particular, Amex notes that, for individual stocks underlying an FRO, in addition to the existing listing requirements, the Exchange has proposed heightened continuing or maintenance listing standards of: (i) At least $30 billion in market capitalization; (ii) a minimum trading volume of at least one billion shares over the last 12 months; (iii) a minimum average daily trading volume of at least four million shares; (iv) a minimum average daily trading value of $125 million; and (v) a minimum market price per share of the underlying

(including, without limitation, using the last sale price during regular trading hours on the most recent trading day for which a last sale price is available); or (ii) suspend the application of the ex-by-ex procedure to option contracts for which that security is an underlying security.

[20] *See* Commentary .01 to Amex Rule 915 for the current options listing criteria.

[21] *See* Commentaries .01 and .02 to Amex Rule 916 for the current options continuing listing criteria.

[22] *See supra* note 10.

[23] Unlike with traditional equity options, exercise instructions are not entered for FROs because the contract is automatically exercised pursuant to the contract if the settlement price exceeds the strike price.

[24] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

security of $5.[25] ETFs underlying an FRO would be subject to the same continued listing standards except for the minimum market capitalization requirement. These heightened listing requirements would provide that only the most highly liquid securities may underlie an FRO. In addition, Amex believes that the proposed FRO settlement pricing based on an ''all-day'' VWAP would greatly reduce the ability to use FROs for manipulative purposes.

FROs would not be subject to any ''qualified hedge exemptions'' from the standard position and exercise limits that currently exist for traditional options.

Consistent with non-FRO or traditional options, positions in FROs would have to be reported to the Exchange when an account establishes an aggregate same-side-of-the-market position of 200 or more FROs. The Exchange also would require that each member or member organization (other than an Exchange specialist or registered trader) that maintains a position on the same side of the market in excess of 25,000 FROs, for its own account or for the account of a customer, report certain information. This data would include, but would not be limited to, the FRO position, whether such position is hedged and, if so, a description of the hedge and, if applicable, the collateral used to carry the position. The Exchange believes that the reporting requirements under Amex Rule 906 and the surveillance procedures for hedged positions would enable the Exchange to closely monitor sizable FRO positions and corresponding hedges.[26]

The Exchange further believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in FROs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. The Exchange has the authority under paragraph (d)(2)(k) of Amex Rule 462 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

Contract Adjustments

FROs will be subject to adjustments for corporate and other actions in accordance with the rules of OCC. The general rule for adjustments in connection with FROs is that, regardless of the corporate action, the settlement value (paid in cash) of the FRO would always be $100.[27]

In the case of even splits [28] and uneven splits,[29] OCC and the Exchange believe that FROs should be adjusted by changing the strike price of the contract.

OCC submitted a proposed rule change with the Commission on November 18, 2004 (OCC File No. SR–OCC–2004–21) to enable it to issue, clear, and settle FROs. The OCC proposal would allow it to process FRO transactions in accordance with procedures that are substantially similar to its existing well established systems and procedures for the clearance and settlement of traditional exchange-traded options.

Margin

Consistent with Amex Rule 462(c)(11) and proposed new paragraph (d)(10) of Amex Rule 462, the initial and maintenance margin for long positions in FROs would have to equal at least 100% of the purchase price of the option (*i.e.*, the premium).[30] In connection with short positions in FROs, the customer margin required is the difference between $100 and the proceeds received from the sale of the FRO. Amex believes that this proposed margin treatment is adequate and should not be otherwise based on the behavior of the underlying security, given the fact that the greatest amount at risk for an option writer of an FRO is the payout amount of $100. As with existing equity options, short FRO positions could be carried in a cash account (not subject to margin) and deemed ''covered,'' provided that proposed new paragraph (d)(10)(F) of Amex Rule 462 were applicable. ''Covered'' for purposes of an FRO is deemed to exist where the writer's obligation is secured by a specific deposit or escrow deposit meeting the entire obligation of $100 on the FRO. This standard is similar to the available ''cover'' for existing exchange-traded options under Amex Rules 462(d)(2)(I) and 900(b)(23).

Options Disclosure Document

As noted above, the OCC submitted a proposed rule change with the Commission to accommodate the listing and trading of FROs.[31] In addition, the OCC will also seek a revision to the Options Disclosure Document (''ODD'') to incorporate FROs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[32] in general, and furthers the objectives of Section 6(b)(5),[33] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change would 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 received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[25] As of March 5, 2007, 60 stocks and 11 ETFs would qualify for FROs.

[26] Hedge information for member firm and customer accounts having 200 or more contracts are electronically reported via the Large Options Positions Report. Specialist and registered options trader account information is also reported to Amex by such member's clearing firm. In addition, a member firm is required to report hedge information for any proprietary or customer account that maintains an options position in excess of 10,000 contracts. These procedures would apply to FROs.

[27] Article VI, Section 11(c) of OCC's By-Laws provide the general rule that there will be no adjustments to reflect ordinary cash dividends or distributions or ordinary stock dividends or distributions.

[28] An ''even split'' is a case where the stock distribution or stock split results in one or more whole numbers of shares of the underlying security issued with respect to each outstanding share.

[29] An ''uneven split'' is a case where the stock distribution or stock split results in other than whole numbers of shares of the underlying security issued with respect to each outstanding share.

[30] New York Stock Exchange Regulation (''NYSER'') confirmed to Amex that the proposed margin requirements are appropriate. NYSER represented that prior to the launch of FROs, a regulatory circular to members would be issued detailing the margin requirements in connection with FROs.

[31] *See* File No. SR–OCC–2004–21.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2004–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–27 and should be submitted on or before June 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10970 Filed 6–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55824; File No. SR–Amex–2007–52]

Self-Regulatory Organization; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Broker Zone Requirements in AEMI

June 4, 2007.

Correction

In FR Doc. No. E7–10680, beginning on page 30891 for Monday, June 4, 2007, the release number was incorrectly stated as 34–58824. The correct release number appears above.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10980 Filed 6–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55838; File No. SR–NYSEArca–2007–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Pilot Program for Initial and Continued Financial Listing Standards for Common Stock Until November 30, 2007

May 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until November 30, 2007, the six-month pilot program (the ''Pilot Program'') which amended the Exchange's financial listing standards for the common stock of operating companies.

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 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca has amended on a six-month pilot program basis the rules governing the NYSE Arca Marketplace to amend the financial listing standards for common stock of operating companies.[5] The Pilot Program expired on May 29, 2007. The Exchange proposes to extend the Pilot Program until November 30, 2007.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5)[7] in particular. The proposed rule change furthers these objectives by preventing fraudulent and

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR–NYSEArca–2006–85).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in facilitating transactions in securities, and removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Pilot Program to continue without any interruption, until November 30, 2007.[12] The Commission further notes that no comments were received on the pilot program.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–51 and should be submitted on or before June 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–10926 Filed 6–6–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The Exchange has requested that the Commission waive the five-day pre-filing notice requirement, and the Commission has agreed to waive the requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0298]

Harbert Mezzanine Partners II SBIC, L.P.; Notice Seeking Exemption Under 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Harbert Mezzanine Partners II SBIC, L.P. One Riverchase Parkway South, Birmingham, Alabama, 35244, 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 Section 312 of the Act and Section 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2003)). Harbert Mezzanine Partners II SBIC, L.P. proposes to provide a loan to Delta CompuTec LLC, 2 Sound View Drive, Suite 100, Greenwich, CT 06830. The financing is contemplated for DCI's expansion through a potential new acquisition.

The financing is brought within the purview of Section 107.730 (a) (1) of the Regulations because Harbinger Mezzanine Partners, LP, an Associate of Harbert Mezzanine Partners II SBIC, L.P., currently owns greater than 10 percent of Delta CompuTec LLC, and therefore, Delta CompuTec LLC, is considered an Associate of Harbert Mezzanine Partners II SBIC, L.P. as defined in Section 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. E7–10990 Filed 6–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10887]

Kentucky Disaster #KY–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the Commonwealth of Kentucky (FEMA–1703–DR), dated 05/25/2007.

Incident: Severe Storms, Flooding, Mudslides, and Rockslides

Incident Period: 04/14/2007 through 04/15/2007.

Effective Date: 05/25/2007.

Physical Loan Application Deadline Date: 07/24/2007.

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 05/25/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Carter, Floyd, Johnson, Knott, Lawrence, Leslie, Martin, Perry, Pike.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10887.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–10988 Filed 6–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10885 and #10886]

Minnesota Disaster #MN–00008

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Minnesota dated 05/30/2007.

Incident: Fires.

Incident Period: 05/05/2007 through 05/12/2007.

Effective Date: 05/30/2007.

Physical Loan Application Deadline Date: 07/30/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2008.

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: Cook.

Contiguous Counties: Minnesota: Lake.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10885 5 and for economic injury is 10886 0.

The State which received an EIDL Declaration # is Minnesota.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 30, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–10989 Filed 6–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10888]

Rhode Island Disaster #RI–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Rhode Island (FEMA–1704–DR), dated 05/25/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/15/2007 through 04/16/2007

Effective Date: 05/25/2007.

Physical Loan Application Deadline Date: 07/24/2007.

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 05/25/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Newport.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10888.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–10986 Filed 6–6–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5804]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 28, 2007, at 9:30 a.m. in Room 1498, New Conference Center, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations and a review of projects selected for the 2006 and 2007 Educational Assistance Programs, which are under development.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 18, 2007. Each visitor will be asked to provide his/her date of birth and either driver's license, passport, or Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the 21st Street entrance to the building.

Dated: May 30, 2007.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. E7–11013 Filed 6–6–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 2007–27401 and OST Docket No. 2003–11473]

RIN 2105–ADO4

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2105–0551)

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Correction notice.

SUMMARY: This notice requests public participation in the Office of Management and Budget approval process for the renewal of an existing OST information collection. In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) described below has been forwarded to OMB for extension of the currently approved collection. The ICR describes the nature of the information and the expected burden. OST published a **Federal Register** notice soliciting comments on the following collection of information and received none. The purpose of this notice is to allow the public an additional 30 days from the date of this notice to submit comments and to make a correction to the recently published application to renew ICR 2105–0551, ''Reporting Requirements for Disability-Related Complaints.''

DATES: Comments on this notice must be received by July 9, 2007.

ADDRESSES: Comments on this action must refer to the docket and notice numbers cited at the beginning of this document and must be submitted to the Docket Management Facility, Office of the Secretary, located at 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590. The DOT Docket Facility is open to the public from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. Comments will be available for inspection at this address and will also be viewable via the Web site for the Docket Management System at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, D.C. 20590, (202) 366–9342 (voice), (202) 366–7152 (Fax), *blane.workie@dot.gov* (E-mail). Arrangements to receive this document in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION: The application to renew this information collection request, which was published in the **Federal Register** on Thursday, March 1, 2007 (72 FR 9385), describes only one of the three information collection requirements imposed on the airlines by a July 8, 2003 final rule. More specifically, it addressed the requirement for each covered carrier to submit an annual report summarizing the disability-related complaint data but did not address the requirement for such carriers to record and categorize disability-related complaints that they receive according to type of disability and nature of complaint on a standard form nor the requirement for carriers to retain correspondence and record of action taken for all disability-related complaints. This notice provides detailed information about the two information collection requirements which were inadvertently not included in the March 2007 notice announcing the Department's intention to renew approval of the ICR on the ''Reporting Requirements for Disability-Related Complaints'' and corrects some of the information provided about the other information collection requirement (i.e., requirement to submit an annual report summarizing the disability-related complaint data). It also explains that the Department believes that the total burden hours for the three information collection requirements would be 3418 hours instead of 8753 hours as estimated in 2003.

The title, description, respondent description of the information collections and the annual recordkeeping and periodic reporting burden are provided below. It is worth noting that, while the formulas upon

which the information collection calculations are based have not changed, the information collection burden hours have changed based on new information available to the Department. As stated above, the estimated total burden hours has been reduced from 8753 to 3418.

ICR 2105–0551, ''Reporting Requirements for Disability-Related Complaints''

(1) Requirement to read, record and categorize each disability related complaint from a passenger or on behalf of a passenger.

Respondents: Certificated U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with large aircraft.

Estimated Annual Burden on Respondents: 0 minutes to 875 hours a year for each respondent (time to record and categorize one complaint [15 minutes] multiplied by the number of complaints respondents receive [0 complaint a year to 3,500 annual complaints a year]. The number of complaints received by carriers varies greatly. In 2003, we estimated that carriers would receive anywhere from 1 complaint a year to 4,000 annual complaints a year. Based on data provided by carriers in 2004, 2005, and 2006, we believe that a range of 0 to 3500 annual complaints a year is more accurate.

Estimated Total Annual Burden: 3238 hours for all respondents (time to record and categorize one complaint [15 minutes] multiplied by the total number of complaints for all respondents [12,952]). In 2003, we estimated that the total number of complaints for all respondents would be 33,050. Based on a review of the data provided by carriers, it appears that our 2003 estimate was too high. Carriers received a total of 11,508 complaints in 2004, a total of 13,584 complaints in 2005, and a total of 13,764 complaints in 2006 for an average of 12,952 annual complaints.

Frequency: 0 to 3,000 complaints per year for each respondent (Some carriers may not receive any complaint in a given year while some of the larger operators could receive 3,000 annual complaints).

(2) Requirement to submit a report to DOT summarizing the disability-related complaint data (key-punching web-based matrix report).

Respondents: Certificated U.S. air carriers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with large aircraft.

Estimated Annual Burden on Respondents: 30 minutes a year for each respondent to type in the 169 items (matrix consists of 13 disabilities and 13 service problems).

Estimated Total Annual Burden: 80 hours for all respondents (annual burden [30 minutes] multiplied by the total number respondents [160]). In 2003, we estimated the total number of respondents to be anywhere from 295 to 370. However, based on the number of carriers that reported data in 2004, 2005 and 2006 as well as the carriers that did not but should have submitted such data, we now believe that the total number of respondents is approximately 160.

Frequency: 1 report to DOT per year for each respondent.

Estimated Number of Responses: 160 (frequency of report [1 per year] multiplied by the total number of respondents [160].

(3) Requirement to retain correspondence and record of action taken on all disability-related complaints for three years.

Respondents: Foreign air carriers operating to and from the United States that conduct passenger carrying service with large aircraft.

Estimated Annual Burden on Respondents: 1 hour a year for each respondent.

Estimated Total Annual Burden: 100 hours for all respondents (annual burden [1 hour] multiplied by the total number respondents [100]. In 2003, we estimated that the total number of foreign air carriers that would be required to submit an annual report to DOT would be 231 to 306. However, we have found that not all of the foreign air carriers that have authority to fly into the U.S. actually do so. It appears that the total number of foreign air carriers that would be covered is approximately 100.

Frequency: 0 to 300 complaints per year for each respondent. The data provided by foreign air carriers operating to and from the United States that conduct passenger carrying service with large aircraft demonstrates that that number of complaints received by such carriers varies greatly from a low of 0 to a high of almost 300.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. As noted earlier, OST published a **Federal Register** notice with a 60 day comment period for this ICR on Thursday, March 1, 2007 (72 FR 9385).

Issued in Washington, DC, on May 30, 2007, under authority delegated in 49 CFR part 1.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. E7–11094 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals.

In May 2007, there were seven applications approved. This notice also includes information on four applications, one approved in February 2007 and the other three approved in April 2007, inadvertently left off the February 2007 and April 2007 notices, respectively. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monty notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. No. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Little Rock, Arkansas.

Application Number: 07–06–C–00–LIT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $21,763,270.

Earliest Charge Effective Date: May 1, 2007.

Estimated Charge Expiration Date: January 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public

agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Little Rock National Airport.

Brief Description of Projects Approved for Collection and Use:

In-line baggage system.
Improve airport drainage—phase II.
Taxiway in-pavement edge and centerline lights.
Interactive employee training system.
Friction testing vehicle.
Terminal planning documents.

Brief Description of Project Partially Approved for Collection and Use: Passenger loading bridge acquisition and replacement.

Determination: The acquisition of a loading bridge for gate No. 8 is not approved. The public agency did not provide adequate information to confirm that it could meet the requirements of Part 158, Assurance No. 8 for this loading bridge.

Decision Date: February 27, 2007.

For Further Information Contact: Glenn Boles, Arkansas/Oklahoma Airports Development Office, (817) 222–5661.

Public Agency: County of Houghton, Calumet, Michigan.

Application Number: 07–11–C–00–CMX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $464,744.

Earliest Charge Effective Date: November 2, 2007.

Estimated Charge Expiration Date: February 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None

Brief Description of Projects Approved for Collection and Use:

Vegetation removal to reduce wildlife habitat.
Air service grant for airport security.
FAA navigational aids.
Rehabilitate taxiway B.
Snow removal equipment procurement (motor grader).
Terminal study, cost benefit analysis.
Master plan study airport layout plan update.
Pavement management program report.
Rehabilitate/relocate airport entrance road.
Snow removal equipment procurement (material spreader).
PFC preparation reimbursement.
PFC audit reimbursement.
Firearm procurement.
Fire inspection program.

Brief Description of Project Approved for Collection: Remove sewage lagoons.

Decision Date: April 12, 2007.

For Further Information Contact: Jason Watt, Detroit Airports District Office, (734) 239–2906.

Public Agency: County of Gogebic, Ironwood, Michigan.

Application Number: 07–02–C–00–IWD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $133,060.

Earliest Charge Effective Date: June 1, 2007.

Estimated Charge Expiration Date: February 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Charter and air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Gogebic—Iron County Airport.

Brief Description of Projects Approved for Collection and Use:

Airport layout plan.
Environmental assessment and preliminary design engineering.
Security fencing.
Environmental assessment and preliminary design engineering for crosswind runway phase 2 and wildlife study.
Acquire snow removal equipment.
Passenger parking lot.
Acquire meter friction tester, wind cones, and fire suits.
Acquire and install 12,000-gallon Jet A fuel tank.

Decision Date: April 27, 2007.

For Further Information Contact: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: John Murtha Johnstown—Cambria County Airport Authority, Johnstown, Pennsylvania.

Application Number: 07–05–C–00–JST.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $132,000.

Earliest Charge Effective Date: July 1, 2007.

Estimated Charge Expiration Date: April 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Johnstown—Cambria County Airport.

Brief Description of Project Approved for Collection and Use: Terminal building construction.

Decision Date: April 30, 2007.

For Further Information Contact: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: City of Hailey and County of Blaine, Hailey, Idaho.

Application Number: 07–06–C–00–SUN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $691,368.

Earliest Charge Effective Date: August 1, 2007.

Estimated Charge Expiration Date: December 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Friedman Memorial Airport.

Brief Description of Projects Approved for Collection and Use:

Runway safety area improvements.
Runway 13/31 reconstruction.
Environmental Impact statement (phase 1) for replacement airport.
Security enhancements.
PFC administrative costs for application 05–05.
PFC administrative costs for application 07–06.

Decision Date: May 3, 2007.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Naples Airport Authority, Naples, Florida.

Application Number: 07–05–C–00–APF.

Application Type: Impose and use a PFC.

PFC Level: Not applicable.

Total PFC Revenue Approved in This Decision: $92,000.

Earliest Charge Effective Date: Decision uses excess PFC revenue—no new collections authorized.

Estimated Charge Expiration Date: Not applicable.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate taxiway B (design).

Decision Date: May 8, 2007.

For Further Information Contact: Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 120.

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 07–13–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $19,250,588.

Earliest Charge Effective Date: June 1, 2011.

Estimated Charge Expiration Date: November 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Nashville International Airport.

Brief Description of Projects Approved for Collection and Use:

Security checkpoint (design and construction).
Terminal renovation.
Reconstruct taxiway Bravo south (design).
Reconstruct taxiway Alpha south (design).
Outbound baggage conveyor system (design and construction).
Access control system replacement (design and construction).
Construct 2L/20R runway safety area.
Pavement management and modification of standards identification study.
Runway weather information system.
Construct 2R/20L runway safety area.
Land acquisition for Elm Hill Pike.
Aircraft flight track monitoring system.

Decision Date: May 10, 2007.

For Further Information Contact: Peggy Kelley, Memphis Airports District Office, (901) 322–8186.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 07–10–C–00–RNO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $32,878,000.

Earliest Charge Effective Date: December 1, 2007.

Estimated Charge Expiration Date: December 1, 2010.

Classes of Air Carriers Not Required To Collect PFC's: (1) Nonscheduled/on demand air carriers filing FAA Form 1800–31; and (2) commuter or small certificated air carriers filing Form T–100.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Jet bridge equipment upgrade.
South air cargo ramp—phase 1.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Concourse elbow build out phase II.

Brief Description of Project Partially Approved for Collection and Use at $3.00 PFC Level: Acquire replacement snow removal equipment.

Decision Date: May 11, 2007.

For Further Information Contact: Ronald Biaco, San Francisco Airports District Office, (650) 876–2778, extension 626.

Public Agency: Metropolitan Topeka Airport Authority, Topeka, Kansas.

Application Number: 07–01–C–00–FOE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $823,720.

Earliest Charge Effective Date: August 1, 2007.

Estimated Charge Expiration Date: March 1, 2023.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Overlay ramp north of terminal.
Auxiliary generator.
Airfield signage.
Snow removal equipment.
Aircraft rescue and firefighting equipment.
Runway 13/31 rehabilitation.
Airport master plan update.
Foreign object debris sweeper.
Taxiways A, B, C, and D rehabilitation.
PFC application and administration fees.

Decision Date: May 18, 2007.

For Further Information Contact: Jeffrey Deitering, Central Region Airports Division, (816) 329–2637.

Public Agency: City and Borough of Sitka, Alaska.

Application Number: 07–01–C–00–SIT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,100,000.

Earliest Charge Effective Date: July 1, 2007.

Estimated Charge Expiration Date: June 1, 2012

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Rehabilitate terminal building.

Decision Date: May 21, 2007.

For Further Information Contact: John Lovett, Alaska Region Airports Division, (907) 271–5446.

Public Agency: Niagara Frontier Transportation Authority, Buffalo, New York.

Application Number: 07–06–C–00–BUF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $75,389,056.

Charge Effective Date for $3.00 Collections: October 1, 2005.

Earliest Charge Effective Date for $4.50 Collections: August 1, 2007.

Estimated Charge Expiration Date: August 1, 2011.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Buffalo Niagara International Airport (BUF).

Brief Description of Projects Approved for Collection at BUF and Use at BUF at a $4.50 PFC Level:

Purchase safety equipment—aircraft rescue and firefighting/emergency response vehicles.
Design and construction, extension and rehabilitation of runway 5/23.
Design and construction, extension and rehabilitation of taxiway A.
Automatic baggage system.
Design and construction of a water quality treatment and improvement system.
Design and implement noise mitigation measures.

Brief Description of Projects Approved for Collection at BUF and Use at BUF at a $3.00 PFC Level:

Relocation of security checkpoints.
Runway 14/32 safety improvements and relocate remote fuel dispensing facility.
Passenger movement equipment.

Upgrade security badging system.
PFC planning and program administration.
Series 1999 debt service—east concourse terminal extension and apron expansion, and east access improvements.
Design and construction, extension of runway 14/32.
Design and construction, extension, widening, and rehabilitation of taxiway D.
Design and construction, overhead canopies for pedestrian walkways.
Purchase of surface friction testing equipment.
Internal perimeter road extension.
PFC planning and program administration.

Brief Description of Project Partially Approved for Collection at BUF and Use at BUF at a $3.00 PFC Level: Procurement of security equipment—vehicles.

Determination: Two K–9 vehicles and a ''captain's vehicle'' were found to be ineligible because the public agency did not provide documentation that the Transportation Security Administration had concurred that these vehicles were a part of the minimum amount of equipment needed to meet the approved security plan.

Brief Description of Project Approved for Collection at BUF and Use at BUF and at Niagara Falls International Airport at a $3.00 PFC Level: Purchase snow removal equipment.

Brief Description of Disapproved Project: PFC planning and program administration.

Determination: The public agency included this project as a part of an amendment request. However, this project was not included in the original decision and a public agency cannot add a new project by amendment.

Decision Date: May 25, 2007.

For Further Information Contact: Larry A'Hearn, New York Airports District Office, (516) 227–3810.

Amendment to PFC Approvals

Amendment No. City, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–08–C–02–CMX					
Hancock, MI	04/12/07	$254,644	$268,191	10/01/05	10/01/05
04–03–C–01–HGR					
Hagerstown, MD	04/25/07	415,188	108,124	12/01/07	12/01/07
*03–05–C–01–MBS					
Saginaw, MI	04/30/07	1,378,794	1,378,794	08/01/09	04/01/08
99–03–C–01–CIC					
Chico, CA	05/08/07	89,300	25,000	02/01/01	02/01/01
04–08–C–02–RNO					
Reno, NV	05/08/07	21,749,000	26,712,865	08/01/07	08/01/07
95–01–C–02–EAU					
Eau Claire, WI	05/08/07	757,028	708,253	09/01/05	01/01/06
05–05–C–02–SJU					
San Juan, PR	05/15/07	334,635,482	352,632,482	05/01/27	11/01/28
96–01–C–02–TRI					
Bristol, TN	05/16/07	5,859,025	5,273,873	11/01/05	11/01/05
97–03–C–01–MSN					
Madison, WI	05/17/07	2,305,000	2,340,000	12/01/99	12/01/99
98–04–C–02–JST					
Johnstown, PA	05/18/07	628,121	496,121	10/01/06	01/01/07
97–03–C–06–DFW					
Dallas-Fort Worth, TX	05/18/07	121,412,427	114,679,598	04/01/01	04/01/01
*99–02–C–01–TRI					
Bristo, TN	05/24/07	5,829,873	5,247,633	08/01/13	03/01/12

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Saginaw, MI and Bristol, TN, this change is effective on July 1, 2007.

Issued in Washington, DC on June 4, 2007.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 07–2833 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Maui County, HI

AGENCY: Federal Highway Administration (FHWA), Hawaii Department of Transportation (HDOT).

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to evaluate alternatives that would improve the roadway capacity, safety, and reliability of Honoapiilani Highway between Maalaea and Launiupoko on the west side of the island of Maui. This section of highway is the main travel way for people and goods between West Maui and the rest of the island.

The EIS will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA), as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (SAFETEA–LU). The purpose of this Notice of intent is to alert interested parties regarding the plan to prepare the EIS, to provide information on the nature of the proposed project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce that a public scoping meeting will be conducted.

FOR FURTHER INFORMATION CONTACT: Written comments on the scope of the EIS should be sent to Pat V. Phung, Transportation Engineer, Federal Highway Administration, Hawaii Division, Box 50206, 300 Ala Moana Blvd., Room 3–306, Honolulu, HI 96850, within 30 days of the publication of this notice.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation (HDOT), will be preparing an Environmental Impact Statement (EIS) for the improvement of the 11-mile segment of Honoapiilani Highway between Maalaea and Launiupoko in West Maui. The eastern limit of the project is the western terminus of the recent Honoapiilani Highway widening project near Maalaea. The western limit of the project will be southern terminus of the Lahaina Bypass Road, near Launiupoko Wayside Park. Highway improvements may involve improving portions of the existing highway and/or constructing a new highway along a different alignment.

Purposes and needs for the Nonoapiilani Highway Realignment/Widening, Maalaea to Launiupoko will be finalized after the completion of the scoping process. Project goals may involve: (1) Alleviate existing congestion; (2) Accommodate future travel demand; (3) Protect road from shoreline erosion; (4) Complement land use and preservation plans; (5) Improve reliability of access to and from West Maui; (6) Enhance pedestrian and vehicular mauka/makai movements; (7) Provide consistent roadway system linkages; (8) Enhance modal interrelationships and non-vehicular modes of travel; (9) Improve public safety for emergencies; and (10) Improve substandard road elements. These project purposes may be modified through the planning process.

The NEPA scoping process being initiated by the publication of this NOI is intended to generate a full range of project alternatives for subsequent evaluation. The No Build alternative would leave Honoapiilani Highway in its current condition except for possible short-term and minor activities, such as safety upgrades and maintenance. A Transportation System Management (TSM) alternative may include elements such as restriping the roadway, enhancing transit service, establishing contra-flow lanes, widening the roadway in place and/or raising the roadbed in areas of high shoreline hazard. The TSM alternative could also include establishing and improving intersections along the existing roadway through techniques such as channelization, roundabouts, or left turn lanes.

Other possible improvement alternatives include: (1) A new Kaanapali to Wailuku highway; (2) Aerial cable car; (3) Tunnel under the Pali; (4) Ocean causeway around the Pali; (5) Light Rail Transit from Lahaina to Wailuku; (6) Pave ''Haul Cane Road'' (Industrial Road, or Cane Haul Road;) (7) Ferries from Maalaea to either Mala Wharf, Lahaina small boat harbor, or a new harbor to be constructed at Cut Mountain; (8) Enhanced bus system; (9) Realignment included in the County's Pali to Puamana Plan (P2P Plan); (10) Alternative alignment proposed in a privately commissioned study; (11) Elevate and widen road within existing ROW; (12) Improve intersections along existing road; (13) Roadway Couplet (Westbound: 2 lanes in a mauka alignment and Eastbound: 2 lanes on existing road); (14) West Maui hotels provide enhanced shuttle service and car pools for workers; (15) Widen existing road to provide for contraflow operation; and (16) Widen existing road to provide for high occupancy vehicle (HOV) lanes.

The purpose of the EIS process is to explore in a pubic setting potentially significant effects of implementing the proposed action on the physical, human, and natural environment. Areas of investigation for this project will include but not be limited to cultural resources, archaeological resources, biological resources, social impact, engineering feasibility, schedule, cost-benefit analysis, land use pattern, shoreline access, residential displacements, impacts on existing businesses, air quality, noise and vibration, and ease of implementation. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified. The documents that will be produced include an Alternatives Analysis Report (AA), Draft and Final Environmental Impact Statement (DEIS and FEIS), and the Record of Decision (ROD).

Regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FHWA and HDOT do the following: (1) Extend an invitation to other government agencies and Native Hawaiian organizations that may have an interest in the proposed project to become ''participating agencies,'' (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for this proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process.

To comply with these regulations, an invitation to become a participating agency, with a scoping information packet appended, will be extended to other government agencies and Native Hawaiian organizations that may have an interest in the proposed project.

Community meetings will provide public-friendly and accessible venues for comments to be accepted regarding alternatives, scope of the EI, and the purpose and needs to be addressed. Community meetings will be held on Maui at times and locations convenient to those that work and live in the corridor. Meeting locations will be accessible to people with disabilities. Input received will be collected and documented. In addition to community meetings and a DEIS public hearing, small group meetings will be held during the planning and DEIS preparatory stages.

A project Task Force will also be formed to help advise HDOT on key aspects of the project such as project goals, development and ranking of alternatives; construction phasing plan; and mitigation measures. Similar to all community meetings, the Task Force meetings will be open to the public, accessible to people with disabilities, and held on Maui at times and locations convenient to those that live and work in the corridor.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 30, 2007.

Abraham Wong,

Federal Highway Administration, Hawaii Division, HOnolulu, Hawaii.

[FR Doc. 07–2814 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28333]

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 FLYING CARPET.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28333 at *http://dms.dot.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 Pub. L. 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28333. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FLYING CARPET is:

Intended Use: ''Non-Bareboat Charters, Whale Watching, Offshore Sailing Training, Onboard Maritime Electronics and Communications Training.''

Geographic Region: ''Columbia River and Pacific Coastwise out no more than 75 miles.''

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) or you may visit *http://dms.dot.gov*.

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11055 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28335]

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 MISTRESS.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28335 at *http://dms.dot.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 Public Law 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28335. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MISTRESS is:

Intended Use: ''Day sailing charters, 6 passengers or less.''

Geographic Region: ''Florida Keys and Key West.''

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) or you may visit *http://dms.dot.gov*.

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11060 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28334]

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 ORION.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28334 at *http://dms.dot.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 Public Law 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28334. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ORION is:

Intended Use: ''Hourly or daily sailing.''

Geographic Region: ''New York, New Jersey, Connecticut, Massachusetts, Rhode Island''

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) or you may visit *http://dms.dot.gov*.

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11058 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28332]

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 SEAHORSE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28332 at *http://dms.dot.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 Pub. L. 105–383 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.

EFFECTIVE DATES: Submit comments on or before July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28332. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEAHORSE is:

Intended Use: ''Sightseeing, Sport Fishing, Charter.''

Geographic Region: ''Southern California, from Point Conception to the Mexican Border.''

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) or you may visit *http://dms.dot.gov.*

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11053 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28331]

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 SEGUE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28331 at *http://dms.dot.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 Public Law 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28331. Written comments may be submitted by hand or by mail to the 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://dmses.dot.gov/submit/.* 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEGUE is:

Intended Use: ''Carry up to 6 passengers for hire on a classic designed sailboat. The vessel will always be under command by a USCG Licensed Captain with a Sailing Endorsement. Half day/Full day cruises, photography, special events, sunset cruises, with teaching and instruction in the art of sailing. No fishing will take place at any time.''

Geographic Region: ''Washington State.''

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) or you may visit *http://dms.dot.gov.*

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11052 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2007 28337]

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 SORRISA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28337 at *http://dms.dot.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 Pub. L. 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28337. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SORRISA is:

Intended Use: ''Passenger service in Portland Oregon.''

Geographic Region: ''Navigable waters of Oregon, Washington, Hawaii and 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) or you may visit *http://dms.dot.gov.*

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11043 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD 2007 28338]

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 TABASCO.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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 2007–28338 at *http://dms.dot.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 Public Law 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007 28338. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TABASCO is:

Intended Use: ''Charter for pleasure.''

Geographic Region: ''ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, FL, including the Gulf, MS, AL, LA, TX.''

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) or you may visit *http://dms.dot.gov.*

Dated: May 25, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11042 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28336]

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 XANTAO.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, 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–2007–28336 at *http://dms.dot.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 Public Law 105–383 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 July 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28336. Written comments may be submitted by hand or by mail to the U.S. Department of Transportation, Docket Operations,

M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* 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://dms.dot.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.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel XANTAO is:

Intended Use: ''Day charter uninspected 6 passenger 3 crew.''

Geographic Region: ''East Central Florida Coast.''

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) or you may visit *http://dms.dot.gov.*

Dated: May 30, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–11041 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1229X]

Denver Regional Transportation District—Abandonment Exemption—in Denver and Jefferson Counties, CO

The Denver Regional Transportation District (RTD) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 5.7-mile line of railroad between milepost 0.60 and milepost 6.3 in Denver and Jefferson Counties, CO. The line traverses United States Postal Service Zip Codes 80204, 80214, and 80215.[1]

RTD has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) although no overhead traffic has moved over the line for at least 2 years, any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 48 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on July 7, 2007, unless stayed pending reconsideration.[3] Petitions to stay that do not involve environmental issues,[4] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 18, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 27, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to RTD's representative: Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW., Suite 905, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RTD has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 12, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RTD shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RTD's filing of a notice of consummation by June 7, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 31, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–10868 Filed 6–6–07; 8:45 am]

BILLING CODE 4915–01–P

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[1] RTD originally filed its verified notice of exemption on May 7, 2007. However, the notice did not contain all of the information required under 49 CFR 1152.50. At the request of Board staff, on May 18, 2007, RTD filed a supplement to its notice. For purposes of this proceeding, the filing date will be considered to have been May 18, 2007, the date upon which the verified notice was complete.

[2] RTD seeks exemption from 49 U.S.C. 10904 (OFA procedures). The Board will address this request in a subsequent decision.

[3] The earliest this transaction may be consummated is July 7, 2007. RTD originally indicated a consummation date of June 25, 2007. RTD has been informed by a Board staff member that consummation may not take place until July 7, 2007.

[4] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[5] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8283–V

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8283–V, Payment Voucher for Filing Fee Under Section 170(f)(13).

DATES: Written comments should be received on or before August 6, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Payment Voucher for Filing Fee Under Section 170(f)(13).

OMB Number: 1545–2069.

Form Number: 8283–V.

Abstract: The Pension Protection Act of 2006 (Pub. L. 109–280) provides in section 1213(c) of the Act that taxpayers claiming a deduction for a qualified conservation contribution with respect to the exterior of a building located in a registered historic district in excess of $10,000, must pay a $500 fee to the Internal Revenue Service or the deduction is not allowed.

Current Actions: There are no changes being made to Form 8283–V.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 28 minutes.

Estimated Total Annual Burden Hours: 690.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2007.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E7–10927 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–L

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120-L, U.S. Life Insurance Company Income Tax Return.

DATES: Written comments should be received on or before August 6, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Life Insurance Company Income Tax Return.

OMB Number: 1545–0128.

Form Number: 1120–L.

Abstract: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to ensure that the companies have correctly reported taxable income and paid the correct tax.

Current Actions: 3 line items have been added as well as a new schedule.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,440.

Estimated Time per Respondent: 254 hours, 53 minutes.

Estimated Total Annual Burden Hours: 621,854.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–10928 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice.

SUMMARY: This document contains a correction to a notice providing notice of the availability of Application Packages for the 2007 Tax Counseling for the Elderly (TCE) Program that was published in the **Federal Register** on Friday, June 1, 2007 (72 FR 30666).

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, (202) 283–0189 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of the correction is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978.

Need for Correction

As published, the notice for the 2007 Tax Counseling for the Elderly (TCE) Program contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice for the 2007 Tax Counseling for the Elderly (TCE) Program, which was the subject of FR Doc. E7–10173, is corrected as follows:

On page 30667, column 1, in the preamble, under the caption **DATES**:, last line of the paragraph, the language ''Program is August 1, 2006.'' is corrected to read

''Program is August 1, 2007.''.

LaNita Van Dyke,

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

[FR Doc. E7–10932 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is reviewing public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service brought forward by the TAP Area and Issue Committees.

DATES: The meeting will be held Monday, June 25, 2007, 8 a.m. to 5 p.m., Tuesday, June 26, 2007, 8 a.m. to 5 p.m., and Wednesday, June 27, 2007, 8 to Noon, Mountain Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Monday, June 25, 2007, 8 a.m. to 5 p.m., Tuesday, June 26, 2007, 8 a.m. to 5 p.m., and Wednesday, June 27, 2007, 8 to Noon, Mountain Time, at the Warwick Hotel in Denver, Colorado, 1776 Grant Street, Denver, CO 80203. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–231–2360, or write Barbara Toy, TAP Office, MS–1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–231–2363, or you can contact us at *http://www.improveirs.org*.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the Joint Committee, office reports, and discussion of next meeting.

Dated: May 29, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–10929 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Committee of the Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 28, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Thursday, June 28, 2007 from 1 p.m. to 2:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: May 31, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–10930 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 5, 2007 at 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, July 5, 2007 at 1 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: May 30, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–10931 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Cancellation notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee was scheduled to be held Tuesday, July 3, 2007, at Noon, Eastern Time via a telephone conference call to solicit public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. This is to notify the public that the meeting has been cancelled.

DATES: The cancelled meeting was scheduled to be held Tuesday, July 3, 2007, at Noon Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee scheduled to be held Tuesday, July 3, 2007, at Noon, Eastern Time via a telephone conference call has been cancelled. You can submit written comments to the Panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, P.O Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org* to be considered at a future meeting. Public comments will also be welcome during future meetings. Please contact Barbara Toy at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda for the cancelled meeting included the following: Various VITA Issues.

Dated: May 30, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–10949 Filed 6–6–07; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Solicited Grant Initiative; Effective Immediately

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its ongoing Solicited Grant Initiative. The Solicited Grant Initiative focuses on six countries as they relate to USIP's mandate. Applications are accepted throughout the year. The Solicited Initiative is restricted to projects that fit specific themes or topics identified for each country.

The six Solicited Initiative countries are outlined below. The specific themes and topics for each country may be found at our Web site at: *http://www.usip.org/grants/solicited.html.*

- Colombia
- Iran
- Iraq
- Nigeria
- Pakistan
- Sudan

Deadline: Solicited Initiative applications are accepted throughout the year. Please visit our Web site at: *http://www.usip.org/grants/solicited/html* for specific information on the competition as well as instructions about how to apply.

ADDRESSES: If you are unable to access our Web site, you may submit an inquiry to: United States Institute of Peace, Grant Program, Solicited Initiative, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), e-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842, E-mail: *grants@usip.org.*

Dated: June 4, 2007.

Michael Graham,

Vice President for Administration.

[FR Doc. 07–2831 Filed 6–6–07; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2007 Unsolicited Grant Initiative; Effective October 1, 2007

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Unsolicited Grant Initiative, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Unsolicited initiative is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline: October 1, 2007; Application material available on request and at *http://www.usip.org/grants.*

DATES: Receipt of Application: October 1, 2007. Notification Date: March 31, 2008.

ADDRESSES: For application package: United States Institute of Peace Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), e-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Unsolicited Grants, Phone (202) 429–3842, E-mail: *grants@usip.org.*

Dated: June 4, 2007.

Michael Graham,

Vice President for Administration.

[FR Doc. 07–2832 Filed 6–6–07; 8:45 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 72, No. 109

Thursday, June 7, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order

Correction

In notice document E7–10367 beginning on page 29970 in the issue of Wednesday, May 30, 2007, make the following correction:

On page 29971, in the third column, in the table, under the ''Weighted–Average Margin (Percent)'' heading, in the first entry, ''*COM041*0.73'' should read ''0.73''.

[FR Doc. Z7–10367 Filed 6–6–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Hearing and Notice of Availability for the Draft Environmental Impact Statement for the Matagorda Ship Channel Improvement Project, Calhoun County and Matagorda County, TX

Correction

In notice document 07–2339 beginning on page 28032 in the issue of Friday, May 18, 2007, make the following corrections:

(1) On page 28033, in the first column, under the **SUPPLEMENTARY INFORMATION** heading, in the first line, the word ''not'' should be removed.

(2) On the same page, in the same column, under the *Background* heading, in the third line from the bottom of the paragraph, the word ''not'' should read ''now''.

(3) On the same page, in the same column, under the *Project Description* heading, in the tenth line ''–23+100'' should read ''–23+000''.

[FR Doc. C7–2339 Filed 6–6–07; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55770; File No. SR–NSCC–2007–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Ability To Receive Transaction Data From Trade Reporting Facilities That Are Facilities of a Self-Regulatory Organization

Correction

In notice document E7–9762 beginning on page 28752 in the issue of Tuesday, May 22, 2007, make the following correction:

On page 28753, in the second column, in eighth line from the bottom of the document, ''June 11, 2007'' should read '' June 12, 2007''.

[FR Doc. Z7–9762 Filed 6–6–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 7, 2007

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 91, 97 et al.
Area Navigation (RNAV) and Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 97, 121, 125, 129, and 135

[Docket No. FAA–2002–14002; Amdt. Nos. 1–57, 91–296, 97–1336, 121–333, 125–52, 129–42, 135–110]

RIN 2120–AH77

Area Navigation (RNAV) and Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its regulations to reflect technological advances that support area navigation (RNAV); include provisions on the use of suitable RNAV systems for navigation; amend certain terms for consistency with those of the International Civil Aviation Organization (ICAO); remove reference to the middle marker in certain sections because a middle marker is no longer operationally required; clarify airspace terminology; and incorporate by reference obstacle departure procedures into Federal regulations. The changes will facilitate the use of new navigation reference sources, enable advancements in technology, and increase efficiency of the National Airspace System.

DATES: *Effective date:* August 6, 2007. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Ernest Skiver, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under Section 44701, the FAA is charged with prescribing regulations and minimum standards 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 will facilitate air navigation from other than ground-based navigation aids, enable new technology and provide for consistency between FAA and ICAO terminology.

Guide to Terms and Acronyms Frequently Used in This Document

AC—Advisory Circular
APV—Approach procedure with vertical guidance
ARAC—Aviation Rulemaking Advisory Committee
ATC—Air Traffic Control
ATS—Air Traffic Service
DA—Decision altitude
DH—Decision height
DME—Distance measuring equipment
EFVS—Enhanced Flight Vision System
FL—Flight level
GPS—Global Positioning System
ICAO—International Civil Aviation Organization
IAP—Instrument approach procedure
IFR—Instrument flight rules
ILS—Instrument landing system
MDA—Minimum descent altitude
MEA—Minimum en route IFR altitude
MOCA—Minimum obstruction clearance altitude
MSL—Mean sea level
NAS—National Airspace System
ODP—Obstacle departure procedure
Over the top—Over the top of clouds
RNAV—Area navigation
RNP—Required navigation performance
RVR—Runway visual range
TAOARC—Terminal Area Operations Aviation Rulemaking Committee
TERPS—U.S. Standard for Terminal Instrument Procedures
VOR—Very high frequency omnidirectional range

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I. Background

I.A. Previous Rulemaking Actions

On December 17, 2002, the FAA published a notice of proposed rulemaking (NPRM) titled ''Area Navigation (RNAV) and Miscellaneous Amendments'' (67 FR 77326; Dec. 17, 2002). The comment period closed on January 31, 2003, and several commenters requested that the FAA extend the comment period. The comment period was reopened for an additional 60 days until July 7, 2003 (68 FR 16992; April 8, 2003) to receive comments specifically on the proposed RNAV operations and equipment requirements. The FAA received approximately 30 comments from industry groups, aircraft manufacturers, navigation equipment manufacturers, communication service providers, and air carriers.

On April 8, 2003 (68 FR 16943; April 8, 2003), the FAA issued a final rule with request for comments titled

''Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points,'' which adopted certain proposed amendments to parts 1, 71, 95, and 97 from the RNAV NPRM. In that rule, the FAA adopted the following:

§ 1.1 General definitions: Air Traffic Service (ATS) route revised as proposed; area navigation (RNAV) revised as proposed; area navigation high route removed as proposed; area navigation low route removed as proposed; area navigation (RNAV) route revised as proposed; RNAV waypoint removed as proposed; and route segment revised as proposed.

Part 71: Subpart A heading transferred and revised (with wording modification) as proposed; §§ 71.11, 71.13, and 71.15 added as proposed; §§ 71.73, 71.75, 71.77, and 71.79 removed as proposed.

Part 95: § 95.1 revised as proposed.

Part 97: § 97.20 revised as proposed with minor modifications. (Note that this section is further amended in this final rule.)

Except for § 97.20 described above, the foregoing amendments are not addressed in this document. Comments received in response to the April 8, 2003 final rule are contained in docket number FAA–2003–14698. (See ''V. Availability of Rulemaking Documents'' for information on how to access the docket.)

Also, on January 9, 2004 (69 FR 1620; Jan. 9, 2004), the FAA issued the ''Enhanced Flight Vision Systems'' (EFVS) final rule. The EFVS rule did not incorporate any proposed RNAV terminology. Certain sections amended by the EFVS final rule are further amended in this rule to update the terminology as appropriate.

I.B. Terminal Area Operations Aviation Rulemaking Committee (TAOARC)

The Regional Airline Association (RAA), United Parcel Service (UPS), and the Airline Transport Association (ATA) all suggested that the FAA allow the Terminal Area Operations Aviation Rulemaking Committee (TAOARC) to review the comments and recommend action to the FAA. The TAOARC (now under a new charter as the Performance-Based Operations Aviation Rulemaking Committee (PARC)) is an FAA-chartered advisory committee composed of government and industry representatives which provides a forum for the United States aviation community to discuss and resolve issues, provide direction for United States flight operations criteria, and produce U.S. consensus positions for global harmonization. The FAA asked TAOARC to review the comments filed in the docket on the RNAV NPRM and provide recommendations.

TAOARC held a public meeting on December 9, 2003, in Arlington, VA, to present its recommendations and request comments. Minutes from this meeting and the TAOARC recommendations are available in the docket. The recommendations are included with the discussion of comments below.

I.C. Concept of Performance-Based Criteria

Many civil aviation authorities (CAAs), including the FAA, recognize the need to change the way airspace is managed due to increased demands for the use of certain airspace within a particular geographic area. Moving towards a performance-based National Airspace System (NAS) may necessitate, for example, the establishment of performance requirements for aircraft communication and navigation equipment needed to manage instrument flight rule (IFR) aircraft, which could ultimately increase capacity in certain airspace. For reasons discussed below, aircraft communication and navigation equipment performance criteria will be addressed in future rulemaking.

In this rule, the FAA is updating its communication and navigation operating regulations to allow flexibility in accommodating technological advances. Part of the FAA's plan to implement a performance-based NAS is to update its regulations and remove prescriptive references to ground-based navigation systems in the operating regulations and to permit the use of non-ground based navigation systems. In a performance-based NAS, operational flexibility depends upon many factors including the performance capability of the aircraft communication and navigation equipment, the availability of the communication and navigation facilities along the route to be flown, and the performance capabilities of those (communication and navigation) facilities that are made available for use by air traffic management service providers.

II. Discussion of the Final Rule

II.A. General

Northwest Airlines stated that, as the FAA is moving toward a required navigation performance (RNP)-based infrastructure, the RNAV system should be performance-based to allow operators to use both existing navigation aids and any future satellite-based systems as sensors to navigate using the concept of RNP. Continental, Boeing, and Airbus expressed concern that the NPRM did not address RNP.

This rulemaking lays the groundwork for navigation equipment and other operational requirements for the RNP environment and is consistent with planned RNP implementation. The FAA already has established RNP criteria for RNAV systems used to conduct certain instrument approach procedures. The agency plans to establish RNP criteria for RNAV systems used in the en route environment in the near future.

Rockwell Collins recommended that the rule clearly state whether there is any change to Wide-Area Augmentation System (WAAS) or LPV (localizer performance with vertical guidance) and their roles within the NAS.

This rule allows for the use of WAAS or any other system where it satisfies the performance requirements and is suitable for the operation to be conducted. The rule also applies to all phases of flight, including LPV approaches.

II.B. Terminology and Definitions (§§ 1.1, 1.2, and 97.3)

To facilitate RNAV operations, the FAA proposed to change certain terminology for area navigation, en route operations, instrument approach procedures, and landings. These amendments were proposed in §§ 1.1 General definitions, 1.2 Abbreviations and symbols, and 97.3 Symbols and terms. Conforming changes to other sections in parts 91, 95, 97, 121, 125, 129, and 135 were also proposed. The FAA proposed removing the words ''ground'' and ''radio'' in the regulations where using those words restricted the type of navigation and communication systems permitted in order for operators to take advantage of future technology and still meet NAS requirements.

Airbus commented generally that several of the proposed amendments to § 1.1 would have an undesirable ''ripple effect'' on other rules in parts 91, 97, 121, 125, 129, and 135.

Rockwell Collins asked if the new terminology would be applied retroactively. While the FAA finds this question somewhat unclear, it confirms that the rule does not impose retrofit requirements for older RNAV equipment. If it becomes necessary, however, to impose future conditions and limitations on the use of RNAV equipment, the FAA will do so through future rulemaking.

The following table sets forth the proposed terms, definitions and their dispositions in this final rule. (Note that terms and definitions adopted in the April 8, 2003 rule are not included in

the table.) A discussion of the comments on these terms and the FAA's responses follows the table.

Proposed definitions and abbreviations	FAA decision reflected in the final rule
Approach procedure with vertical guidance (APV) (§ 1.1)	Withdrawn and action deferred until reviewed by joint industry/government working groups.
Category I, II, & III, IIIa, IIIb, and IIIc approaches (§ 1.1)	Withdrawn and action deferred until reviewed by joint industry/government working groups.
Decision altitude (DA) (§ 1.1)	Adopted.
Decision height (DH) (§ 1.1)	Adopted with modification.
Final approach fix (FAF) (§ 1.1)	Adopted.
HAT (Height above threshold) (§ 97.3)	Withdrawn.
Helipoint (§ 97.3)	Adopted.
Instrument approach procedure (IAP) (§ 1.1)	Adopted with modification.
Minimum descent altitude (MDA) (§ 1.1)	Adopted with modification.
MSA (minimum safe altitude) (§ 97.3)	Adopted.
Night (§ 1.1)	Withdrawn.
Nonprecision approach procedure (NPA) (§ 1.1)	Withdrawn and action deferred until reviewed by joint industry/government working groups.
Person	Adopted as appropriate to section.
Pilot	Adopted as appropriate to section.
Precision approach procedure (PA) (§ 1.1)	Withdrawn and action deferred until reviewed by joint industry/government working groups.
Precision final approach fix (PFAF) (§ 1.1)	Withdrawn and action deferred until reviewed by joint industry/government working groups.
RNAV (abbreviation) (§ 1.2)	Adopted.
Visibility minimum (§ 97.3)	Adopted.

II.B.1. Classification of Instrument Approach Procedures (§ 1.1: APV, NPA, PA)

The FAA proposed to redefine ''nonprecision approach procedure (NPA)'' and ''precision approach procedure (PA).''

For the term ''nonprecision approach procedure (NPA),'' the proposal eliminated reference to ''electronic glide slope'' and defined it as, ''* * * an instrument approach procedure based on a lateral path and no vertical glide path.''

Similarly, the proposed definition of ''precision approach procedure (PA)'' deleted reference to ''electronic glide slope'' and ''standard instrument procedure'' and defined that term as ''* * * an instrument approach procedure based on a lateral path and a vertical glide path.'' This definition would provide lateral course and track information with vertical glide path information.

The term ''approach procedure with vertical guidance (APV)'' was proposed as ''* * * an instrument approach procedure based on lateral path and vertical glide path. These procedures may not conform to requirements for precision approaches.''

ATA, the Aircraft Owners and Pilots Association (AOPA), American Airlines, Continental Airlines, Alaska Airlines, Airbus, Boeing, and American Trans Air all objected to the above three proposed definitions. They recommended withdrawing the definitions for reconsideration because the terms were either inconsistent with, or were in direct conflict with, the same terms defined in Advisory Circular (AC) 120–28D ''Criteria for Approval of Category III Weather Minima for Takeoff, Landing, and Rollout,'' and AC 120–29A ''Criteria for Approval of Category I and Category II Weather Minima for Approach.''

In addition, RAA and Airbus contended that adopting the term ''approach with vertical guidance (APV)'' would impose additional crewmember training requirements and require the updating of training materials.

TAOARC commented that the Aviation Rulemaking Advisory Committee's (ARAC's) All Weather Operations Working Group has already initiated a review of this terminology and that the FAA should defer final action until that group completes its review.

Based on the above comments, and the fact that these terms are currently under review by ARAC, the FAA concludes that it is inappropriate to adopt these terms and definitions at this time. The FAA anticipates that working groups within the ARAC, PARC, and civil aviation authorities will review the terms and submit recommendations to the agency for future consideration. Therefore, all proposed amendments using these three proposed terms are withdrawn.

II.B.2. Category I, II, III, IIIa, IIIb, and IIIc Operations (§ 1.1)

The FAA proposed to add a definition of ''Category I;'' expand the definitions of ''Category II, and III, IIIa, IIIb, and IIIc operations'' to accommodate precision RNAV approaches; and replace the terms ''ILS [instrument landing system] approach'' and ''instrument approach'' with ''precision approach'' or ''precision instrument approach,'' respectively. The proposed definitions are as follows.

''Category I (CAT I) operation is a precision instrument approach and landing with a decision altitude that is not lower than 200 feet (60 meters) above the threshold and with either a visibility of not less than ½ statute mile (800 meters), or a runway visual range of not less than 1,800 feet (550 meters).

''Category II (CAT II) operation is a precision instrument approach and landing with a decision height lower than 200 feet (60 meters), but not lower than 100 feet (30 meters), and with a runway visual range of not less than 1,200 feet (350 meters).

''Category III (CAT III) operation is a precision instrument approach and landing with a decision height lower than 100 feet (30 meters) or no DH, and with a runway visual range less than 1200 feet (350 meters).

''Category IIIa (CAT IIIa) operation is a precision instrument approach and landing with a decision height lower than 100 feet (30 meters), or no decision height, and with a runway visual range of not less than 700 feet (200 meters).

''Category IIIb (CAT IIIb) operation is a precision instrument approach and landing with a decision height lower than 50 feet (15 meters), or no decision height, and with a runway visual range of less than 700 feet (200 meters), but not less than 150 feet (50 meters).

''Category IIIc (CAT IIIc) operation is a precision instrument approach and landing with no decision height and with a runway visual range less than 150 feet (50 meters).''

ATA, Delta, Alaska Airlines, AOPA, Helicopter Association International (HAI), RAA, and American Trans Air objected to the proposed definitions because the terms would specify the approaches as ''precision.'' As discussed previously, numerous commenters objected to the proposal with respect to redefining ''precision'' and ''nonprecision.''

In addition, HAI stated that the definition of ''Category I'' should take into account the capabilities of helicopters and better define the parameters for helicopter operations to execute Category I operations.

TAOARC recommended withdrawing the above definitions until studies on precision/nonprecision procedures, decision altitude, decision height, and a concept for a new categorization of approach procedures to support the evolution of a performance-based NAS are completed.

In view of the comments and because the FAA is not adopting the proposed definitions for precision approach (PA) and nonprecision approach (NPA), it is inappropriate to amend these terms as proposed until the joint industry/government working groups review the issues.

II.B.3. Decision Altitude (DA) and Decision Height (DH) (§ 1.1)

The FAA proposed to redefine ''decision height (DH)'' as ''the specified height AGL [above ground level], at which a person must initiate a missed approach during a Category II or III approach if the person does not see the required visual reference.'' [1]

The FAA proposed a new definition of ''decision altitude (DA)'' to describe the altitude in feet above mean sea level (MSL) at which a person must initiate a missed approach if he or she does not see the required visual reference.

The FAA proposed these terms to be consistent with similar International Civil Aviation Organization (ICAO) terminology and, more importantly, to accurately identify the point where a pilot must decide to either continue the approach or execute a missed approach, depending on the instrument approach procedure.

Airbus commented that because the proposed definition of ''decision height (DH)'' only applies to Category II and Category III procedures, this would preclude the use of decision height in any future Category I procedures. Airbus also points to several Category II procedures that currently use an inner marker or a DA as the decision point and that have been safely conducted for more than 40 years.

TAOARC opposed adopting the term ''decision height (DH)'' because it may create charting, training, and performance-based systems implementation problems in the near term.

These comments raised valid concerns with respect to the proposed definition of decision height. The type of altitude-or height-measuring device that is selected by instrument approach procedure developers to accurately determine the height or altitude for the missed approach decision point depends on the underlying topography associated with the instrument approach procedure (IAP). The term decision altitude currently is not codified in the regulations, but it has become a term of reference in instrument approach procedure construction and is used by the aviation community.

In response to the comments, the FAA is modifying the term ''decision height (DH)'' by striking the words ''during a Category II or III approach,'' which will permit the use of DH in Category I approaches, if appropriate, as well as continuing to allow the use of DA in Category II approaches, if appropriate. In addition, the FAA is clarifying in both definitions that, if ''DA'' or ''DH'' is specified in an instrument approach procedure, it is the altitude or height at which the pilot must decide whether to initiate an immediate missed approach or to continue the approach.

Northwest Airlines expressed two concerns—(1) that the proposals to amend the flight data recorder requirements in part 121 (§ 121.344 and appendix M) and part 135 (§ 135.152 and appendix M) to record DA would require a costly software modification to certain aircraft; and (2) that although it supports the distinction between decision height and decision altitude, this distinction could require a software modification to add a ''discrete'' code to the flight data recorder parameters to differentiate between DH and DA.

The FAA did not intend for the NPRM to require modifications to the Flight Data Recorder requirements or software changes. The FAA agrees with Northwest that the proposals could result in these modifications and therefore, these proposals are withdrawn.

DA/DH (combined acronyms): Even though Boeing and ATA agreed with the FAA's distinction between ''altitude'' and ''height,'' they did not agree with the combined acronym of ''DA/DH'' for these terms.

Boeing, RAA, and Airbus stated that adopting this acronym would require them to change their charts, manuals, and training programs to conform to the FAA's acronyms.

The FAA has used the term ''DA(H)'' for several years in its handbook guidance to refer to the terms decision height and decision altitude and adopting this acronym now is not a substantive change. Operators and aircraft manufacturers will need to revise these documents accordingly; however, these revisions can be accomplished during their normal revision cycles.

II.B.4. Final Approach Fix (FAF) (§ 1.1)

The FAA proposed to add the term ''final approach fix (FAF)'' to provide that the final approach fix defines the beginning of the nonprecision final approach segment and the point where final segment descent may begin.

Delta and Alaska Airlines commented that the agency only proposed ''final approach fix'' relative to a nonprecision approach, but that AC 120–29A applies final approach fix to both nonprecision and precision approaches with no distinction. TAOARC recommended withdrawing the definition, but did not provide adequate rationale for this comment.

Because the term ''final approach fix'' is used in numerous operating rules and instrument approach procedures, the FAA finds it prudent to adopt this definition. However, the FAA agrees with the commenters that the proposal erroneously limited the term to nonprecision approach procedures instead of applying to both categories. Consequently, the FAA is adopting the term, but is removing the word ''nonprecision'' so that it applies to both precision and nonprecision procedures.

II.B.5. HAT as Acronym for ''Height Above Threshold'' (§ 97.3)

The FAA proposed to change the acronym ''HAT'' from ''height above touchdown'' to ''height above threshold.''

[1] Prior to this rule, the term decision height meant the height at which a decision must be made during an ILS or PAR instrument approach to either continue the approach or to execute a missed approach.

Boeing and Airbus commented that the ''height above touchdown'' is an important point in design of autoland systems and head-up displays, and said that the proposed change could have adverse consequences on aircraft design.

AOPA commented that ''height above touchdown'' provides pilots with more information about the portion of the runway where a landing will take place. AOPA contended that ''height,'' when referring to the threshold only, is misleading because the threshold height may not be the highest part of the ''touchdown zone.'' Furthermore, AOPA stated, general aviation pilots are trained that ''touchdown zone'' is larger than the runway threshold, and that the highest point in that area provides information about runway slope characteristics.

TAOARC supported this proposal.

While the FAA does not find that Boeing's and Airbus's comments are convincing, the agency does agree with AOPA's comment, and consequently is not proceeding with the proposed change. The agency recognizes the long-standing use of the current acronym ''HAT'' to mean ''height above touchdown.''

II.B.6. Helipoint (§ 97.3)

In the NPRM, the FAA proposed to add the term ''helipoint'' as ''* * * the aiming point for the final approach course for heliports. It is normally the center point of the touchdown and lift-off area (TLOF). The helipoint elevation is the highest point on the TLOF and is the same elevation as heliport elevation.'' In the NPRM, the FAA stated that the helipoint is usually the designated arrival and departure point located in the center of an obstacle-free area, 150-feet square overlying an approved landing area.

The Helicopter Association International (HAI) stated that many heliports do not have a 150-foot square obstacle-free area that would meet the requirements of the proposed term. HAI suggested, and TAOARC agreed, that instead, the FAA should add the term ''heliport reference point (HRP),'' which would be consistent with AC 150/5390–2B, ''The Heliport Design Guide.'' (At the time, HAI based its comment on the draft version of AC 150/5390–2B. The FAA published the AC after the publication of the RNAV NPRM.) HRP is defined in the AC as ''the geographic position of the heliport expressed as the latitude and longitude at—(1) the center of the FATO [final approach and takeoff area], or the centroid of multiple FATOs for heliports having visual and nonprecision instrument approach procedures; or (2) the center of the Final Approach Reference Area (FARA) when the heliport has a precision instrument approach procedure.''

Commenters are advised that a helipoint is the geographic point on the ground to which an approach is designed and it should not be confused with an HRP. The helipoint may or may not be coincident with the HRP, particularly where multiple landing areas are specified at a heliport. The helipoint and HRP are different terms serving different purposes. The AC defines both HRP (as stated by HAI) and helipoint. Under AC 150/5390–2B, a helipoint is ''the aiming point for the final approach course. It is normally the center point of the touchdown and lift-off area (TLOF).'' The proposed definition of ''helipoint'' and the term in the AC are substantively the same; therefore, the FAA adopts the term as proposed.

II.B.7. Instrument Approach Procedure (IAP) (§ 1.1)

The FAA proposed to define ''instrument approach procedure'' as—''A predetermined ground track and vertical profile that provides prescribed measures of obstruction clearance and assurance of navigation signal reception capability. An IAP enables a person to maneuver a properly equipped aircraft with reference to approved flight instruments from a specified position and altitude to—(1) a position and altitude from which a landing can be completed; or (2) a position and altitude at which holding or en route flight may begin.''

ATA commented that the word ''approach'' should be removed, as the definition includes the phrase ''en route flight may begin,'' which is not necessarily restricted to being on an approach. ATA also said this could confuse future airspace enhancement strategies and technology applications.

The FAA is not persuaded by ATA's comment and believes that removing the word ''approach'' is inappropriate. A pilot executing an instrument approach procedure is conducting a specific maneuver developed to permit a safe letdown to an airport. In this case, it is not appropriate to use general terminology that could be misunderstood as to the proper ground tracks and vertical profiles to be flown. TAOARC recommended that the FAA revise the definition to match the ICAO definition of IAP, which is, ''a series of predetermined maneuvers by reference to flight instruments with specified protection from obstacles from the initial approach fix, or where applicable, from the beginning of a defined arrival route to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding or en route obstacle clearance criteria apply.''

The FAA agrees to modify the definition to mirror the ICAO definition, but is retaining the clause ''and assurance of navigation signal reception capability'' from the NPRM. By including this clause, the FAA is requiring that the signal used by an aircraft's navigation equipment to position that aircraft on an IAP, with the required performance established for the procedure, is available and suitable for use on the route to be flown.

II.B.8. Minimum Descent Altitude (MDA) (§ 1.1)

The FAA proposed to define minimum descent altitude (MDA) as ''the lowest altitude to which a person may descend on a nonprecision final approach, or during a circle-to-land maneuver, until the visual reference requirements of § 91.175(c) of this chapter are met. Minimum descent altitude is expressed in feet above mean sea level.''

In the proposed definition, the MDA was limited to non-precision final approaches and references to ''standard instrument approach procedure'' and ''electronic glide slope'' were deleted. These changes were intended to clarify that an MDA is applicable only to a non-precision instrument approach procedure.

Alaska Airlines objected to using ''nonprecision'' in this definition because AC 120–29A applies to instrument procedures generally and does not distinguish precision and nonprecision. Boeing, Airbus, Continental, and TAOARC agreed that the definition should refer to instrument procedures generally until the joint industry/government working groups and the FAA review the categorization issues associated with precision and nonprecision approaches.

The FAA is adopting the definition with several modifications. A precise definition of this term is critical to both the safe execution of the instrument approach procedure and the supporting design criteria. The FAA agrees with deleting reference to ''nonprecision,'' in view of the comments on this term and previously addressed in this document. In the final rule, the definition retains the current phrase ''instrument approach procedure.''

After further review, the FAA finds that this definition should be modified by replacing the words ''in execution of an instrument approach procedure, where no electronic glide slope is provided'' with the words ''specified in

an instrument approach procedure.'' This more general phrasing accommodates RNAV IAPs specific to the use of RNAV.

Lastly, the proposed definition did not include visual reference requirements added to § 91.175(l) by the Enhanced Flight Vision Systems rule (69 FR 1620; Jan. 9, 2004). Therefore, the words ''until the pilot sees the required visual references for the heliport or runway of intended landing'' are added for consistency with current § 91.175(l) and to clarify that, when an MDA is specified in an instrument approach procedure, that altitude is the lowest altitude to which the pilot is authorized to descend until he or she sees the required visual references to continue the approach to an intended landing.

II.B.9. MSA—Minimum Safe Altitude (§ 97.3)

The FAA proposed to revise the definition of ''minimum safe altitude (MSA)'' as ''expressed in feet above mean sea level, depicted on an approach chart that provides at least 1,000 feet of obstacle clearance for emergency use within a certain distance from the specified navigation facility or fix.'' TAOARC recommended that the FAA accept the definition as proposed.

AOPA commented that, while it would appear that the use of any navigational aid (NAVAID) or fix to be the reference point for MSA is beneficial, poor or inconsistent application of selection criteria for fixes or NAVAIDs could raise safety issues. AOPA contended that the FAA should establish regulatory criteria for the consistent application of MSA.

The FAA disagrees with AOPA and is adopting the definition as proposed. The FAA's ''Instrument Procedures Handbook'' (FAA–H–8261–1) and the ''Instrument Flying Handbook'' (FAA–H–8083–15) appropriately provide standardized guidance for the selection and depiction of the fix or NAVAID that forms the basis of the minimum safe altitude on the approach chart. AOPA did not cite any cases where this guidance has resulted in poor site selection or pilot confusion.

II.B.10. Night (§ 1.1)

The FAA proposed to revise the definition of ''night'' either to be the period of time published in the American Air Almanac, converted to local time, or other period between sunset and sunrise, as prescribed by the FAA.

Boeing, American, Delta, American Trans Air, AOPA, and ATA commented that the proposed definition could have operational impacts at particular locations, where terrain may cause sunset earlier than the American Air Almanac indicates. RAA asked where the local definition of ''night'' would be published.

TAOARC recommended that the FAA withdraw the definition and explore alternate methods that might address the local determination of the hours of darkness and how to impose those limitations.

In view of these comments, the FAA is withdrawing this proposal and will request that the term ''night'' be studied by joint industry/government working groups.

II.B.11. Use of the Word ''Pilot'' or ''Person''

The FAA proposed to change the word ''pilot'' to ''person'' in a number of sections depending on the context of the regulations. (See table below.) In certain regulations, the word ''person'' is appropriate if it applies to those individuals in an operator's organization, including pilots, who are authorized to develop the policies and procedures under which its aircraft are to be operated, and who are responsible for compliance with the requirements in the regulations.

Boeing and Continental argued that this change would be inappropriate, because ''pilots'' fly aircraft. Boeing added that the current definitions are adequate and familiar to pilots. TAOARC also objected to the change.

The FAA re-examined each proposed amendment in context to determine whether the requirement applies to an organization and its pilots or other persons used in its operations, or only to the pilots conducting the operation. Based on this re-examination, the term ''person'' or ''pilot'' is adopted as follows:

Section	FAA decision reflected in the final rule
§ 1.1 Decision altitude	The word ''pilot'' retained.
§ 1.1 Decision height	The word ''pilot'' retained.
§ 91.129 (e)	The word ''pilot'' retained.
§ 91.175 (e) and (j)	The word ''pilot'' retained.
§ 91.177	The word ''person'' adopted.
§ 91.189	The word ''pilot'' retained.
§ 121.347	The word ''person'' adopted.
§ 125.381	The word ''pilot'' retained (as adopted in the EFVS final rule of January 9, 2004).
§ 129.16 (renumbered as § 129.22 in the final rule) (a) and (b)	The word ''person'' changed to ''foreign air carrier'' to be consistent with terminology in part 129.
§ 129.17 (b) and (d)	The word ''person'' changed to ''foreign air carrier'' to be consistent with terminology in part 129.
§ 135.161	The word ''person'' adopted.
§ 135.165 (a), (b), (e), (f), and (g)	The word ''pilot'' retained.
§ 135.225	The word ''pilot'' retained (as adopted in the EFVS final rule of January 9, 2004).

II.B.12. Precision Final Approach Fix (PFAF) (§ 1.1)

The FAA proposed to add the definition of ''precision final approach fix (PFAF)'' as a final approach fix for a precision approach or an approach procedure with vertical guidance (APV).

ATA and Alaska Airlines commented that the use of ''precision'' and ''nonprecision'' is inappropriate and inconsistent with AC 120–29A because the AC does not differentiate between precision and nonprecision.

As previously discussed, the FAA is withdrawing the definition of ''approach procedure with vertical guidance (APV)'' pending its review by joint industry/government working groups. Consequently, the term ''precision final approach fix'' is withdrawn for the same reason.

II.B.13. RNAV (Acronym) (§ 1.2)

The FAA proposed to include the acronym ''RNAV'' for the term ''area navigation'' in § 1.2.

American Trans Air and Continental Airlines requested that the FAA withdraw the proposed acronym ''RNAV'' because, in their view, it needs industry input. Furthermore, American Trans Air said that ''RNAV'' appears to be a charting acronym and is not necessary for inclusion in § 1.2. TAOARC, however, supported the acronym.

''RNAV'' is a long-standing acronym that the industry and the FAA have used to refer to area navigation for several decades. It is unclear what ''industry input'' would be necessary with respect to merely codifying a universally accepted acronym. Therefore, the FAA is adopting the acronym ''RNAV'' for ''area navigation.'' The definition of ''RNAV'' in § 1.1 was adopted in the April 8, 2003 final rule, ''Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points.'' However, in that rule, the acronym ''RNAV'' was inadvertently left out of § 1.2.

II.B.14. Visibility Minimum (§ 97.3)

In the NPRM, the FAA did not propose any substantive amendments to the term ''visibility minimum.'' The term is defined as ''* * * the minimum visibility specified for approach, landing, or takeoff, expressed in statute miles, or in feet where RVR [runway visual range] is reported.''

Boeing, however, recommended adding the words, ''Unless otherwise specified'' to the beginning of the definition of ''visibility minimum'' to allow for alternative units of measure, such as meters.

TAOARC recommended adopting the definition as proposed.

FAA regulations uniformly refer to miles (nautical and statute) or feet, and the agency does not intend to introduce new units of measure in the foreseeable future. It is also noted that certain operators are issued operations specifications containing a feet-to-meters conversion table. Consequently, having one regulation that includes an alternative unit of measure, when numerous other regulations do not, would generate additional questions.

II.C. Communications Requirements

II.C.1. Communications Facilities (§ 121.99)

The FAA proposed the following amendment to § 121.99, Communications facilities:

(1) Change the requirement for a ''two-way radio communication system available over the entire route under normal operating conditions'' to a ''two-way communication system under normal operating conditions,'' which would permit the use of data link as opposed to just voice communication;

(2) Change the words ''point-to-point circuits'' to ''communication links;''

(3) Add the requirement for a communication system to have two-way voice communication capability for use between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control (ATC) unit for non-normal and emergency conditions; and

(4) Define the term ''rapid communications'' in this section to mean that the caller must be able to establish communications with the called party in less than 4 minutes.

The Airline Dispatchers Federation commented that the new voice communications requirements would contribute to aviation safety and that the 4-minute time limit as used in the proposed definition of ''rapid communications'' is reasonable and technologically achievable.

The majority of other commenters, including airlines, industry associations, communication service providers, and aircraft manufacturers, objected to the proposed requirement for a communication system to have two-way voice communication capability for use between each airplane and the appropriate dispatch office for non-normal and emergency conditions. These commenters also did not support the proposed definition of ''rapid communications'' to mean that the caller must be able to establish communications with the called party in less than 4 minutes. The commenters cited the diminishing availability of communication service providers who use high frequency (HF) radio communications systems for long-range communications, e.g., oceanic and polar, the limitations of HF voice communications due to propagation characteristics, and the high costs of equipping their aircraft with satellite communication systems which would be one means of meeting these two proposed requirements. Several of these commenters stated that because of the limitations of HF communications and the costs of satellite communications they use only data link for dispatch office communications on certain routes and only maintain voice communication capability with ATC on those routes. Furthermore, nearly all of these commenters objected to the proposed definition of ''rapid communications'' stating that the proposed requirement is unrealistic especially in view of the limitations of HF voice communications systems and the lack of safety justification provided by the FAA.

Delta further commented that paragraph (b) of this section should be amended to permit domestic and flag operators, in an emergency, to communicate with their dispatch offices using an ATC facility communication link between the airplane and the dispatch office.

TAOARC recommended instead that ''rapid communication under normal operating conditions'' between the pertinent parties be established within 5–10 minutes, unless otherwise authorized by the Administrator. TAOARC also did not support requiring voice communication with dispatch in non-normal and emergency situations, but did not expand on the comment.

Delta commented that the § 121.99 proposals pertaining to two-way voice communication capability for use between each airplane and the appropriate dispatch office, and the proposed definition of ''rapid communications'' would require equipping its aircraft with both data link and satellite voice communication equipment under § 121.349.

Upon further consideration, the FAA is making the following changes to proposed paragraph (a) in the final rule: (1) The words ''under normal operating conditions'' are struck from the first sentence because they are redundant, and the acronym ''FAA'' is replaced with the words ''certificate holding district office;'' (2) in the second sentence, the words ''except as specified in § 121.351(c)'' are struck because they are no longer applicable to the rule as it has been modified. The FAA acknowledges the comments that opposed the proposal regarding ''rapid communication under normal operating conditions'' and proposed definition of ''rapid communications,'' and therefore, removes these statements from the rule text. Finally, the FAA is adopting Delta's recommendation to amend § 121.99(b) to permit, in an emergency, domestic and flag operators the use of U.S. ATC communication facilities to communicate with their dispatch offices.

II.C.2. Aircraft Communication Equipment (§§ 91.205, 91.511, 91.711, 121.345, 121.347, 121.349, 121.351, 125.203, 129.16 (Adopted as § 129.22), 129.17, 135.161, and 135.165)

In conjunction with the § 121.99(a) proposals for communications facilities described above, the FAA proposed to

amend the related aircraft communication equipment requirements in parts 91, 121, 125, 129, and 135 to make them less prescriptive. This would allow for the expanded use of different kinds of communication systems technology for aeronautical operational control and air traffic management as the NAS increasingly becomes more performance-based.

Upon further consideration, the agency has determined that many of the aircraft communication equipment proposals are premature because the future communication infrastructure needs for air traffic management of the NAS have not yet been determined, nor has the international aviation community made decisions regarding its respective air traffic communications. Accordingly, the FAA is withdrawing many of the associated proposed aircraft communication equipment amendments so that joint industry/government working groups may study the issues and provide recommendations to the FAA for the NAS communications infrastructure and for compatible aircraft communication equipment.

Specifically the agency has concluded that, where it had proposed to remove or omit reference to ''radio'' in order to refer generally to just ''communication,'' the existing language (use of the term ''radio'') should be retained for NAS and foreign air traffic service provider communication infrastructures.[2]

In proposing to add new § 129.16 (adopted as § 129.22), the FAA similarly proposed to require ''communication'' equipment; however, the word ''radio'' is added to this section for uniformity and consistency in the requirements for parts 121, 125, 129 and 135.

The FAA did not receive comments on the following issues; however, upon review the agency finds that further modifications are necessary.

This rule amends §§ 121.347(a)(2), 129.22(a)(2) (proposed as § 129.16), and 135.161(a)(2), as proposed, to clarify the communication requirement with appropriate air traffic control facilities within a Class E surface area and not in Class E airspace generally.

The agency's proposal to modify the factors considered by the FAA to approve the installation and use of a single long-range communication system (LRCS) and a single long-range navigation system (LRNS) under §§ 125.203(f)(2) and 135.165(g)(2) was incorrect and mistakenly makes these paragraphs inconsistent with the remainder of the section. Consequently, this proposed amendment is withdrawn and the factor considered by the FAA, among others, is for the length of the route.

The FAA sought to permit operators under parts 121, 125, and 135 to use a single LRNS and a single LRCS, if among other considerations, the aircraft was equipped with only very high frequency (VHF) communication equipment.[3] Upon review, the FAA has concluded that specifying VHF equipment unduly limits the communication gap exception requirement (found in §§ 121.351(c)(3), 125.203(f)(3), and 135.165(g)(3)) to VHF and would not permit the use of other kinds of communication systems to be included in the exception. This result was not intended and therefore, this proposal is also withdrawn.

The FAA proposed to add a requirement in parts 121, 129, and 135[4] that ''for non-normal and emergency operating conditions, at least one of the independent communication systems must have two-way voice communication capability.'' Although no comments were received regarding this proposal, the FAA has reconsidered and is removing the words ''Except as required in § 121.99'' and ''non-normal and emergency operating conditions,'' wherever they appear in those sections which expands the applicability of those sections. The FAA believes that voice communication is necessary in other than non-normal or emergency conditions.

Further, the FAA has concluded that it is necessary to modify the proposed communication equipment requirement language in §§ 121.349, 129.17, and 135.165 from ''For normal operating conditions'' to ''under normal operating conditions'' to be consistent with the FAA's legal interpretation issued on April 16, 1964.[5] The legal interpretation makes it clear that, in conjunction with §§ 121.99 and 121.347 and the modifications to these proposals, a temporary interruption of communications capability of the aircraft communication systems by conditions other than ''normal operating conditions'' is not intended to preclude the suitability of such communication systems for the routes to be flown.

The proposed caption of paragraph § 121.349(e), which read ''Additional communication system equipment requirements'' is misleading because it indicates that it applies to all part 121 operators. In the final rule, the caption is clarified and reads ''Additional communication system equipment requirements for operators subject to § 121.2.'' There is no substantive change.

There were no comments received on the following proposals and these proposals are adopted in this final rule. Proposed § 129.16 is adopted as § 129.22. Shortly before the NPRM was issued, the FAA added another section numbered § 129.16 (''Supplemental inspections for U.S.-registered aircraft'') via a separate rulemaking and the numbering adjustment inadvertently was not made in the RNAV NPRM. Therefore, the section is renumbered accordingly in this final rule.

As proposed, references to ''ground facilities'' are removed in order to permit the use of non-ground based navigational facilities in certain sections of parts 91, 121, and 135.[6]

The FAA is adopting the following proposed amendments to § 125.203: (1) Change the requirement that an airplane must have two-way radio communication equipment, able to transmit to and receive from appropriate facilities from ''25 miles away'' to ''22 nautical miles away''; and (2) add the requirement for two independent communication systems, one of which must have two-way voice communication capability, capable of transmitting to, and receiving from, at least one appropriate facility from any place on the route to be flown.

II.C.3. Flight Operations Communications Requirements (§§ 91.183, 91.185, 129.21, and 135.79)

The FAA did not receive any comments to its proposals to amend §§ 91.183, 91.185, 129.21, and 135.79. The FAA therefore is adopting the following proposed amendments: (1) Removing the words ''by radio'' in § 91.183(a); (2) removing the word ''radio'' from § 91.185 heading and paragraph (a); (3) removing the word ''ground'' from § 129.21; and (4) replacing the words ''radio or telephone communications'' with the word ''communication'' in § 135.79.

These amendments provide operators with greater flexibility to take advantage of future technology and to determine the appropriate communication equipment based on the availability of compatible communication facilities on the route to be flown.

Upon reconsideration, however, the FAA is further modifying § 91.183. The NPRM would have allowed for the use

[2] See proposed §§ 91.205(d)(2), 91.511(a)(1), 91.711(c)(1)(i), 121.345, 121.347, 125.203(a), and 135.161.

[3] See proposed §§ 121.351(c)(3), 125.203(f)(3), and 135.165(g)(3).

[4] See proposed §§ 121.349, 129.17 and 135.165(d)(2).

[5] The interpretation is included in the docket for this rulemaking.

[6] See proposed §§ 91.205(d)(2), 121.347, 135.161 and 135.165.

of advanced communications, other than by voice, in meeting the reporting requirements in the rule. The NPRM also sought to require pilots in command to monitor the frequency. While the rule does not require voice communication to monitor frequencies, it does require that the pilot get permission from ATC to be off the frequency previously required to be monitored, as ATC is the appropriate entity to determine when the frequency does not need to be continuously monitored. Also, the FAA is clarifying the requirement to monitor the frequency by specifying that if there is a two-pilot crew, either pilot can monitor the frequency.

II.D. Navigation Equipment Requirements

II.D.1. Aircraft Navigation Equipment Requirements

The FAA proposed to amend the aircraft navigation equipment requirements in parts 91, 121, 125, 129, and 135 to allow the use of navigation systems that use satellite navigation aids and to require that the navigation equipment must be suitable for the route to be flown. These proposals would allow for the use of future navigation system technology that does not rely on ground-based navigation aids (e.g., global positioning systems (GPS)). The proposals also sought to facilitate the use of RNAV equipment throughout all phases of flight (departure, en route, and approach).

The NPRM contained several proposed amendments to the rules addressing IFR operation equipment requirements. Specifically, the FAA proposed to add the words ''suitable RNAV system'' in several sections.[7] In other sections,[8] however, the FAA proposed adding the words ''suitable IFR-approved RNAV system.'' (Note that the word ''suitable'' was inadvertently omitted from the proposed text of § 91.711 (e).) Both phrases were intended to convey the same requirements, but only one phrase should have been proposed. The phrase ''IFR-approved'' implies a higher standard than the phrase ''suitable RNAV system'' and is misleading, in that some IFR-approved RNAV systems may not be suitable for providing accurate distance information to or from distance measuring equipment (DME) facilities. The term ''suitable RNAV system'' means that the navigation system is designed and installed to perform its intended function. Therefore, ''suitable RNAV system'' is adopted in this rule. (See the discussion under ''II.D.1.a. Suitability of RNAV systems,'' for a description of the assessment strategies used to determine whether certain RNAV systems are ''suitable'' substitutions for certain ground-based navigation facilities or fixes identified in a standard ILS instrument approach procedure.)

In part 129, the FAA proposed that equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals. (See proposed § 129.17(a).) The proposed language is identical to current regulations in other parts governing U.S. operators.[9] Upon review, the FAA has determined that it is no longer necessary to include this phrase in any of the cited regulations because it is redundant. Therefore, this proposal is not adopted and the phrase is removed from §§ 121.349, 125.203 and 135.165. There are legacy navigation systems capable of receiving both signals and operators may continue to use those systems.

This rule replaces, as proposed, the requirement under § 121.349(a) for two independent navigational receivers with the requirement for two independent navigation systems. These two systems are not required to be identical.

The FAA proposed to amend §§ 121.103 and 121.121 to make these sections performance-based by requiring that the navigation aids must be available over the route to navigate the airplane along the route ''with the required accuracy,'' so that any suitable navigation system could be used. The agency believed that the required accuracy would be defined by the route specifications (including route width) or by ATC if not operating on the route. The agency has reviewed the current regulatory text, which requires that the navigation aids used for the route must be used to navigate ''within the degree of accuracy required for ATC.'' This current language does permit the use of any suitable navigation system but also importantly continues the ATC expectation (and requirement under § 91.181, Course to be flown) that, unless otherwise authorized by ATC, aircraft must fly the centerline of an airway. The FAA concludes that the current language is clear and permits the use of any suitable navigation system and consequently, it is not necessary to adopt this proposed amendment.

Based on the above conclusion with respect to §§ 121.103 and 121.121, and supported by TAOARC's preference for consistency between the navigation equipment requirements of § 121.349 and the route accuracy requirements of §§ 121.103 and 121.121, the FAA has determined that it is necessary to further modify § 121.349(a) and (c) to require that the airplane's independent navigation systems be suitable for navigating the airplane along the route to be flown ''within the degree of accuracy required for ATC.'' Although the route accuracy requirement was not proposed for this particular section, the FAA finds that its inclusion here does not pose additional operating requirements but is clarifying the accuracy performance necessary for ATC purposes. (Further discussion on this proposal in relation to §§ 121.349, 125.203, 129.17, and 135.165 are found in ''II.D.3. En route navigation facilities.'')

Also in §§ 121.349(a), the FAA proposed to include a statement that only one navigation system need be provided for precision approach and APV operations.''[10] Since this rule does not adopt the terms precision approach and APV operations, references to these terms are withdrawn. The current regulatory text provides that only one marker beacon receiver providing visual and aural signals and one ILS receiver is needed.

In §§ 121.349(a) and (c)(2),[11] the FAA proposed a requirement that the navigation systems used to meet the navigation equipment requirements be authorized in the operations specifications issued to the operator. The FAA finds this proposal unnecessarily broad because the navigation capabilities of equipment such as very high frequency omnidirectional range (VOR) and ADF are well known. Therefore, the FAA is limiting the operations specifications navigation equipment authorization requirements to RNAV systems only in the sections referenced.

For part 121 operators,[12] the FAA proposed to retain the requirement for two long-range navigation systems (LRNS) when VOR or ADF radio navigation equipment is unusable along a portion of the route. In the final rule, the FAA is adopting (in the introductory text of paragraph (a)) the requirement for two LRNSs; however, the words ''when VOR or ADF radio navigation equipment requirement is unusable along a portion of the route'' are

[7] See proposed §§ 91.131(c)(1), 91.175(k), and 91.205.

[8] See proposed §§ 91.711(e), 121.349(d), 125.203(e), 129.17(d) and 135.165(c).

[9] See proposed §§ 121.349, 125.203 and 135.165.

[10] Identical amendments were proposed in §§ 125.203(c)(5), 129.17(a), 135.165(a).

[11] Identical amendments were proposed in §§ 125.203(c)(5) and (d)(2), 129.17(a) and (c)(2), and 135.165(a) and (b)(2).

[12] See proposed § 121.351(a)(4).

removed. The references to VOR and ADF are removed because these navigation systems are rarely used in extended overwater operations. In addition, in the proposed rule, the FAA inadvertently did not include a reference to navigation systems in the introductory text of § 121.351(a). This reference is added in the final rule.

The FAA proposed to change one of the operational factors the Administrator may consider in authorizing the use of a single long-range navigation system and a long-range communication system from ''the ability of the flightcrew to reliably fix the position of the airplane within the degree of accuracy required by ATC'' to ''the ability of the flightcrew to navigate the airplane along the route with the required accuracy.'' [13] This proposal is not adopted in this rule because the NPRM did not include the route navigation accuracy performance requirements. (See the discussions under ''II.D.1.a. Suitability of RNAV systems'' and ''II.D.3. En route navigation facilities.'')

II.D.1.a. Suitability of RNAV Systems

Aircraft that use some of the older RNAV equipment cannot execute RNAV instrument approach procedures because that equipment cannot support the accuracy requirements necessary for those procedures. Also, some of the older RNAV systems are not capable of meeting the performance necessary for certain established departure procedures, in particular those RNAV systems that cannot process GPS and DME information.

In the various proposed amendments to aircraft navigation equipment requirements, the FAA proposed to include a ''suitable RNAV'' system. The NPRM, however, did not explain the term suitable. In order to clarify for operators with RNAV systems that they must ensure that aircraft's RNAV system is suitable, the agency believes that it is necessary to adopt a definition of that term in § 1.1. Consequently, a suitable RNAV system is defined as an RNAV system that—(1) meets the required performance established for a type of operations, e.g. IFR; and (2) is suitable for operation over the route to be flown in terms of any performance criteria (including accuracy) established by the air navigation service provider for certain routes , e.g. oceanic, ATS routes, and IAPs. An RNAV system's suitability is dependent upon the availability of ground and/or satellite navigation aids that are needed to meet any route performance criteria that may be prescribed in route specifications to navigate the aircraft along the route to be flown.

The FAA has published numerous Advisory Circulars on RNAV system operations, which may be found at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/MainFrame?OpenFrameSet*.

II.D.1.b. Aircraft Navigation Requirements

Airbus commented that in the case of a GPS-equipped aircraft operating within the operational service volume of ground-based navigation aids, operators would have to show at each point along these routes that the aircraft retains the capability to ''navigate the airplane along the route with the required degree of accuracy.'' Airbus argued that this means that the aircraft can never be outside the operational service volume of the existing NAVAID network, which would be unreasonable, unnecessary, and a costly constraint. Moreover, it would significantly impede implementation of a performance-based NAS and the achievement of the safety and efficiency benefits of RNAV systems that use GPS information.

TAOARC contends that permitting the use of a single independent navigation system but mandating that the system must be able to ''navigate safely to a suitable airport'' in the event of a signal loss would result in an unrealistic requirement for operations in the future NAS under the FAA's plan to decommission ground-based navigation aids such as VOR and TACAN. TAOARC therefore, recommended that the word ''navigating'' be changed to ''proceeding'' because, under the GPS-sensor-interference scenario described in the proposal for § 121.349, the FAA would require operators to use ground-based navigation aids and be limited to operating within the service volume established for those navigation aids.

The FAA agrees with Airbus and TAOARC and replaces the words ''navigat(ing) safely to a suitable airport'' with the words ''proceed(ing) safely to a suitable airport'' in the final rule.[14] Proceeding to another airport can be accomplished many ways, such as reverting to ground-based navigation aids or reverting to inertial-referenced navigation systems. This exception does not require the alternative system to be capable of navigating within the degree of accuracy required for ATC, but rather to provide a safe means for the pilot to continue the flight to a suitable diversion airport.

The FAA realizes that in crafting the NPRM, a current equipment requirement in § 121.349(a) was omitted inadvertently. While no party commented on the omission, the agency believes it is critical to flight safety to maintain the requirement that the airplane's navigation systems must be capable to ''receive navigation signals from all primary en route and approach navigational facilities to be used.'' The pertinent language is updated and clarified so as to require the en route navigation aids necessary for navigating the aircraft along the route (e.g. ATS routes, arrival and departure routes and instrument approach procedures, including missed approach procedures if a missed approach routing is specified in the procedure), are available and suitable for use.[15] This clarifies that the route, for example, may be an ATS route (under part 71) or other ATS routing, or a part 97 instrument approach procedure.

AOPA requested that the FAA consider IFR-certified GPS equipment as a ''suitable RNAV system'' as an option to meet existing equipage requirements in lieu of the DME. (Note that currently DME is required to operate in certain airspace areas and at altitudes of flight level (FL) 240 and above.)

The FAA agrees that an RNAV system used to navigate under IFR operations may constitute a ''suitable RNAV system'' that can be used to substitute for the DME currently required to operate in certain airspace areas and at altitudes of FL 240 and above if the RNAV system is suitable for performing that function. Not all RNAV systems may be suitable to substitute for DME. Suitable navigation aids, e.g., GPS, must be available along the route to be flown to permit the system to provide distance information analogous to the distance information provided by DME, subject to any operating limitations or provisions that may be specified in the approved Airplane or Rotorcraft Flight Manual, AFM supplement, or pilot's guide.

Lastly, the FAA corrects § 91.131 to require that a VOR ''or'' TACAN receiver must be operable if an RNAV system is not available.

The FAA will issue an Advisory Circular containing guidance on what constitutes a suitable RNAV system that may be used to substitute for an ILS component or a ground-based navigation facility in the near future.

[13] See proposed §§ 121.351(c), 125.203(f) and 135.165(g).

[14] See adopted §§ 121.349(c)(1), 125.203, 129.17, and 135.165.

[15] Identical text is inserted in §§ 125.203, 129.17 and 135.165.

II.D.1.c. Navigation System Configurations

Airbus and others commented that the NPRM was unclear on the combinations of navigation sensors and/or aircraft equipment that would satisfy the proposed navigation system requirements. Northwest Airlines requested examples of the permitted combinations.

The FAA proposed to replace the requirement for two independent receivers with a requirement for two independent navigation systems to enable the use of new types of navigation systems such as autonomous inertial navigation systems (INS). A single VOR and a single suitable RNAV system may satisfy the requirement. The FAA also clarifies that this requirement can be met either by use of autonomous navigation systems or by use of ground and/or satellite navigation aids that are suitable and available for en route operations and for the intended instrument approach procedures.

Aircraft navigation systems are considered independent if there is no probable failure or event that will affect both systems. This ensures that, before dispatch or flight release, there will be no potential single point of failure or event that could affect an aircraft's navigation systems and cause loss of the ability to navigate along the intended route or to proceed safely to a suitable diversion airport. Therefore, the FAA is providing an exception [16] for operations on routes using only one navigation system suitable for navigating the aircraft along the route as discussed in the previous paragraph, provided that the aircraft is equipped with at least one other independent navigation system for purposes of proceeding to a suitable airport.

Although not proposed, the FAA finds it necessary to add a requirement under the exception that the certificate holder must show, by appropriate description in the certificate holder's operating manuals or by another means acceptable to the FAA, that the other independent navigation system is suitable, in the event of loss of the navigation capability of the single system at any point along the route, to enable the aircraft to proceed safely to a suitable airport and complete an instrument approach. For example, an operation that is currently permitted over routes on which navigation is based on low-frequency radio range or automatic direction-finding (ADF) navigation aids may use an airplane equipped with two VOR receivers and only one low-frequency radio range or ADF receiver. In the case of failure of the single low-frequency radio range receiver, or ADF receiver, the flight must be able to proceed safely to a suitable airport by means of VOR navigation aids and complete an instrument approach by use of the remaining aircraft VOR equipment. The FAA is making this change in the final rule to ensure that aircraft avoid collision with obstacles on the ground and other aircraft during flight.

II.D.2. Global Navigation Satellite System (GNSS) or Other Satellite Navigation Aids, e.g., Global Positioning Systems (GPS)

The FAA requires two independent navigation systems to ensure that there is no single point of failure or ''event'' that could result in losing the ability to navigate along the intended route or to navigate to a suitable diversion airport. This proposal addresses the vulnerability of GPS, which uses very weak signals that are susceptible to interference that may cause a loss of integrity, or total loss of usable signals, thus degrading the use of the GPS for IFR operations. Such single point of failure or an event is one that could lead to increased workload, the inability of the flight crew to cope, or prevent continued safe flight and landing.

Airbus commented that there are no known industry or agency criteria for determining which GPS systems can be considered ''independent.'' Furthermore, Airbus contended that the FAA did not define the probability of interference, nor state what the government might do to reduce or eliminate the generation of interfering signals.

Although the risk of intentional jamming of GPS is low in the United States, the FAA routinely issues Notices to Airmen (NOTAMs) indicating that GPS is unreliable in certain areas and during certain times due to planned testing. Unintentional interference is frequently encountered in some areas of the world, but historically is infrequent in the United States. Airbus states that interference in oceanic areas has not been experienced and can be expected to be very rare. The FAA agrees that the likelihood of interference varies by region, and the possibility of intentional interference could increase.

On December 15, 2004, the President of the United States issued the ''U.S. Space-Based Positioning, Navigation and Timing Policy'' acknowledging the vulnerability of GPS, and tasking the Department of Transportation, in coordination with the Secretary of Homeland Security, to—

* * * develop, acquire, operate, and maintain backup position, navigation, and timing capabilities that can support critical transportation, homeland security, and other critical civil and commercial infrastructure applications within the United States, in the event of a disruption of the Global Positioning System or other space-based positioning, navigation, and timing services, consistent with Homeland Security Presidential Directive-7, Critical Infrastructure Identification, Prioritization, and Protection, dated December 17, 2003;

In keeping with this policy, the FAA will continue to maintain adequate ground-based navigation aids for navigation services. The FAA does not believe it is appropriate or necessary, however, to restrict all operations to the service volume of ground-based navigation aids. As technology is developed, tested and accepted, it is the FAA's intention to permit the use of that technology when its use can be done in a safe and appropriate manner.

Under GPS interference scenarios, operations of aircraft that are not equipped for this contingency may be severely limited. Therefore, a DME infrastructure and a VOR network must remain in place for the foreseeable future. As the NAS evolves and navigation technology improves, however, a satellite-based system may become the core of the aviation navigation infrastructure.

II.D.3. En Route Navigation Facilities (§§ 121.103, 121.121, and 125.51)

The FAA proposed to use the term ''navigation systems'' in the headings of §§ 121.103 and 121.121 and the term ''navigation aids'' in the heading of § 125.51. Northwest Airlines pointed out that, while the FAA proposed to use the word ''systems'' in the headings of those sections, it addressed requirements for navigation aids in the text. American Trans Air recommended that the headings read ''Enroute navigation'' because use of the words ''systems,'' ''aids,'' and ''facilities'' confuses the rule. TAOARC recommended removing the word ''systems'' from the proposed headings of §§ 121.103 and 121.121.

After considering the comments, the FAA has concluded that ''facilities'' is appropriate under the current infrastructure and is changing the headings of §§ 121.103, 121.121, and 125.51 in the final rule to ''En route navigation facilities.''

Currently, §§ 121.103(a), 121.121(a), and 125.51(a) all provide that ''nonvisual ground aids'' must be available over the route for navigating an aircraft within the degree of accuracy required for ATC. The FAA proposed to replace reference to ''nonvisual ground

[16] See §§ 121.349 (c), 125.203 (d), 129.17 (c) and 135.165 (b).

aids'' in these sections with ''navigation aids.'' No comments were received and this rule adopts that amendment.

II.E. International Standards

An individual commenter objected to conforming FAA regulations to ICAO standards and argued that since the majority of aviation activity occurs within the United States, ICAO should conform to United States standards.

AOPA commented that there are significant differences between the United States and European operating environments and that harmonization with ICAO is not necessarily a good model for future changes to the domestic system. Moreover, AOPA contended that the FAA should only harmonize with ICAO when there is an operational benefit to users of the NAS.

The FAA recognizes that there are differences between the United States and European general aviation operating environments; however, harmonization of international standards remains a high priority for the FAA whenever it is in the public interest.

In the NPRM, the FAA erroneously stated that there are no current ICAO standards that corresponded to the proposed rule. The requirements proposed in §§ 121.349, 125.203, 129.17, and 135.165 are consistent with the current international standards in parts 1, 2, and 3 of ICAO Annex 6, ''Aeroplane Communication and Navigation Equipment'' for air carrier and general aviation operations, and ''Helicopter Communication and Navigation Equipment'' for helicopter operations.

American Trans Air asked whether the rule would apply to foreign operators in U.S. Gulf of Mexico airspace. Foreign operators are advised to review the regional procedures in the United States Aeronautical Information Publication (AIP) to determine the applicability of certain portions of this rule.

II.F. Elimination of Middle Markers (§§ 91.129 and 91.175)

In the NPRM, the FAA proposed deleting reference to the middle marker in §§ 91.129(e) and 91.175(k) because a middle marker is no longer operationally required. There are some middle markers still in use, but there are no middle markers being installed at new ILS sites by the FAA.

The FAA did not receive any comments on the §§ 91.129(e) and 91.175(k) proposals to remove the middle marker as a required component of an ILS, and the amendments are adopted as proposed.

II.G. DME Requirements for Aircraft Operating At or Above FL 180 Versus FL 240 (§§ 91.205 and 91.711)

The FAA proposed to lower the altitude for which DME is required from flight level (FL) 240 to FL 180.[17] This would make the altitude for which DME is required consistent with the floor of Class A airspace. The FAA believed that most aircraft operating in Class A airspace already have DME.

AOPA and Boeing objected to this proposal. AOPA argued that the justification is inadequate and that some operators must change or supplement their navigation systems, which would impose costs. AOPA estimated that approximately 30% of the aircraft capable of operating at or above FL 180 are equipped with DME. The number of aircraft equipped with a suitable RNAV system is unknown.

Boeing contends that maintaining FL 240 is necessary to address lead turn radius at high true airspeed. Boeing also argues that RNAV should also be permitted in lieu of DME. In view of the comments and after further consideration, the FAA concludes that this amendment may inadvertently create additional airspace congestion below FL 180 by restricting non-DME-equipped aircraft to operate at or below 18,000 feet. Consequently, the FAA withdraws this proposal.

II.H. Minimum Altitudes for Use of Autopilot (§§ 121.579 and 135.93)

The FAA proposed to amend §§ 121.579(b)(1) and (b)(2) and 135.93(b) and (c) to change references from ILS to precision approaches.

Boeing, ATA, and TAOARC suggested completely rewriting §§ 121.579 and 135.93 to reflect the previous input of ARAC's Flight Guidance System Harmonization Working Group. The FAA is currently reviewing the recommendations of this group. In the meantime, as the term ''precision approach'' is not being adopted in this rule, it is necessary to withdraw this proposal.

III. Discussion of Comments on Specific Sections

Section 91.129 Operations in Class D Airspace

ATA recommended removing the word ''glide'' from any definitions. The FAA does not agree with the commenter because the word ''glide'' must be associated with either the word ''slope'' or ''path'' in the context of this section. However, the FAA is changing the reference to ''glide slope'' proposed in paragraph (e)(4) to ''glide path'' because the term ''glide path'' is appropriate to all approaches with vertical guidance.

Section 91.175 Takeoff and Landing Under IFR

Upon reconsideration, the FAA has concluded that in paragraph (b), the terminology in the regulation as currently published is accurate and that it is appropriate to retain the language ''when the approach procedure being used provides for and requires the use of a DA/DH or MDA.''

In addition, the FAA is amending its proposal in paragraph (b)(3) from, ''The DA/DH or MDA for which the aircraft is equipped'' to ''The DA/DH or MDA appropriate for the aircraft equipment available and used during the approach.'' While this change is editorial, it is more precise and is consistent with the FAA's efforts to promote a performance-based NAS.

In paragraph (c), the FAA is deleting the phrase ''at any airport'' as the words are not necessary.

In paragraph (f), the FAA proposed to require that, if published civil takeoff weather minimums in part 97 are specified for a particular departure route, pilots must comply with these minimums and the published route unless an alternative route has been assigned by ATC. In order to ensure adequate obstacle clearance, the associated published weather minimums may only be applicable based upon a particular routing, i.e. departure procedure. For numerous airports, departure procedures are predicated upon obstacles located in the flight path(s) of the takeoff runway.

Airbus, Boeing, and Continental argued that it would be unnecessary, unsafe and economically onerous to require air carrier pilots to adhere to published departure procedures if in determining compliance with the aircraft takeoff limitations of § 121.189, air carriers have safely used a flight track significantly different from the flight track published in a part 97 procedure. In this case, Airbus argued that, in an engine-out situation, the pilot should fly the track that was determined to be compliant with § 121.189 and, in that case, it would be unsafe for the pilot to continue flying the part 97 departure procedure.

American Airlines contended that many part 121 operators already have approved engine-out procedures in place that are negotiated with air traffic control and provide for the safe operation of aircraft in such situations. American Airlines also argued that part 97 departure procedures are not based on engine-inoperative obstacle clearance

[17] See proposed §§ 91.205 and 91.711.

requirements contained in the airplane performance operating limitation regulations in parts 121 and 135. It also argued that it is too costly to conduct obstacle assessments for each departure procedure specified in part 97 and that negotiated departure procedures provide carriers with the flexibility and safe operating procedures.

TAOARC commented that the proposal does not contemplate the high standards for obstacle clearance in parts 121 and 135.

The FAA agrees in part with the above comments. Where takeoff minimums clearly are specified for a particular departure route, as a matter of safety, pilots must follow that routing. However, an exception is permitted. An operator may use an alternate departure route (see definition of ''T'' for an alternate departure route under § 97.3), if it is negotiated in advance with ATC and that alternative departure route allows part 121 and part 135 operators and certain part 129 operators to use a takeoff obstacle clearance or avoidance procedure that ensures compliance with the applicable airplane performance operating limitations requirements under part 121, subpart I or part 135, subpart I, or that ensures compliance with the airplane performance operating limitations for takeoff prescribed by the State of the operator, if applicable, at that airport. The provisions of subpart I in both part 121 and part 135 contain higher performance standards than that provided for in part 97 departure procedure. It is not the FAA's intention to disrupt or force operators to stop using established departure procedures that are safe and have been approved by the FAA. Therefore, these alternative routes may be used in lieu of the specified obstacle departure routes under § 97.1.

The FAA proposed to delete the runway visual range (RVR) table in paragraph (h) of § 91.175 and instead refer to the RVR table in FAA Order 8260.3, ''U.S. Standard for Terminal Instrument Procedures (TERPs).'' At the time of the NPRM, FAA Order 8260.3 was incorporated by reference in § 97.20.

Alaska Airlines and AOPA recommend using advisory circulars to disseminate the RVR table. AOPA and American Trans Air suggested that the agency list all the publications that provide the RVR table, i.e. the Aeronautical Information Manual, etc. ATA and Boeing recommended that these conversions go into carrier operations specifications.

Conversely, Delta maintained that the RVR table must have a regulatory source. American Trans Air also opposes incorporating the RVR table into an FAA order, and argues that the proposal would permit the FAA to change it without public input.

TAOARC endorsed putting the RVR table into the FAA Order because that Order was previously incorporated by reference into part 97, which makes it a regulatory provision.

On May 3, 2005, the FAA removed the incorporation by reference of FAA Order 8260.3. (See ''Revision of Incorporation by Reference Provisions'' final rule published on May 3, 2005 (70 FR 23002)). The agency concludes that the RVR table must have a regulatory basis and therefore, leaves the Comparable Values of RVR and Ground Visibility table in § 91.175.

The FAA proposed to amend paragraph (k) to allow certain locations on the ILS to be fixed by other than ground-based navigation aids.

AOPA requested clarification as to whether RNAV equipment, including IFR-approved GPS, can be used to identify certain locations on the ILS. AOPA estimated that less than one-third of all general aviation aircraft have the equipment necessary to identify a database fix. AOPA objected to any ILS implementation where RNAV equipage is a required component for completion of the approach because this would, as argued by AOPA, mandate the use of GPS for general aviation aircraft to access ''non-GPS'' procedures.

The FAA made an editorial error in paragraph (k) of § 91.175 that listed the means that may be used to substitute for the outer marker as ''requiring'' a suitable RNAV system instead of stating that a suitable RNAV systems was one of the many possible means of meeting this requirement.

AOPA also suggested modifying paragraph (h) to permit a pilot to use the ILS glide slope interception and altitude crosscheck as an acceptable substitute for an outer marker. Boeing recommended that a compass locator or precision radar may be substituted for the outer or middle marker.

AOPA's request to substitute an ILS glide slope interception and altitude crosscheck for an outer marker and Boeing's request to substitute a compass locator or precision radar for the outer or middle marker are beyond the scope of this rulemaking.

Published FAA guidance material advises that if a required fix for a particular instrument approach procedure is not in the aircraft's navigation database, then the pilot should not fly the procedure, nor enter such fix manually. (See Aeronautical Information Manual, Chapter 5, Air Traffic Procedures.) This reduces the risk of human error with respect to an incorrect manual fix entry and incorrect estimation of fix location while flying the instrument approach procedure. Pilot actions of this nature could result in controlled flight into terrain or manmade obstacles.

Boeing and Continental suggested adding a paragraph to § 91.175 to explicitly facilitate the introduction of new technology for low visibility approach and landing, when it can be shown that the new technology is appropriate. The commenters went on to state that the use of new technology could then be authorized through Operations Specifications or other suitable means.

The proposed recommendation is beyond the scope of the NPRM; however, the FAA already addressed the authorization of certain new technology in low-visibility approach and landing in the January 9, 2004 EFVS final rule (69 FR 1620).

Section 91.177 Minimum Altitudes for IFR Operations

The FAA proposed to clarify § 91.177(a) by stating that the section applies to both minimum en route IFR altitudes (MEA) and minimum obstruction clearance altitudes (MOCA) for a particular route or route segment. This would permit operators using other than ground-based navigation systems that meet navigation requirements to operate along the route at the MOCA.

The commenter stated that many general aviation IFR operations are done outside of radar contact while en route, and that more approach and departure procedures are flown to and from airports in a non-radar environment. AOPA said that while en route, general aviation aircraft remain at lower altitudes and, with the approval to operate at the minimum obstruction clearance altitude (MOCA), use of minimum altitudes along airways will increase. AOPA recommended that the FAA make every effort to accommodate area navigation operations outside of radar coverage because the NPRM appeared to revoke these capabilities, not expand them.

The FAA agrees that flights may be conducted at the MOCA if communication, navigation, and surveillance requirements are met, irrespective of whether the operation is in a radar environment. ATC may decide not to clear a flight to operate at the MOCA on a particular route if ATC is concerned that a flight may not be able to meet applicable separation standards. Additionally, ATC may require a flight requesting radar advisory services to operate at the MEA

as opposed to the MOCA because satisfactory communication can only be assured when operating at the MEA, not at the MOCA.

American Airlines, Air Transport Association of America, Boeing Commercial Airplanes, and Continental Airlines all commented that, instead of establishing a prescriptive value of 4 nautical miles horizontal distance from the course to be flown as the basis for identifying the highest obstacle within that space and applying the altitude value above that obstacle as the minimum altitude, the rule should also allow the use of RNP values for determining the space having the highest obstacle therein when applicable navigation performance requirements for routes are established.

The FAA did not propose to establish navigation performance requirements for certain routes. Therefore the commenters' recommendations are outside the scope of the rulemaking.

American Trans Air recommended revising the language in proposed paragraph (a)(1) to remove the words ''provided the applicable navigation signals are available'' and add a new sentence to read, ''Except when using VOR navigation, operations at MOCA beyond 22 nautical miles of the VOR concerned (based on the pilot's reasonable estimate of that distance) is not permitted.'' This change would allow other navigation without further specifying types of avionics, RNAV, GPS, etc.

The FAA does not agree with American Trans Air's suggestion. The suggestion appears to reverse the proposal and prohibit the use of navigation facilities other than VOR. The FAA believes that the suggested language could result in unsafe operations because it is essential that the applicable navigation signals for the navigation means used must be available over the route or route segment.

TAOARC recommended adding the phrase ''or when otherwise authorized by the Administrator'' to the proposed language in paragraph (a) of the proposal, but did not provide rationale; therefore, the FAA declines further consideration of this recommendation.

Section 97.1 Applicability

The FAA proposed to change § 97.1 to describe the applicability of part 97 as follows:

(1) Expand part 97 to include obstacle departure procedures;

(2) Clarify that civil takeoff weather minimums at certain airports are based on a specified route, and that pilots must comply with that route unless an alternative route has been assigned by ATC; and

(3) Minor editorial changes.

In the NPRM, the FAA referred to departure procedures generally, which includes obstacle departure procedures (ODPs) as well as non-regulatory departure procedures issued by ATC. The FAA's intention was only to include obstacle departure procedures in this rulemaking.

In addition to the comments received on § 91.175(f) (discussed above), Boeing, Airbus, and Continental Airlines stated that § 97.1(b) would not be the appropriate regulation in which to require compliance with obstacle departure procedures.

The FAA agrees with the commenters and has amended § 91.175(f) to require compliance with ODPs when applicable. (See discussion of § 91.175(f).)

Section 97.3 Symbols and Terms Used in Procedures

The FAA proposed to revise § 97.3 to organize the terms alphabetically. In addition, the FAA proposed to revise several of the terms in the section, and to add others.

The FAA received comments on the proposed definitions of ''height above touchdown (HAT),'' ''helipoint,'' ''minimum safe altitude (MSA),'' and ''visibility minimum.'' These comments, and the FAA's responses, are discussed under ''II.B. Terminology and Definitions.''

The FAA included the term ''Aircraft approach category'' in the proposed revision of § 97.3 so that the text of the section could be shown in its entirety for the convenience of the reader. The text of that definition was not different from that in the CFR at the time that the NPRM was drafted. However, in a separate rulemaking (unrelated to RNAV) on November 26, 2002 (67 FR 70828), the FAA amended the lead-in text of the definition, but inadvertently omitted the amended text from the NPRM. The FAA therefore is including the current text of ''Aircraft approach category'' in this final rule.

Section 97.10 General

The FAA proposed to remove and reserve § 97.10 because it prescribes standard instrument approach procedures ''other than those based on the criteria contained in FAA Order 8260.3, U.S. Standard for Terminal Instrument Approach Procedures (TERPS).'' The FAA proposed to remove § 97.10 because these types of approach procedures no longer exist.

American Trans Air, Continental Airlines, Boeing, ATA, and American Airlines recommended leaving the text in § 97.10, as it is currently written to allow for the development of instrument approaches based on criteria other than that stated in the U.S. TERPS.

The FAA disagrees. The sole purpose of § 97.10 was to allow procedures developed pre-TERPS to remain in effect until they came into compliance with TERPS criteria; however, the section is no longer valid. All public instrument approach procedures published are in compliance with current FAA criteria. The FAA may authorize special procedures using non-standard criteria on a case-by-case basis. These special procedures are usually for private use only and are authorized under § 91.175(a). Thus, the FAA is removing and reserving the text of § 97.10, as proposed.

Section 97.20 General

The NPRM proposed to incorporate FAA Orders 8260.3 and 8260.19 by reference into § 97.20, as well as the terminal aeronautical charts. On April 8, 2003, the FAA adopted this amendment (68 FR 16948). The incorporation by reference (IBR) of the two above-referenced orders and the aeronautical charts was in error and resulted in the inappropriate designation of certain material as regulatory. The FAA subsequently corrected this error in a final rule adopted on May 3, 2005 (70 FR 23002) that removed those FAA orders from § 97.20. Also, in that final rule, the FAA instead incorporated by reference into part 97 the information documented on FAA Forms 8260–3, 8260–4, 8260–5, and 8260–15A, which are the forms that depict instrument procedures and the associated weather takeoff minimums.

As discussed in § 91.175(f) and unless specifically excluded, this rule requires a pilot to use an ODP if such a procedure is prescribed under part 97. ODPs are depicted on form 8260–15A. This rule provides for the IBR of the ODPs on form 8260.15A in § 97.20. The Director of the Federal Register approved the IBR of the material on August 6, 2007.

IV. Rulemaking Analyses and Economic Evaluation

IV.A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no current or new requirement for information collection associated with these amendments.

IV.B. International Compatibility

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

IV.C. Regulatory Evaluation Summary

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

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect, and the basis for it, be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule.

The final rule will impose minimal costs on aircraft operators because it does not require changes to current navigation systems. Cost savings may result because the rule will enable the use of advanced RNAV navigation routes the FAA has been developing. These routes are typically more direct and shorter than current Federal airways and jet routes and therefore may result in less fuel and time for aircraft to reach their destinations.

The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

IV.D. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

This rule is definitionally clarifying, incorporates existing orders, and provides cost saving as it enables more direct routes requiring less time and fuel. Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

IV.E. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral affect on international trade.

IV.F. Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. This final rule does not contain such a mandate.

IV.G. Executive Order 13132, Federalism

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

IV.H. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

IV.I. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The

FAA has determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

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

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

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

VI. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 97

Air traffic control, Airports, Incorporation by Reference, Navigation (air), Weather.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

■ In consideration of the foregoing, the Federal Administration Aviation amends chapter I of 14 CFR as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.1 as follows:

■ a. Remove the definitions of ''Decision height'' and ''Minimum descent altitude''.

■ b. Add definitions for ''Decision altitude (DA)'', ''Decision height (DH)'', ''Final approach fix (FAF)'', ''Instrument approach procedure (IAP)'', ''Minimum descent altitude (MDA)'', and ''Suitable RNAV system'' in alphabetical order to read as set forth below.

§ 1.1 General definitions.

* * * * *

Decision altitude (DA) is a specified altitude in an instrument approach procedure at which the pilot must decide whether to initiate an immediate missed approach if the pilot does not see the required visual reference, or to continue the approach. Decision altitude is expressed in feet above mean sea level.

Decision height (DH) is a specified height above the ground in an instrument approach procedure at which the pilot must decide whether to initiate an immediate missed approach if the pilot does not see the required visual reference, or to continue the approach. Decision height is expressed in feet above ground level.

Final approach fix (FAF) defines the beginning of the final approach segment and the point where final segment descent may begin.

* * * * *

Instrument approach procedure (IAP) is a series of predetermined maneuvers by reference to flight instruments with specified protection from obstacles and assurance of navigation signal reception capability. It begins from the initial approach fix, or where applicable, from the beginning of a defined arrival route to a point:

(1) From which a landing can be completed; or

(2) If a landing is not completed, to a position at which holding or en route obstacle clearance criteria apply.

* * * * *

Minimum descent altitude (MDA) is the lowest altitude specified in an instrument approach procedure, expressed in feet above mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering until the pilot sees the required visual references for the heliport or runway of intended landing.

* * * * *

Suitable RNAV system is an RNAV system that meets the required performance established for a type of operation, e.g. IFR; and is suitable for operation over the route to be flown in terms of any performance criteria (including accuracy) established by the air navigation service provider for certain routes (e.g. oceanic, ATS routes, and IAPs). An RNAV system's suitability is dependent upon the availability of ground and/or satellite navigation aids that are needed to meet any route performance criteria that may be prescribed in route specifications to navigate the aircraft along the route to be flown. Information on suitable RNAV systems is published in FAA guidance material.

* * * * *

■ 3. Amend § 1.2 by adding the abbreviations ''NM'' and ''RNAV'' in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

NM means nautical mile.

* * * * *

RNAV means area navigation.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 5. Amend § 91.129 by revising paragraph (e) to read as follows:

§ 91.129 Operations in Class D airspace.

* * * * *

(e) *Minimum altitudes when operating to an airport in Class D airspace.* (1) Unless required by the applicable distance-from-cloud criteria, each pilot operating a large or turbine-powered airplane must enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing.

(2) Each pilot operating a large or turbine-powered airplane approaching to land on a runway served by an instrument approach procedure with vertical guidance, if the airplane is so equipped, must:

(i) Operate that airplane at an altitude at or above the glide path between the published final approach fix and the decision altitude (DA), or decision height (DH), as applicable; or

(ii) If compliance with the applicable distance-from-cloud criteria requires glide path interception closer in, operate that airplane at or above the glide path, between the point of interception of glide path and the DA or the DH.

(3) Each pilot operating an airplane approaching to land on a runway served by a visual approach slope indicator must maintain an altitude at or above the glide path until a lower altitude is necessary for a safe landing.

(4) Paragraphs (e)(2) and (e)(3) of this section do not prohibit normal bracketing maneuvers above or below the glide path that are conducted for the purpose of remaining on the glide path.

* * * * *

■ 6. Amend § 91.131 by revising paragraph (c)(1) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(c) * * *

(1) *For IFR operation.* An operable VOR or TACAN receiver or an operable and suitable RNAV system; and

* * * * *

■ 7. Amend § 91.175 by revising paragraphs (a), (b), (c) introductory text, (e)(1)(ii), (f), and (k) to read as follows:

§ 91.175 Takeoff and landing under IFR.

(a) *Instrument approaches to civil airports.* Unless otherwise authorized by the FAA, when it is necessary to use an instrument approach to a civil airport, each person operating an aircraft must use a standard instrument approach procedure prescribed in part 97 of this chapter for that airport. This paragraph does not apply to United States military aircraft.

(b) *Authorized DA/DH or MDA.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DA/DH or MDA, the authorized DA/DH or MDA is the highest of the following:

(1) The DA/DH or MDA prescribed by the approach procedure.

(2) The DA/DH or MDA prescribed for the pilot in command.

(3) The DA/DH or MDA appropriate for the aircraft equipment available and used during the approach.

(c) *Operation below DA/ DH or MDA.* Except as provided in paragraph (l) of this section, where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(e) * * *

(1) * * *

(ii) Upon arrival at the missed approach point, including a DA/DH where a DA/DH is specified and its use is required, and at any time after that until touchdown.

* * * * *

(f) *Civil airport takeoff minimums.* This paragraph applies to persons operating an aircraft under part 121, 125, 129, or 135 of this chapter.

(1) Unless otherwise authorized by the FAA, no pilot may takeoff from a civil airport under IFR unless the weather conditions at time of takeoff are at or above the weather minimums for IFR takeoff prescribed for that airport under part 97 of this chapter.

(2) If takeoff weather minimums are not prescribed under part 97 of this chapter for a particular airport, the following weather minimums apply to takeoffs under IFR:

(i) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

(ii) For aircraft having more than two engines—½ statute mile visibility.

(iii) For helicopters—½ statute mile visibility.

(3) Except as provided in paragraph (f)(4) of this section, no pilot may takeoff under IFR from a civil airport having published obstacle departure procedures (ODPs) under part 97 of this chapter for the takeoff runway to be used, unless the pilot uses such ODPs.

(4) Notwithstanding the requirements of paragraph (f)(3) of this section, no pilot may takeoff from an airport under IFR unless:

(i) For part 121 and part 135 operators, the pilot uses a takeoff obstacle clearance or avoidance procedure that ensures compliance with the applicable airplane performance operating limitations requirements under part 121, subpart I or part 135, subpart I for takeoff at that airport; or

(ii) For part 129 operators, the pilot uses a takeoff obstacle clearance or avoidance procedure that ensures compliance with the airplane performance operating limitations prescribed by the State of the operator for takeoff at that airport.

* * * * *

(k) *ILS components.* The basic components of an ILS are the localizer, glide slope, and outer marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. The following means may be used to substitute for the outer marker: Compass locator; precision approach radar (PAR) or airport surveillance radar (ASR); DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure; or a suitable RNAV system in conjunction with a fix identified in the standard instrument approach procedure. Applicability of, and substitution for, the inner marker for a Category II or III approach is determined by the appropriate 14 CFR part 97 approach procedure, letter of authorization, or operations specifications issued to an operator.

* * * * *

■ 8. Amend § 91.177 by revising paragraph (a) to read as follows:

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in parts 95 and 97 of this chapter. However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, provided the applicable navigation signals are available. For aircraft using VOR for navigation, this applies only when the aircraft is within 22 nautical miles of that VOR (based on the reasonable

estimate by the pilot operating the aircraft of that distance); or

(2) If no applicable minimum altitude is prescribed in parts 95 and 97 of this chapter, then—

(i) In the case of operations over an area designated as a mountainous area in part 95 of this chapter, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

* * * * *

■ 9. Amend § 91.179 by adding introductory text to read as follows:

§ 91.179 IFR cruising altitude or flight level.

Unless otherwise authorized by ATC, the following rules apply—

* * * * *

§ 91.181 [Amended]

■ 10. Amend § 91.181 by removing the words ''a Federal airway'' and adding in their place the words ''an ATS route'' in paragraph (a).

■ 11. Amend § 91.183 by revising the heading and the introductory text to read as follows:

§ 91.183 IFR communications.

Unless otherwise authorized by ATC, the pilot in command of each aircraft operated under IFR in controlled airspace must ensure that a continuous watch is maintained on the appropriate frequency and must report the following as soon as possible—

* * * * *

§ 91.189 [Amended]

■ 12. Amend § 91.189 (c) and (d) by removing the term ''DH'' and adding in its place the term ''DA/DH'' wherever it appears.

■ 13. Amend § 91.205 by revising paragraphs (d)(2) and (e) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(d) * * *

(2) Two-way radio communication and navigation equipment suitable for the route to be flown.

* * * * *

(e) *Flight at and above 24,000 feet MSL (FL 240).* If VOR navigation equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above FL 240 unless that aircraft is equipped with approved DME or a suitable RNAV system. When the DME or RNAV system required by this paragraph fails at and above FL 240, the pilot in command of the aircraft must notify ATC immediately, and then may continue operations at and above FL 240 to the next airport of intended landing where repairs or replacement of the equipment can be made.

* * * * *

§ 91.219 [Amended]

■ 14. Amend § 91.219 (b)(5) by removing the term ''DH'' and adding in its place the term ''DA/DH''.

■ 15. Amend 91.511 by revising the heading and paragraph (a)(1) introductory text to read as follows:

§ 91.511 Communication and navigation equipment for overwater operations.

(a) * * *

(1) Radio communication equipment appropriate to the facilities to be used and able to transmit to, and receive from, at least one communication facility from any place along the route:

* * * * *

■ 16. Amend § 91.711 by revising paragraphs (c)(1)(ii) and (e) introductory text to read as follows:

§ 91.711 Special rules for foreign civil aircraft.

* * * * *

(c) * * *

(1) * * *

(ii) Navigation equipment suitable for the route to be flown.

* * * * *

(e) *Flight at and above FL 240.* If VOR navigation equipment is required under paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above FL 240, unless the aircraft is equipped with approved DME or a suitable RNAV system. When the DME or RNAV system required by this paragraph fails at and above FL 240, the pilot in command of the aircraft must notify ATC immediately and may then continue operations at and above FL 240 to the next airport of intended landing where repairs or replacement of the equipment can be made. A foreign civil aircraft may be operated within the 50 States and the District of Columbia at or above FL 240 without DME or an RNAV system when operated for the following purposes, and ATC is notified before each takeoff:

* * * * *

PART 97—STANDARD INSTRUMENT PROCEDURES

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

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

■ 18. Revise the heading for part 97 to read as set forth above.

■ 19. Revise § 97.1 to read as follows:

§ 97.1 Applicability.

(a) This part prescribes standard instrument approach procedures to civil airports in the United States and the weather minimums that apply to landings under IFR at those airports.

(b) This part also prescribes obstacle departure procedures (ODPs) for certain civil airports in the United States and the weather minimums that apply to takeoffs under IFR at civil airports in the United States.

■ 20. Revise § 97.3 to read as follows:

§ 97.3 Symbols and terms used in procedures.

As used in the standard instrument procedures prescribed in this part—

Aircraft approach category means a grouping of aircraft based on a speed of VREF, if specified, or if VREF is not specified, 1.3 V_{so} at the maximum certificated landing weight. VREF, V_{so}, and the maximum certificated landing weight are those values as established for the aircraft by the certification authority of the country of registry. The categories are as follows—

(1) Category A: Speed less than 91 knots.

(2) Category B: Speed 91 knots or more but less than 121 knots.

(3) Category C: Speed 121 knots or more but less than 141 knots.

(4) Category D: Speed 141 knots or more but less than 166 knots.

(5) Category E: Speed 166 knots or more.

Approach procedure segments for which altitudes (minimum altitudes, unless otherwise specified) and paths are prescribed in procedures, are as follows—

(1) Initial approach is the segment between the initial approach fix and the intermediate fix or the point where the aircraft is established on the intermediate course or final approach course.

(2) Initial approach altitude is the altitude (or altitudes, in high altitude procedure) prescribed for the initial

approach segment of an instrument approach.

(3) Intermediate approach is the segment between the intermediate fix or point and the final approach fix.

(4) Final approach is the segment between the final approach fix or point and the runway, airport, or missed approach point.

(5) Missed approach is the segment between the missed approach point, or point of arrival at decision altitude or decision height (DA/DH), and the missed approach fix at the prescribed altitude.

Ceiling means the minimum ceiling, expressed in feet above the airport elevation, required for takeoff or required for designating an airport as an alternate airport.

Copter procedures means helicopter procedures, with applicable minimums as prescribed in § 97.35. Helicopters may also use other procedures prescribed in subpart C of this part and may use the Category A minimum descent altitude (MDA), or decision altitude or decision height (DA/DH). For other than ''copter-only'' approaches, the required visibility minimum for Category I approaches may be reduced to one-half the published visibility minimum for Category A aircraft, but in no case may it be reduced to less than one-quarter mile prevailing visibility, or, if reported, 1,200 feet RVR. Reduction of visibility minima on Category II instrument approach procedures is prohibited.

FAF means final approach fix.

HAA means height above airport and is expressed in feet.

HAL means height above landing and is the height of the DA/MDA above a designated helicopter landing area elevation used for helicopter instrument approach procedures and is expressed in feet.

HAS means height above the surface and is the height of the DA/MDA above the highest terrain/surface within a 5,200-foot radius of the missed approach point used in helicopter instrument approach procedures and is expressed in feet above ground level (AGL).

HAT means height above touchdown.

HCH means helipoint crossing height and is the computed height of the vertical guidance path above the helipoint elevation at the helipoint expressed in feet.

Helipoint means the aiming point for the final approach course. It is normally the center point of the touchdown and lift-off area (TLOF).

Hold in lieu of PT means a holding pattern established under applicable FAA criteria, and used in lieu of a procedure turn to execute a course reversal.

MAP means missed approach point.

More than 65 knots means an aircraft that has a stalling speed of more than 65 knots (as established in an approved flight manual) at maximum certificated landing weight with full flaps, landing gear extended, and power off.

MSA means minimum safe altitude, expressed in feet above mean sea level, depicted on an approach chart that provides at least 1,000 feet of obstacle clearance for emergency use within a certain distance from the specified navigation facility or fix.

NA means not authorized.

NOPT means no procedure turn required. Altitude prescribed applies only if procedure turn is not executed.

Procedure turn means the maneuver prescribed when it is necessary to reverse direction to establish the aircraft on an intermediate or final approach course. The outbound course, direction of turn, distance within which the turn must be completed, and minimum altitude are specified in the procedure. However, the point at which the turn may be begun, and the type and rate of turn, is left to the discretion of the pilot.

RA means radio altimeter setting height.

RVV means runway visibility value.

SIAP means standard instrument approach procedure.

65 knots or less means an aircraft that has a stalling speed of 65 knots or less (as established in an approved flight manual) at maximum certificated landing weight with full flaps, landing gear extended, and power off.

T means nonstandard takeoff minimums or specified departure routes/procedures or both.

TDZ means touchdown zone.

Visibility minimum means the minimum visibility specified for approach, landing, or takeoff, expressed in statute miles, or in feet where RVR is reported.

■ 21. Amend § 97.5 by revising the heading and paragraph (a) to read as follows:

§ 97.5 Bearings, courses, tracks, headings, radials, miles.

(a) All bearings, courses, tracks, headings, and radials in this part are magnetic, unless otherwise designated.

* * * * *

§ 97.10 [Removed and reserved]

■ 22. Remove and reserve § 97.10.

■ 23. Revise § 97.20 to read as follows:

§ 97.20 General.

(a) This subpart prescribes standard instrument approach procedures and takeoff minimums and obstacle departure procedures (ODPs) based on the criteria contained in FAA Order 8260.3, U.S. Standard for Terminal Instrument Procedures (TERPs), and other related Orders in the 8260 series that also address instrument procedure design criteria.

(b) Standard instrument approach procedures and associated supporting data adopted by the FAA are documented on FAA Forms 8260–3, 8260–4, 8260–5. Takeoff minimums and obstacle departure procedures (ODPs) are documented on FAA Form 8260–15A. These forms are incorporated by reference. The Director of the Federal Register approved this incorporation by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The standard instrument approach procedures and takeoff minimums and obstacle departure procedures (ODPs) are available for examination at the FAA's Rules Docket (AGC–200) and at the National Flight Data Center, 800 Independence Avenue, SW., Washington, DC 20590, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) Standard instrument approach procedures and takeoff minimums and obstacle departure procedures (ODPs) are depicted on aeronautical charts published by the FAA National Aeronautical Charting Office. These charts are available for purchase from the FAA's National Aeronautical Charting Office, Distribution Division, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 24. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 25. Amend § 121.99 by revising paragraphs (a) and (b) to read as follows:

§ 121.99 Communications facilities—domestic and flag operations.

(a) Each certificate holder conducting domestic or flag operations must show that a two-way communication system, or other means of communication approved by the FAA certificate holding

district office, is available over the entire route. The communications may be direct links or via an approved communication link that will provide reliable and rapid communications under normal operating conditions between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit.

(b) Except in an emergency, for all flag and domestic kinds of operations, the communications systems between each airplane and the dispatch office must be independent of any system operated by the United States.

* * * * *

■ 26. Revise § 121.103 to read as follows:

§ 121.103 En route navigation facilities.

(a) Except as provided in paragraph (b) of this section, each certificate holder conducting domestic or flag operations must show, for each proposed route (including to any regular, provisional, refueling or alternate airports), that suitable navigation aids are available to navigate the airplane along the route within the degree of accuracy required for ATC. Navigation aids required for approval of routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation; and

(3) Other operations approved by the certificate holding district office.

■ 27. Revise § 121.121 to read as follows:

§ 121.121 En route navigation facilities.

(a) Except as provided in paragraph (b) of this section, no certificate holder conducting supplemental operations may conduct any operation over a route (including to any destination, refueling or alternate airports) unless suitable navigation aids are available to navigate the airplane along the route within the degree of accuracy required for ATC. Navigation aids required for routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation; and

(3) Other operations approved by the certificate holding district office.

■ 28. Amend § 121.347 by revising the heading, paragraphs (a) introductory text, (a)(1), (a)(2), and (b) to read as follows:

§ 121.347 Communication and navigation equipment for operations under VFR over routes navigated by pilotage.

(a) No person may operate an airplane under VFR over routes that can be navigated by pilotage unless the airplane is equipped with the radio communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route;

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E surface area designated for an airport in which flights are intended; and

* * * * *

(b) No person may operate an airplane at night under VFR over routes that can be navigated by pilotage unless that airplane is equipped with—

(1) Radio communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

■ 29. Revise § 121.349 to read as follows:

§ 121.349 Communication and navigation equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over the top.

(a) *Navigation equipment requirements—General.* No person may conduct operations under VFR over routes that cannot be navigated by pilotage, or operations conducted under IFR or over the top, unless—

(1) The en route navigation aids necessary for navigating the airplane along the route (e.g., ATS routes, arrival and departure routes, and instrument approach procedures, including missed approach procedures if a missed approach routing is specified in the procedure) are available and suitable for use by the aircraft navigation systems required by this section;

(2) The airplane used in those operations is equipped with at least—

(i) Except as provided in paragraph (c) of this section, two approved independent navigation systems suitable for navigating the airplane along the route to be flown within the degree of accuracy required for ATC;

(ii) One marker beacon receiver providing visual and aural signals; and

(iii) One ILS receiver; and

(3) Any RNAV system used to meet the navigation equipment requirements of this section is authorized in the certificate holder's operations specifications.

(b) *Communication equipment requirements.* No person may operate an airplane under VFR over routes that cannot be navigated by pilotage, and no person may operate an airplane under IFR or over the top, unless the airplane is equipped with—

(1) At least two independent communication systems necessary under normal operating conditions to fulfill the functions specified in § 121.347 (a); and

(2) At least one of the communication systems required by paragraph (b)(1) of this section must have two-way voice communication capability.

(c) *Use of a single independent navigation system for operations under VFR over routes that cannot be navigated by pilotage, or operations conducted under IFR or over the top.* Notwithstanding the requirements of paragraph (a)(2)(i) of this section, the airplane may be equipped with a single independent navigation system suitable for navigating the airplane along the route to be flown within the degree of accuracy required for ATC if:

(1) It can be shown that the airplane is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single independent navigation system permitted by this paragraph at any point along the route, for proceeding safely to a suitable airport and completing an instrument approach; and

(2) The airplane has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(d) *Use of VOR navigation equipment.* If VOR navigation equipment is used to comply with paragraph (a) or (c) of this section, no person may operate an airplane unless it is equipped with at least one approved DME or suitable RNAV system.

(e) *Additional communication system equipment requirements for operators subject to § 121.2.* In addition to the requirements in paragraph (b) of this section, no person may operate an airplane having a passenger seat configuration of 10 to 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less, under IFR, over the top, or in extended over-water operations unless it is equipped with at least—

(1) Two microphones; and

(2) Two headsets, or one headset and one speaker.

■ 30. Amend § 121.351 by revising the heading and paragraphs (a) and (c)(1) to read as follows:

§ 121.351 Communication and navigation equipment for extended over-water operations and for certain other operations.

(a) Except as provided in paragraph (c) of this section, no person may conduct an extended over-water operation unless the airplane is equipped with at least two independent long-range navigation systems and at least two independent long-range communication systems necessary under normal operating conditions to fulfill the following functions—

(1) Communicate with at least one appropriate station from any point on the route;

(2) Receive meteorological information from any point on the route by either of two independent communication systems. One of the communication systems used to comply with this paragraph may be used to comply with paragraphs (a)(1) and (a)(3) of this section; and

(3) At least one of the communication systems must have two-way voice communication capability.

* * * * *

(c) * * *

(1) The ability of the flightcrew to navigate the airplane along the route within the degree of accuracy required for ATC,

* * * * *

§ 121.419 [Amended]

■ 31. Amend § 121.419 (a)(1)(vii) by removing the term ''DH'' and adding in its place the term ''DA/DH''.

§ 121.559 [Amended]

■ 32. Amend § 121.559 (c) by removing the words ''ground radio station'' and adding in their place the words ''communication facility''.

■ 33. Amend § 121.561 by revising the heading as set forth below and by amending paragraph (a) by removing the words ''ground or navigational facility'' and adding in their place the words ''ground facility or navigation aid''.

§ 121.561 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

§ 121.565 [Amended]

■ 34. Amend § 121.565 (c) by removing the words ''ground radio station'' and adding in their place the words ''communication facility'' and by removing the word ''station'' and adding in its place the word ''facility''.

§ 121.579 [Amended]

■ 35. Amend § 121.579 (b) introductory text by removing the words ''decision height'' and adding in their place the term ''DA/DH''.

§ 121.651 [Amended]

■ 36. Amend § 121.651 by replacing the term ''DH'' with the term ''DA/DH'' wherever it appears in paragraphs (c) and (d).

§ 121.652 [Amended]

■ 37. Amend § 121.652 (a) by removing the term ''DH'' and adding in its place the term ''DA/DH''.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 38. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 39. Revise § 125.51 to read as follows:

§ 125.51 En route navigation facilities.

(a) Except as provided in paragraph (b) of this section, no certificate holder may conduct any operation over a route (including to any destination, refueling or alternate airports) unless suitable navigation aids are available over the route to navigate the airplane along the route within the degree of accuracy required for ATC. Navigation aids required for routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operations; and

(3) Other operations approved by the certificate holding district office.

■ 40. Revise § 125.203 to read as follows:

§ 125.203 Communication and navigation equipment.

(a) *Communication equipment—general.* No person may operate an airplane unless it has two-way radio communication equipment able, at least in flight, to transmit to, and receive from, appropriate facilities 22 nautical miles away.

(b) *Navigation equipment for operations over the top.* No person may operate an airplane over the top unless it has navigation equipment suitable for the route to be flown.

(c) *Communication and navigation equipment for IFR or extended over-water operations—General.* Except as provided in paragraph (f) of this section, no person may operate an airplane carrying passengers under IFR or in extended over-water operations unless—

(1) The en route navigation aids necessary for navigating the airplane along the route (e.g., ATS routes, arrival and departure routes, and instrument approach procedures, including missed approach procedures if a missed approach routing is specified in the procedure) are available and suitable for use by the aircraft navigation systems required by this section;

(2) The airplane used in those operations is equipped with at least the following equipment—

(i) Except as provided in paragraph (d) of this section, two approved independent navigation systems suitable for navigating the airplane along the route within the degree of accuracy required for ATC;

(ii) One marker beacon receiver providing visual and aural signals;

(iii) One ILS receiver;

(iv) Two transmitters;

(v) Two microphones;

(vi) Two headsets or one headset and one speaker; and

(vii) Two independent communication systems, one of which must have two-way voice communication capability, capable of transmitting to, and receiving from, at least one appropriate facility from any place on the route to be flown; and

(3) Any RNAV system used to meet the navigation equipment requirements of this section is authorized in the certificate holder's operations specifications.

(d) *Use of a single independent navigation system for operations under IFR—not for extended overwater operations.* Notwithstanding the requirements of paragraph (c)(2)(i) of this section, the airplane may be equipped with a single independent navigation system suitable for navigating the airplane along the route to be flown within the degree of accuracy required for ATC if—

(1) It can be shown that the airplane is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single independent navigation system permitted by this paragraph at any point along the route, for proceeding safely to a suitable airport and completing an instrument approach; and

(2) The airplane has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(e) *Use of VOR navigation equipment.* If VOR navigation equipment is required by paragraph (c) or (d) of this section, no person may operate an airplane unless it is equipped with at least one approved DME or a suitable RNAV system.

(f) *Extended over-water operations.* Notwithstanding the requirements of paragraph (c) of this section, installation and use of a single long-range navigation system and a single long-range communication system for extended over-water operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flight crew to navigate the airplane along the route to be flown within the degree of accuracy required for ATC;

(2) The length of the route being flown; and

(3) The duration of the very high frequency communications gap.

■ 41. Amend § 125.321 by revising the heading to read as set forth below and by removing the words ''ground or navigational facility'' and adding in their place the words ''ground facility or navigation aid''.

§ 125.321 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

§ 125.379 [Amended]

■ 42. Amend § 125.379 (a) by removing the term ''DH'' wherever it appears and adding in its place the term ''DA/DH''.

§ 125.381 [Amended]

■ 43. Amend § 125.381 (c)(2) by revising the reference to ''DH'' to read ''DA/DH''.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 44. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec.

■ 45. Revise § 129.17 to read as follows:

§ 129.17 Aircraft communication and navigation equipment for operations under IFR or over the top.

(a) *Aircraft navigation equipment requirements—General.* No foreign air carrier may conduct operations under IFR or over the top unless—

(1) The en route navigation aids necessary for navigating the aircraft along the route (e.g., ATS routes, arrival and departure routes, and instrument approach procedures, including missed approach procedures if a missed approach routing is specified in the procedure) are available and suitable for use by the aircraft navigation equipment required by this section;

(2) The aircraft used in those operations is equipped with at least the following—

(i) Except as provided in paragraph (c) of this section, two approved independent navigation systems suitable for navigating the aircraft along the route to be flown within the degree of accuracy required for ATC;

(ii) One marker beacon receiver providing visual and aural signals; and

(iii) One ILS receiver; and

(3) Any RNAV system used to meet the navigation equipment requirements of this section is authorized in the foreign air carrier's operations specifications.

(b) *Aircraft communication equipment requirements.* No foreign air carrier may operate an aircraft under IFR or over the top, unless it is equipped with—

(1) At least two independent communication systems necessary under normal operating conditions to fulfill the functions specified in § 121.347(a) of this chapter; and

(2) At least one of the communication systems required by paragraph (b)(1) of this section must have two-way voice communication capability.

(c) *Use of a single independent navigation system for operations under IFR or over the top.* Notwithstanding the requirements of paragraph (a)(2)(i) of this section, the aircraft may be equipped with a single independent navigation system suitable for navigating the aircraft along the route to be flown within the degree of accuracy required for ATC if:

(1) It can be shown that the aircraft is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single independent navigation system permitted by this paragraph at any point along the route, for proceeding safely to a suitable airport and completing an instrument approach; and

(2) The aircraft has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(d) *VOR navigation equipment.* If VOR navigation equipment is required by paragraph (a) or (c) of this section, no foreign air carrier may operate an aircraft unless it is equipped with at least one approved DME or suitable RNAV system.

■ 46. Revise § 129.21 to read as follows:

§ 129.21 Control of traffic.

(a) Subject to applicable immigration laws and regulations, each foreign air carrier must furnish sufficient personnel necessary to provide two-way voice communications between its aircraft and stations at places where the FAA finds that communication is necessary but cannot be maintained in a language with which station operators are familiar.

(b) Each person furnished by a foreign air carrier under paragraph (a) of this section must be able to speak English and the language necessary to maintain communications with its aircraft and must assist station operators in directing traffic.

■ 47. Add § 129.22 to read as follows:

§ 129.22 Communication and navigation equipment for rotorcraft operations under VFR over routes navigated by pilotage.

(a) No foreign air carrier may operate a rotorcraft under VFR over routes that can be navigated by pilotage unless the rotorcraft is equipped with the radio communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route;

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E surface area designated for an airport in which flights are intended; and

(3) Receive meteorological information from any point en route.

(b) No foreign air carrier may operate a rotorcraft at night under VFR over routes that can be navigated by pilotage unless that rotorcraft is equipped with—

(1) Radio communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

■ 48. Amend Appendix A to part 129 by revising paragraph (b), Section IV, to read as follows:

Appendix A to Part 129—Application for Operations Specifications by Foreign Air Carriers

* * * * *

(b) * * *

Sec. IV. Communications facilities. List all communication facilities to be used by the applicant in the conduct of the proposed operations within the United States and over that portion of the route between the last point of foreign departure and the United States.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 49. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 50. Amend § 135.67 by revising the heading to read as set forth below and by removing the words ''ground communications or navigational facility'' and adding in their place the words ''ground facility or navigation aid''.

§ 135.67 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

■ 51. Add § 135.78 to read as follows:

§ 135.78 Instrument approach procedures and IFR landing minimums.

No person may make an instrument approach at an airport except in accordance with IFR weather minimums and instrument approach procedures set forth in the certificate holder's operations specifications.

§ 135.79 [Amended]

■ 52. Amend § 135.79 (a)(3) by removing the words ''radio or telephone communications'' and adding in their place the word ''communications''.

■ 53. Revise § 135.161 to read as follows:

§ 135.161 Communication and navigation equipment for aircraft operations under VFR over routes navigated by pilotage.

(a) No person may operate an aircraft under VFR over routes that can be navigated by pilotage unless the aircraft is equipped with the two-way radio communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route;

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E surface area designated for an airport in which flights are intended; and

(3) Receive meteorological information from any point en route.

(b) No person may operate an aircraft at night under VFR over routes that can be navigated by pilotage unless that aircraft is equipped with—

(1) Two-way radio communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

■ 54. Revise § 135.165 to read as follows:

§ 135.165 Communication and navigation equipment: Extended over-water or IFR operations.

(a) *Aircraft navigation equipment requirements—General.* Except as provided in paragraph (g) of this section, no person may conduct operations under IFR or extended over-water unless—

(1) The en route navigation aids necessary for navigating the aircraft along the route (e.g., ATS routes, arrival and departure routes, and instrument approach procedures, including missed approach procedures if a missed approach routing is specified in the procedure) are available and suitable for use by the navigation systems required by this section:

(2) The aircraft used in extended over-water operations is equipped with at least two-approved independent navigation systems suitable for navigating the aircraft along the route to be flown within the degree of accuracy required for ATC.

(3) The aircraft used for IFR operations is equipped with at least—

(i) One marker beacon receiver providing visual and aural signals; and

(ii) One ILS receiver.

(4) Any RNAV system used to meet the navigation equipment requirements of this section is authorized in the certificate holder's operations specifications.

(b) *Use of a single independent navigation system for IFR operations.* The aircraft may be equipped with a single independent navigation system suitable for navigating the aircraft along the route to be flown within the degree of accuracy required for ATC if:

(1) It can be shown that the aircraft is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single independent navigation system permitted by this paragraph at any point along the route, for proceeding safely to a suitable airport and completing an instrument approach; and

(2) The aircraft has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(c) *VOR navigation equipment.* Whenever VOR navigation equipment is required by paragraph (a) or (b) of this section, no person may operate an aircraft unless it is equipped with at least one approved DME or suitable RNAV system.

(d) *Airplane communication equipment requirements.* Except as permitted in paragraph (e) of this section, no person may operate a turbojet airplane having a passenger seat configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane in a commuter operation, as defined in part 119 of this chapter, under IFR or in extended over-water operations unless the airplane is equipped with—

(1) At least two independent communication systems necessary under normal operating conditions to fulfill the functions specified in § 121.347(a) of this chapter; and

(2) At least one of the communication systems required by paragraph (d)(1) of this section must have two-way voice communication capability.

(e) *IFR or extended over-water communications equipment requirements.* A person may operate an aircraft other than that specified in paragraph (d) of this section under IFR or in extended over-water operations if it meets all of the requirements of this section, with the exception that only one communication system transmitter

is required for operations other than extended over-water operations.

(f) *Additional aircraft communication equipment requirements.* In addition to the requirements in paragraphs (d) and (e) of this section, no person may operate an aircraft under IFR or in extended over-water operations unless it is equipped with at least:

(1) Two microphones; and

(2) Two headsets or one headset and one speaker.

(g) *Extended over-water exceptions.* Notwithstanding the requirements of paragraphs (a), (d), and (e) of this section, installation and use of a single long-range navigation system and a single long-range communication system for extended over-water operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flight crew to navigate the airplane along the route within the degree of accuracy required for ATC;

(2) The length of the route being flown; and

(3) The duration of the very high frequency communications gap.

§ 135.225 [Amended]

■ 55. Amend § 135.225(c)(2) and (e) by revising the reference ''DH'' to read ''DA/DH''.

§ 135.345 [Amended]

■ 56. Amend § 135.345(a)(7) by removing the term ''DH'' and adding in its place the term ''DA/DH''.

§ 135.371 [Amended]

■ 57. Amend § 135.371(c)(2) by removing the word ''radio''.

§ 135.381 [Amended]

■ 58. Amend § 135.381(b)(2) by removing the word ''radio''.

Issued in Washington, DC, on May 24, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. E7–10609 Filed 6–6–07; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
June 7, 2007

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 635

Atlantic Highly Migratory Species (HMS); U.S. Atlantic Swordfish Fishery Management Measures; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 061121306–7105–02; I.D. 110206A]

RIN 0648–AU86

Atlantic Highly Migratory Species (HMS); U.S. Atlantic Swordfish Fishery Management Measures

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

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the North Atlantic swordfish fishery to provide additional opportunities for U.S. vessels to more fully utilize the U.S. North Atlantic swordfish quota, in recognition of the improved stock status of the species. The U.S. North Atlantic swordfish quota is derived from the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). For the past several years, the United States has not fully harvested its available North Atlantic swordfish quota. This final rule will increase swordfish retention limits for Incidental swordfish permit holders, and modify recreational swordfish retention limits for HMS Charter/Headboat (CHB) and Angling category permit holders. It will also modify HMS limited access vessel upgrading restrictions for vessels concurrently issued certain HMS permits. These actions are necessary to address persistent underharvests of the domestic North Atlantic swordfish quota, while continuing to minimize bycatch to the extent practicable, so that swordfish are harvested in a sustainable, yet economically viable manner.

DATES: This final rule is effective July 9, 2007.

ADDRESSES: Copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (Final EA/RIR/FRFA) can be obtained from Sari Kiraly, Highly Migratory Species Management Division at 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Final EA/RIR/FRFA, the 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), and other relevant documents are also available from the Highly Migratory Species Management Division website at *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly, by phone: 301–713–2347; by fax: 301–713–1917; or by e-mail: *Sari.Kiraly@noaa.gov*, or Richard A. Pearson, by phone: 727–824–5399; by fax: 727–824–5398; or by e-mail: *Rick.A.Pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), and ATCA (16 U.S.C. 971 *et seq)*. Under ATCA, the United States is obligated to implement the recommendations of ICCAT, including those for Atlantic swordfish quotas (ICCAT Recommendations 02–02, 03–03, and 04–02). ICCAT is an inter-governmental fishery organization, currently consisting of 44 contracting parties, that is responsible for the conservation of tunas and tuna-like species, including swordfish, in the Atlantic Ocean and its adjacent seas.

In 2001, ICCAT established its ''Criteria for the Allocation of Fishing Possibilities'' (ICCAT Recommendation 01–25) that included 15 separate criteria to be considered when allocating quota within the ICCAT framework. The first two criteria relate to the past and present fishing activity of qualifying participants. These criteria specify that ''historical catches'' and ''the interests, fishing patterns and fishing practices'' of qualifying participants are to be considered when making allocation recommendations. Other criteria, including conservation measures, economic importance of the fishery, geographical occurrence of the stock, compliance with ICCAT management measures, and dependence on the stocks, must also be considered when allocating quota.

At its 2006 meeting, ICCAT established an annual Total Allowable Catch (TAC) for North Atlantic swordfish of 14,000 mt whole weight (ww) for the years 2007 and 2008 (ICCAT Recommendation 06–02). A total of 2,530 mt (ww) of the TAC were allocated to ''other contracting parties and others,'' with the remainder being distributed to the European Community (52.42 percent), United States (30.49 percent), Canada (10.52 percent), and Japan (6.57 percent), using the allocation criteria described above. This resulted in a baseline U.S. North Atlantic swordfish quota of 3,907 mt (ww) for 2007 and 2008.

U.S. North Atlantic swordfish catches, as reported to ICCAT, have declined by approximately 40 percent from 4,026 mt (ww) in 1995 to 2,424 mt (ww) in 2005, although they have stabilized since 2001. As a percent of the ICCAT-recommended U.S. quota, the decline in U.S. North Atlantic swordfish landings is even more apparent. Because the portion of the baseline quota not landed in one year (an ''underage'') may be added to the subsequent year's baseline quota, the ''adjusted'' U.S. North Atlantic swordfish quota has continued to increase. The United States has landed less than its ICCAT-recommended ''baseline'' and ''adjusted'' swordfish quota since 1997. Based on reported landings to ICCAT, the United States went from exceeding its ''baseline'' quota in 1996 to landing only 29 percent of its ''adjusted'' quota in 2005. As indicated above, reported catches in 2005 were 2,424 mt (ww) of a 2005 ''adjusted'' quota of 8,319 mt (ww). For the 2006 fishing year, the United States' ''adjusted'' quota is 9,803 mt (ww). After completing the first half of the 2006 fishing year (June 1, 2006 - November 30, 2006), the United States has landed approximately 913.7 mt (ww) of North Atlantic swordfish, which equates to 9.3 percent of the ''adjusted'' quota, or 23 percent of the annual ''baseline'' quota.

The ICCAT Standing Committee on Research and Statistics (SCRS) recently completed a stock assessment for North Atlantic swordfish, in October 2006. The 2006 assessment indicated that North Atlantic swordfish biomass had improved, possibly due to strong recruitment in the late 1990's combined with reductions in reported catch since then. The SCRS estimated the biomass of North Atlantic swordfish at the beginning of 2006 (B_{2006}) to be at 99 percent of the biomass necessary to produce maximum sustainable yield (B_{msy}). The 2005 fishing mortality rate (F_{2005}) was estimated to be 0.86 times the fishing mortality rate at maximum sustainable yield (F_{msy}). In other words, in 2006, the North Atlantic swordfish stock was determined to be almost fully rebuilt and fishing mortality was low.

NMFS has implemented several management measures in recent years, primarily to reduce the bycatch of undersized swordfish, non-target species, and protected species. These actions have been effective at reducing bycatch, but they may have also had the unintended consequence of contributing to persistent underharvests of the U.S. North Atlantic swordfish quota, and a

precipitous decline in the number of active pelagic longline (PLL) vessels (''active'' is defined as vessels that report landings in the HMS logbook). Some of these measures include: year-round closures in the DeSoto Canyon and East Florida Coast areas; seasonal closures in the Charleston Bump and Northeastern areas; limited access vessel permits; mandatory utilization of Vessel Monitoring Systems (VMS); mandatory circle hook and bait requirements; possession and utilization of release and disentanglement gear; utilization of non-stainless hooks; and a live bait prohibition in the Gulf of Mexico.

The Magnuson-Stevens Act specifies that NMFS shall provide a reasonable opportunity for domestic vessels to harvest quota allocations that are derived from international fishery agreements, such as ICCAT recommendations. In this final rule, NMFS is modifying certain management measures (swordfish retention limits and vessel upgrading provisions) to increase domestic swordfish landings and revenues, while retaining important bycatch reduction provisions. The final management measures are intended to help revitalize the historical U.S. swordfish fishery in recognition of the improved stock status of North Atlantic swordfish, and to help maintain or increase the historical U.S. North Atlantic swordfish quota allocation. These actions are necessary to address persistent underharvests of the domestic swordfish quota, while continuing to minimize bycatch to the maximum extent practicable, so that swordfish are harvested in a sustainable, yet economically viable manner.

Specifically, this action will reduce swordfish dead discards by increasing swordfish retention limits for Incidental swordfish permit holders, and increase the per vessel recreational swordfish retention limits for HMS CHB and Angling category permit holders. This final rule will also modify HMS limited access vessel upgrading and permit transfer upgrading restrictions for vessels that are issued, or eligible for renewal of, the following three permits: Incidental or Directed swordfish and shark permits, and Atlantic Tunas Longline category permits.

The Agency conducted an Environmental Assessment (EA) to analyze alternatives to increase the harvest of Atlantic swordfish, while retaining important bycatch reduction provisions. The alternatives included increasing incidental and recreational swordfish retention limits, and modifying HMS limited access vessel upgrading restrictions. Information regarding the alternatives was provided in the preamble of the proposed rule and is not repeated here. Additional information can be found in the Final EA/RIR/FRFA available from NMFS (see **ADDRESSES**).

The public comment period for the proposed rule (November 28, 2006; 71 FR 68784) was open from November 28, 2006, to January 31, 2007. During that time, NMFS conducted seven public hearings. The locations and dates of the public hearings were announced in a separate **Federal Register** notice (January 3, 2007; 72 FR 96). Public hearings were conducted in Gloucester, MA (January 17, 2007), Manahawkin, NJ (January 18, 2007), Madeira Beach, FL (January 18, 2007), Destin, FL (January 23, 2007), Houma, LA (January 25, 2007), Ft. Pierce, FL (January 30, 2007), and Manteo, NC (January 31, 2007). The Agency received approximately 50 e-mailed or written comment letters, and many verbal comments that were presented at the public hearings. A summary of the major comments received, along with NMFS' response, is provided below.

Response to Comments

These comments and responses are divided into two major categories: those that relate specifically to the alternatives discussed in the proposed rule and Draft EA, and those that relate to other potential swordfish management measures not included in the rulemaking. Because the Draft EA specifically mentions the possibility of implementing future, long-term swordfish management measures, NMFS considers and responds to comments received on issues beyond the direct scope of this rulemaking, but still related to swordfish management.

Purpose and Need for Rulemaking

Comment 1: NMFS should not change swordfish management measures. The swordfish stock has just begun to rebound. The current regulations have enabled swordfish to rebuild. The increased abundance does not justify an enlargement of the fishery, especially for the commercial sector, which nearly destroyed the swordfish fishery in the first place. Enough swordfish to supply the market are currently being harvested. Recreational fishermen can catch the occasional large swordfish. Overall, it seems that the fishery is doing well. The present swordfish population consists mostly of juveniles. These fish should be left in the water to assure that the population has a full size range. There should be a total ban on catching any swordfish at all, by any entity, or an immediate decrease in swordfish retention for all.

Response: The U.S. North Atlantic swordfish quota is derived from the recommendations of the ICCAT. The stock has shown a significant increase in abundance. In 2006, the SCRS of ICCAT concluded that the stock was at 99 percent of B_{msy}, and recommended continuing with a TAC of 14,000 mt (ww), in accordance with the current rebuilding plan. Based on this information, ICCAT adopted an overall TAC of 14,000 mt. This is the same TAC that had previously been recommended for the period from 2002 - 2006, and it is expected to provide for continued growth of the North Atlantic stock. The United States is allocated 30.49 percent of the overall TAC, which equates to 3,907 mt (ww) after deducting 1,185 mt (ww) to ''other contracting parties.'' The United States has not landed its North Atlantic swordfish quota allocation since 1997. In order to help retain the historic U.S. ICCAT swordfish quota allocation, NMFS believes it is appropriate to implement prudent management measures that will increase U.S. swordfish landings and foster an economically viable fishery that adheres to sound conservation principles. Accordingly, the measures in this final rule are anticipated to increase U.S. swordfish landings, but remain within the current ICCAT-recommended U.S. quota allocation. The additional landings are not projected to jeopardize stock rebuilding. In fact, some of the additional landings may previously have been discarded dead because the vessel exceeded the current Incidental swordfish retention limits. For these reasons, this action is not expected to have a significant adverse impact upon the North Atlantic swordfish stock.

Comment 2: If the U.S. swordfish fishery continues to under perform, it will be difficult for the United States to protect its quota share at ICCAT in 2008. The United States must harvest its swordfish quota share, or it will lose it. The agreed upon transfer of U.S. quota underages to other countries will allow for the development of new or larger foreign fisheries. If a precedent has been established with transferring unused swordfish quota to foreign nations that are developing their own fisheries, in the future the United States will need to defend what it has done to avoid further quota transfers or losses to other ICCAT nations that do not have the same conservation measures in place to reduce or mitigate bycatch. These countries will demand quota share based upon their newly developed swordfish fisheries. If the United States loses its swordfish quota at ICCAT, foreign pelagic longline vessels will line

up in the Caribbean Straits or right outside the U.S. Exclusive Economic Zone (EEZ) and also catch billfish. Because these countries do not utilize circle hooks and careful release techniques, levels of bycatch will increase. Therefore, NMFS must retain the U.S. swordfish quota to protect other species, including blue and white marlin. Recreational and commercial swordfish fisheries, environmental groups, and NMFS will all lose if the U.S. swordfish quota share is lost or transferred. How is NMFS going to ensure that the domestic swordfish quota is filled, so that quota share is not lost?

Response: ICCAT quota allocations are not solely dependent upon recent landings. In 2001, ICCAT established its ''Criteria for the Allocation of Fishing Possibilities'' (ICCAT Recommendation 01–25) that included 15 separate criteria to be considered when allocating quota within the ICCAT framework. Many other factors must also be considered during negotiations to allocate quota, including conservation measures, economic importance of the fishery, geographical occurrence of the stock, compliance with ICCAT management measures, and dependence on the stocks. For many of these criteria, especially conservation measures and compliance, the United States has been a world leader among fishing nations. However, NMFS also recognizes the relative importance that many ICCAT contracting parties place upon ''historical catches'' and ''fishing patterns'' when making quota allocations. Because of this, NMFS implements management measures to help U.S. vessels more fully harvest the U.S. swordfish quota, especially since the stock is almost fully rebuilt. It would not be beneficial to risk losing any portion of the U.S. swordfish quota, for a variety of reasons, including those mentioned in this comment. While the Agency cannot ensure that the domestic swordfish quota will be fully harvested, it will consider future management actions, as appropriate, that are consistent with other federal law and may provide additional opportunities to harvest swordfish.

Comment 3: It doesn't make sense to promote the killing of more swordfish in U.S. waters so that we won't have to give away U.S. quota to other countries. Why not stop ICCAT from allocating part of the U.S. quota to the other countries?

Response: As discussed in the response to Comment 1, the U.S. swordfish quota allocation is derived from international negotiations conducted at ICCAT. Because of this, the United States cannot be assured of its future quota allocation. Therefore, NMFS believes it is appropriate, at this time, to implement swordfish management measures that address persistent swordfish quota underharvests to better ensure that the United States retains an influential role in future ICCAT swordfish quota discussions and negotiations. As the North Atlantic swordfish stock is almost fully rebuilt, and overfishing is not occurring, the additional domestic fishing effort anticipated from this rulemaking should not result in overfishing.

Comment 4: The only way that the United States can set an international example regarding how to appropriately manage fisheries is to have its fishermen making money. It is not only about preserving fish and saving sea turtles. These two goals, a profitable fleet and sustainable fisheries, must be linked in order to convince other countries to change their fishing methods. Otherwise, foreign fishing nations will keep doing whatever it takes to maximize their landings.

Response: NMFS believes that a well-managed, sustainable swordfish fishery can be profitable as well. These final regulations are an initial step towards improving the financial stability of the U.S. swordfish fleet, while assuring that swordfish remain at acceptable biomass levels, and bycatch rates and bycatch mortality do not increase. Additional measures may be considered in the future to increase swordfish landings. In achieving these two goals, a sustainable and profitable fishery, NMFS believes that other ICCAT nations throughout the Atlantic Basin might be encouraged to adopt much-needed conservation measures similar to those required of American vessels. These include regulations regarding bycatch reduction techniques, and implementation of effective fishery monitoring, reporting, and recordkeeping capabilities. For species that traverse international boundaries, such as HMS, NMFS believes that it is essential to achieve broad consensus and cooperation on matters of conservation.

Comment 5: NMFS' mismanagement of the swordfish fishery is the problem, not the fishermen. If NMFS had not driven all of the longliners out of the Straits of Florida while stocks were at 96 percent of B_{msy}, the United States would be meeting its swordfish allocation instead of allowing so many imports from other countries. Many vessels are now out of business. I do not believe that the United States is committed to revitalizing its historical swordfish fishery. NMFS should have looked at swordfish landings seven years ago. The Agency would have seen that the United States was not catching its quota, and tried to revitalize the fishery then. If NMFS wants more young people to get into fishing, the United States needs to allow people to catch the swordfish quota and to maintain the swordfish quota in the future.

Response: The East Florida Coast, DeSoto Canyon, and Charleston Bump PLL closed areas were originally implemented from November 2000 - March 2001. At that time, the North Atlantic swordfish stock assessment (SCRS 1999) indicated that the stock was overfished, and at 65 percent of the biomass necessary to achieve B_{msy}. In addition, overfishing was occurring (F_{1998}/F_{msy} = 1.34). In 2000, the United States did not land its entire ICCAT swordfish quota allocation. The United States had an allocation of 2,951 mt (ww), and reported landings were 2,684 mt (ww) in 2000. Because swordfish were overfished and overfishing was occurring in 2000, NMFS reduced the bycatch of undersized swordfish and other species by closing to PLL gear certain important areas of the ocean with unique biological characteristics. Since the implementation of those PLL time/area closures in 2000 - 2001, the North Atlantic swordfish stock has substantially increased in abundance, and it is now almost fully rebuilt and overfishing is not occurring. This is a significant achievement. The result, in recent years, has been a larger overall TAC recommendation from ICCAT and a correspondingly larger U.S. swordfish quota allocation. During that same time period, however, the number of active PLL vessels has continued to decline. Because the swordfish stock has shown a significant increase in biomass, the Agency now believes it is appropriate to reconsider existing swordfish management measures and take additional steps to more fully utilize this important natural resource. Revitalizing the U.S. swordfish fishery, while ensuring that the biomass remains at sustainable levels, will provide opportunities for future generations of Americans to participate in this fishery.

Comment 6: NMFS should take a conservative approach in its attempt to more fully harvest the U.S. swordfish quota. The current size structure of the swordfish stock may not accurately reflect the stock's structure before it was severely overfished. Although swordfish abundance has increased, many of the fish are still juveniles. If swordfish harvests are unabated, it could cause irreparable harm to the stock. The preferred alternatives appear to make modest strides to more fully harvest the

swordfish quota, apparently without fully reaching or exceeding it.

Response: NMFS has taken a conservative approach in relieving some swordfish management measures to begin fishery revitalization efforts, while ensuring that swordfish overfishing does not occur and that bycatch of undersized swordfish, protected species and non-target species is minimized, to the extent practicable. However, it will be necessary to continue to monitor catches and landings to ensure that these objectives are met. Additional management measures may be considered in the future, as appropriate.

Comment 7: We support the preferred alternatives and commend NMFS for moving forward and trying to provide more opportunities in this healthy fishery for both commercial and recreational interests. The Agency's ability to publish the proposed rule prior to the November 2006 ICCAT meeting is appreciated. Although there are numerous concerns with the rule itself, it has shown the international community that the United States still has a valid stake in the swordfish fishery, and that revitalization is real and tangible.

Response: NMFS recognized that it was imperative to demonstrate to ICCAT that the United States is committed to revitalizing its historical swordfish fishery, especially because the stock is now almost fully rebuilt. Importantly, the United States was successful in maintaining its swordfish quota share through 2008. U.S. fishermen have contributed to swordfish stock rebuilding, and should realize some benefit from it. Further action will be considered, consistent with the requirements of the Magnuson-Stevens Act, ATCA, the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), and other Federal regulations, to revitalize this important domestic fishery.

Comment 8: The proposed measures fall far short of what is needed to save this national resource. I recognize that the proposed rule only includes less controversial solutions that can be implemented relatively quickly, but there will still be a significant underharvest of the U.S. swordfish quota. This poses a problem because there is a limited amount of time available to show that revitalization of the fishery is underway.

Response: The final management measures are not likely, by themselves, to result in full utilization of the U.S. swordfish quota. Other measures may be considered in the future to provide additional opportunities to increase U.S. swordfish landings.

Comment 9: The purpose of the proposed rulemaking was to revitalize the swordfish fishery, not redistribute the U.S. longline quota to recreational interests. NMFS should develop additional alternatives that will allow the commercial swordfish fishery to harvest more of the U.S. quota. The proposed alternatives are skewed to the advantage of the recreational and for-hire sectors. Because swordfish are almost fully rebuilt, it is a valuable opportunity for the U.S. food service sector. The proposed alternatives will not substantially increase the amount of product available to the seafood consuming public, or effectively increase the commercial swordfish harvest.

Response: The overall U.S. North Atlantic swordfish quota is harvested by both commercial and recreational fisheries. Landings from both of these sectors are reported to ICCAT. Because the objective of this rulemaking is to increase overall U.S. swordfish landings, NMFS believes that the final management measures affecting both sectors are appropriate. The final rule does not redistribute U.S. longline quota to recreational fishing interests. Recreational and Incidental swordfish landings are currently allocated 300 mt (ww) of North Atlantic swordfish, within the overall U.S. quota. NMFS is not changing this allocation. In fact, projections contained within the Draft Environmental Assessment clearly indicated that the final measures are not likely to result in landings that would exceed the 300 mt (ww) Incidental quota. It is also important to note that commercial vessels with Directed swordfish permits are not currently governed by any retention limits, unlike recreational vessels. Furthermore, the selected vessel upgrading provisions will benefit the commercial sector exclusively. For these reasons, NMFS believes that the final management measures are appropriately balanced, and are not skewed to favor any particular sector. The rebuilt swordfish stock represents an opportunity to increase the amount of product available to the seafood consuming public. Increasing the Incidental swordfish retention limit and relieving some vessel upgrading restrictions are viable short-term ways to increase commercial swordfish harvests, while reinvigorating swordfish marketing channels.

No Action Alternatives (1a and 2a)

Comment 10: I strongly oppose any changes to the current swordfish regulations so that swordfish can continue to rebuild. Therefore, I support the status quo alternatives and am opposed to all of the preferred alternatives. NMFS must conserve fish, and let the current regulations strengthen the swordfish population. Give the fish a break and rejoice in the resurrection of a magnificent fish species, which NMFS had previously allowed to go nearly extinct. The current regulations are not broken, so NMFS should not make any regulatory changes.

Response: Swordfish is an important natural resource that provides food to American consumers, and economic and social benefits to commercial and recreational fishery participants. Among other requirements, the Magnuson-Stevens Act specifies that NMFS shall provide a ''reasonable opportunity'' for U.S. vessels to harvest HMS quotas that are managed under international agreements, such as ICCAT. As discussed in the response to Comment 1, the management measures contained in this final rule will provide for a modest increase in swordfish landings, without jeopardizing stock rebuilding efforts.

Comment 11: Reasonable efforts to fully utilize the domestic swordfish quota are appropriate. It is vital that our commercial and recreational fishermen are given the opportunity to benefit from the successful rebuilding of the North Atlantic swordfish stock. NMFS should take responsible measures in an attempt to catch the U.S. swordfish quota, but not at the expense of billfish and the continuing recovery of swordfish. Therefore, NMFS cannot abandon its responsibility to protect juvenile swordfish, their nursery areas and critical spawning zones or other seriously overfished species, such as Atlantic marlin and bluefin tuna. NMFS should rebuild swordfish by ensuring that there is a spawning stock, and that the fishery is sustainable. Fishermen have to make a living, but it has taken 10 years to rebuild the stock. Do not let the pendulum swing the other way again to an overfished status.

Response: The final management measures were selected to provide additional opportunities for commercial and recreational fishermen to land swordfish, while ensuring that the bycatch of undersized, protected, and non-target species remain at acceptable levels. NMFS is required under several federal statutes, including the Magnuson-Stevens Act, ESA, NEPA, and ATCA, to minimize bycatch and bycatch mortality to the extent practicable, prevent overfishing, achieve optimum yield, provide for sustained participation of fishing communities, protect threatened and endangered

species, and analyze the environmental impacts of potential fishery management actions. NMFS will continue to comply with all applicable legal requirements as it continues to investigate methods to revitalize the domestic swordfish fishery, so that U.S. swordfish quota share is retained.

Incidental Swordfish Retention Limits (Alternative 1a - 1d)

Comment 12: Is it really necessary for NMFS to increase Incidental swordfish retention limits? The fishery is just recovering from being overfished. I propose that recreational anglers release all swordfish, and that commercial fishermen remain at their current limits (non-preferred alternative 1a) for the next five years to give the fishery a chance to more fully recover. There is no reason to increase the retention limits, no matter what category.

Response: Swordfish are almost fully rebuilt. As discussed in the response to Comment 1, the North Atlantic swordfish stock was at 99 percent of the biomass necessary to achieve B_{msy} in 2006. Therefore, at this time, NMFS believes it is not necessary to lower the recreational retention limit. Rather, this final rule will increase the Incidental swordfish retention limit to reduce the number of legal-sized swordfish being discarded, and to provide some economic benefit to permit holders by converting those discards into landings. Although most trips do not report a large number of discards, available logbook information shows that some trips reported as many as fifty swordfish discards. NMFS has selected final management measures that will reduce discards and allow more swordfish to be landed by Incidental swordfish permit holders, without providing an incentive for these permit holders to direct a large amount of additional fishing effort on swordfish. As such, the measures are not projected to adversely impact continued swordfish stock rebuilding.

Comment 13: I support preferred alternative 1c, which would increase Incidental swordfish retention limits. This alternative would especially help commercial fishermen in the Gulf of Mexico. It would also help to supplement income for those fishermen whose earnings have been drastically slashed by recent shark management regulations.

Response: The final management measures will increase the retention limits for vessels possessing an Incidental swordfish permit from two fish per trip to 30 fish per trip, except that permitted vessels fishing with a squid trawl will be limited to 15 swordfish per trip. These limits were selected because they may provide additional opportunities to land swordfish that might otherwise be discarded, while preventing a large increase in directed fishing effort. The 30 fish limit is just below the median number of swordfish landed by directed permit holders (36 fish). If vessels land an additional 28 swordfish, it could increase ex-vessel revenues by over $7,000.00 per trip, minus any additional costs, based upon the average weight and ex-vessel price for swordfish in 2005.

Comment 14: I thought ''incidental'' means just that, not 30 fish. NMFS should not change the commercial Incidental swordfish retention limits under preferred alternative 1c. I believe that this might turn Incidental swordfish permit holders into directed commercial fishers because of the high retention limit.

Response: The selected alternative maintains a distinction between Incidental and Directed swordfish vessels. There is no retention limit for vessels possessing a Directed swordfish permit, whereas vessels possessing an Incidental swordfish permit would be allowed to retain only 30 fish per trip, and permitted squid trawl vessels would be limited to 15 swordfish per trip. Available logbook data from 2002 - 2005 indicate that the majority of Incidental swordfish permit holders did not report landing or discarding any swordfish. However, 19 percent of the trips reported swordfish discards, with as many as 52 reported on a single trip. Increasing the Incidental limit to 30 swordfish will allow 90 percent of all swordfish discards to be converted into landings, if they are above the minimum legal size. As mentioned in the response to Comment 13, the 30 fish Incidental swordfish retention limit is just below the median number of swordfish reported kept on trips by Directed swordfish permit holders. It is possible that some Incidental permit holders may choose to deploy a directed swordfish set, perhaps seasonally. However, the new Incidental retention limit is not expected to result in a large-scale conversion to directed swordfish fishing by Incidental swordfish permit holders.

Comment 15: The proposed regulations for retention limits make good sense. NMFS wants to limit regulatory discards, but not open the door for incidental permit holders to target swordfish. Discarding dead fish is the biggest double-edge sword, and it does not make any sense to throw a dead fish away.

Response: The final management measures are intended to reduce regulatory discards without providing an incentive for Incidental swordfish permit holders to direct a large amount of fishing effort on swordfish. This is consistent with the incidental nature of the permit. It is primarily intended to allow Incidental permit holders to retain swordfish that might otherwise be discarded. The proposed 30 fish limit is just below the median number of swordfish retained by Directed permit holders.

Comment 16: Increasing recreational and Incidental swordfish retention limits will not reduce discards of undersized swordfish.

Response: Increasing recreational and Incidental swordfish retention limits will not reduce discards of undersized swordfish. NMFS cannot determine if the swordfish discards reported in the HMS logbook were attributable to exceeding the incidental retention limit, or because the swordfish were below the minimum legal size. NMFS continually strives to reduce the catch and mortality of undersized swordfish and non-target species. For example, NMFS has recently implemented a series of mandatory safe handling and release workshops for owners and operators of vessels with swordfish or shark Incidental and Directed permits, and using longline gear or gillnets. In combination with other measures, including mandatory circle hooks on PLL gear, mandatory possession and use of careful release equipment on PLL vessels, and PLL time/area closures, NMFS has made significant progress in reducing discards and discard mortality of undersized swordfish.

Comment 17: The wording of the final regulations should be changed to restrict the increased Incidental swordfish retention limit to PLL gear and trawl gear only, and prohibit the higher retention limit in the buoy gear fishery in the East Florida Coast PLL closed area. The Incidental swordfish retention limit must remain at two fish, unless the permit is only to be used outside of the PLL closed areas. The area off the east coast of Florida is currently well balanced between commercial and recreational interests. Increasing Incidental swordfish retention limits could cause an increase in buoy gear sets in the East Florida Coast Closed Area off the Dade, Broward, and Palm Beach County Coasts. This would cause major conflicts with the vast recreational fleet in the Florida Straits, and undue stress on the recovering swordfish stock that consists mostly of immature fish that have not reached their full spawning potential.

Response: Under HMS regulations at § 635.71(e)(10), Incidental swordfish permit holders are not authorized to fish

for swordfish with buoy gear. For this reason, increasing the Incidental swordfish retention limit will not provide an incentive for fishermen to enter the buoy gear fishery in any area. Also, Incidental or Directed swordfish permit holders may not retain swordfish unless their vessel also possesses both a limited access shark permit and an Atlantic Tunas Longline category permit.

Comment 18: NMFS is requested to consider increasing the Incidental swordfish retention limit for squid vessels to 20 fish. Also, a higher limit might be needed for squid freezer vessels that stay at sea for longer periods of time. Seventy-seven vessels hold Illex squid moratorium permits. Approximately 25 of these vessels actively fish for Illex squid in any single year, and 10 are freezer vessels that take trips lasting from seven to ten days. The remaining vessels utilize refrigerated seawater and stay at sea for three to four days. Because all existing regulations for maintaining swordfish as an incidental catch in the squid trawl fisheries would apply, no directed fishery is possible or encouraged.

Response: The final management measures will increase the retention limit for Incidental swordfish permit holders that deploy squid trawls from five to 15 swordfish per trip. This increase will enable squid trawl vessels to retain fish that otherwise may have been discarded. Squid trawl vessels fish for, and land, small pelagic species such as squid, mackerel and butterfish. Swordfish catches should remain truly incidental to catches of these target species. However, NMFS welcomes additional input or comments from the squid trawl sector for future consideration.

Comment 19: Increasing the retention limit for 48 Incidental swordfish permit holders will not make much of a difference, in terms of catching more of the swordfish quota. NMFS' projected swordfish landings are wrong. Incidental permit holders will not catch that many fish. NMFS has shown a wide range in the number of swordfish that could potentially be landed by increasing the Incidental swordfish limit. Why is there such a wide range? How did NMFS estimate the additional swordfish that will be landed? How many active Incidental swordfish permit holders are there? How many squid trawl vessels? Would the U.S. reach its quota before reaching the maximum number that could potentially be landed? Is it appropriate to project that each one of the boats is going to keep 30 fish? Only a small number of PLL boats are still in business, as two-thirds of the fleet is gone. The projections that NMFS has shown are confusing. NMFS should provide more detail on these numbers, so that they make sense.

Response: The projected swordfish landings in the Draft Environmental Assessment are based upon certain assumptions. However, until final landings data are available after implementation of the new swordfish retention limits, it is not possible to determine whether these projections are accurate. In 2005, 10,787 lb dressed weight (dw) of swordfish were reported landed by Incidental swordfish permit holders in the HMS logbook. Swordfish landings by squid trawl vessels, as reported to ICCAT, averaged 10,443 lb (dw) per year from 1998 - 2004. Because all squid trawl landings may not have been reported in the HMS logbook, these landings were added together with the other Incidental landings to derive an estimate of 21,230 lb (dw) of swordfish landed by Incidental permit holders in 2005. NMFS then presented a range of projected landings to reflect uncertainties regarding future fishing activity. At one end of the range, NMFS assumed that all reported discards by Incidental swordfish permit holders would be landed, up to 30 fish. Therefore, if a vessel reported landing two swordfish and discarding five swordfish, a total of seven swordfish were assumed to be landed. Also, squid trawl landings in 2005 were tripled, reflecting the tripling of the squid limit from five fish to 15 fish. This methodology resulted in a projected estimate of 66,207 lb. At the other end of the range, NMFS assumed that all reported trips by Incidental swordfish permit holders would land 30 fish. Therefore, if an Incidental swordfish permit holder reported landing one swordfish in 2005, it was assumed that 30 fish would be landed under the new limits. Again, squid trawl landings were also tripled. This methodology resulted in a projected estimate of 476,444 lb. A similar methodology was used for the recreational retention limits where, at one end of the range, it was assumed that only trips that had previously landed the retention limit (three fish) would also land the new retention limit (four fish or 15 fish). At the other end of the range, it was assumed that all recreational trips would land the new retention limits. NMFS believes that actual landings will likely fall somewhere between the lower and higher end of these ranges.

Comment 20: Putting more swordfish on the market by increasing the Incidental retention limit will reduce the price that Directed swordfish permit holders receive. This is a bad economic decision.

Response: NMFS recognizes that an increase in the volume of incidentally caught swordfish could affect swordfish prices. However, some constituents have told NMFS that the current 2–fish Incidental retention limit does not justify the additional effort of fishing for, or landing, swordfish, and then bringing them to market. These constituents stated that the current two-fish Incidental retention limit has contributed to an inadequate infrastructure and marketing channel in some areas that is not suitable for handling swordfish. NMFS believes that the 30–fish retention limit will provide more of an incentive to land and market incidentally caught swordfish, without a significant disruption to swordfish prices. Increased participation by incidental permit holders could help to develop a more consistent supply of swordfish, and thus lead to a more robust market for swordfish products.

Recreational Swordfish Retention Limits (Alternatives 1e - 1f)

Comment 21: NMFS received several comments concerning preferred alternatives 1e and 1f, which would increase the per vessel recreational swordfish retention limits. These comments include: The current recreational swordfish retention limit is already very generous for ''personal'' use, and increasing it would promote commercial harvest by ''recreational'' anglers. Recreational permit holders are currently keeping one swordfish, and illegally selling the others to a restaurant or a market buyer. Under the preferred alternatives, these illegal recreational swordfish sales would continue to grow; there is no reason to increase ''recreational'' retention limits if the rampant illegal sale of recreational swordfish cannot be controlled. It is necessary to strike a balance when setting recreational limits between fulfilling the recreational ''experience'' and encouraging the development of a quasi-commercial activity; the preferred alternatives to increase recreational vessel limits will hurt the prices that commercial fishermen receive for their swordfish. These swordfish will be sold and compete in the market with commercially landed fish.

Response: The Agency received many comments regarding the illegal sale of recreationally caught swordfish. The current regulations explicitly prohibit the sale of swordfish by HMS Angling category permit holders. The sale of swordfish by HMS CHB permit holders is also prohibited, unless the vessel owner concurrently possesses a limited

access swordfish Handgear permit. Furthermore, anyone who buys Atlantic swordfish from a U.S. vessel must have a Federal Atlantic Swordfish Dealer permit, and must report all purchases to NMFS. All non-tournament swordfish landings by Angling and CHB permit holders must be reported by calling (800) 894–5528. For recreational swordfish reporting information in Maryland, contact (410) 213–1531. In North Carolina, contact (800) 338–7804. Tournament directors, if selected, must report tournament landings. NMFS does not anticipate that increasing the recreational retention limit will increase illegal recreational sales because the recreational sale of all swordfish is clearly prohibited. However, citizens with information regarding the illegal sale of recreationally caught swordfish are encouraged to call the anonymous NMFS Office of Law Enforcement tip line at (800) 853–1964 to report the incident.

Comment 22: A recreational vessel does not have enough room onboard to properly ice more than one fish. Therefore, the preferred alternatives to increase recreational swordfish retention limits could cause health problems. NMFS should reduce the recreational retention limit to one fish per boat per trip.

Response: NMFS is not reducing the recreational retention limit because it is important to provide more opportunities for fishermen to land the U.S. swordfish quota, and recreational landings are counted against the quota. The decision regarding whether or not to land a fish is often made when the animal is alongside the boat. HMS regulations currently require that all fish that are not retained must be released in a manner that will ensure the maximum probability of survival, without removing the fish from the water. If an angler decides to keep a fish, it is his or her personal responsibility to ensure that the fish is maintained properly so that it is safe to eat. Since the fish cannot be sold, the federal government has no direct role in ensuring that it is safe to eat. However, to prevent waste, NMFS strongly encourages all anglers to keep no more fish than they can safely handle.

Comment 23: Recreational fisheries can develop rapidly and can threaten the Incidental catch quota. NMFS must properly monitor and record recreational and CHB swordfish landings to control the ultimate destination of these catches. NMFS should also include criteria that would allow for the downward adjustment of recreational limits to prevent exceeding the Incidental catch quota.

Response: As indicated in the response to Comment 21, all non-tournament recreational swordfish landings by HMS Angling and CHB permit holders must be reported to NMFS, or to the states of Maryland and North Carolina as applicable. These landings are collected on a daily basis. Using historical reported recreational swordfish landings, the projections presented in the Draft Environmental Assessment indicate that increasing recreational retention limits will not result in an exceedance of the Incidental swordfish quota. However, anecdotal information suggests that recreational swordfish landings may be under reported. Reporting could increase in the future as more anglers become aware of the requirement through Agency outreach. NMFS will continue to collect recreational swordfish landings data, and will take appropriate and timely action to maintain compliance with the Incidental swordfish quota.

Comment 24: I prefer alternative 1e, which would increase CHB vessel retention limits. This alternative would assist the recreational CHB industry by increasing overall recreational swordfish landings. It would allow CHB vessels to target swordfish instead of just catching them as bycatch species on tuna, marlin, and dolphin fishing trips.

Response: The final management measures will increase the per vessel HMS CHB swordfish retention limits, based upon the number of paying passengers onboard. This could provide additional opportunities for the HMS CHB sector to market recreational swordfish fishing trips.

Comment 25: Increasing the recreational retention limits will not affect the U.S. swordfish quota, because recreational fishermen are catching swordfish and not reporting them. They believe that reporting their catches will result in them being closed out.

Response: As indicated in the response to Comment 21, all non-tournament recreational swordfish landings by HMS Angling and CHB permit holders must be reported to NMFS, or to the states of Maryland and North Carolina as applicable. These reported landings are counted against the U.S. swordfish quota. It is possible that a failure to report recreational landings could result in a potential reduction of the Incidental swordfish quota, or a reduction in the overall U.S. swordfish quota in the future.

Comment 26: We have no objections to the proposed regulations to increase the recreational retention limit to one per person, up to four per vessel, as long as NMFS is only making the change to help the U.S. reach its swordfish quota. Similarly, there is no objection to the proposed regulations to increase retention limits for CHB vessels.

Response: The purpose of this rulemaking is to implement management measures that will enable the United States to more fully harvest its ICCAT-recommended North Atlantic swordfish quota. The U.S. swordfish quota allocation includes both recreational and commercial landings. For this reason, NMFS chose to modify the regulations for both sectors in order to increase overall U.S. swordfish landings.

Comment 27: We support alternatives 1e and 1f to help the United States catch its swordfish quota. However, most recreationally caught swordfish are caught in the areas that are closed to PLL gear to protect juvenile swordfish. Therefore, we recommend an increase in the minimum size limit for all swordfish caught from within the PLL closed areas.

Response: The minimum swordfish size is established by ICCAT. However, the United States has some discretion to negotiate a higher minimum size, considering domestic requirements. NMFS may consider this in the future, if necessary.

Comment 28: Does the crew count when calculating the recreational swordfish vessel retention limit for HMS CHB vessels?

Response: No. The captain and crew do not count when calculating the swordfish vessel retention limit for HMS CHB vessels. Under the final regulations, the vessel limit is no more than one swordfish per paying passenger, up to six swordfish per vessel per trip for charter vessels; and no more than one swordfish per person, up to 15 swordfish per vessel per trip for headboat vessels. The retention limit for vessels issued an HMS Angling category permit is no more than one per person, up to four swordfish per vessel per trip.

Comment 29: In Louisiana, there are approximately four headboats, but they do not fit into the typical ''headboat'' category. They might fall under the headboat category or the charter boat category. These boats have to meet their minimum day rate, and they must carry a certain amount of passengers in order to leave the dock. But, they are different from the boats in Florida where everybody shows up and pays their individual fees. These boats are usually targeting snapper and grouper on overnight trips, but they may target swordfish. They might also fish for tuna during the day, and then start fishing for swordfish at night.

Response: A charter boat means a vessel that is less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire. A headboat means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. Thus, the applicable swordfish retention limits for charter and headboat vessels are based upon the tonnage of the vessel and whether it meets the requirements to carry six or fewer passengers, or whether it possesses a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

Vessel Upgrading Restrictions (Alternatives 2a - 2e)

Comment 30: NMFS should consider an alternative to remove gross registered tonnage (GRT) and net tonnage (NT) restrictions for simplification of vessel construction or conversion.

Response: Length overall (LOA), GRT, and NT are all measurements of a vessel's size and capacity. During the initial development of the limited access permit regulations, NMFS established an upper limit on fishing effort by restricting both the number of permitted vessels, and restricting upgrades in the size and capacity of those vessels. The purpose was to maintain overall fleet capacity at a relatively constant level. This was intended to improve the effectiveness of other management measures by preventing a sudden increase in fleet capacity and fishing effort when stocks first began to rebuild. Vessel tonnage was linked with vessel length to prevent vessels from increasing in beam while complying with other restrictions on length. However, since then, the fishing and boat building industries have informed NMFS that it is sometimes difficult to increase a vessel's length proportionately with its tonnage. Also, it has been brought to the Agency's attention that restrictions on net tonnage may significantly hamper interior modifications to vessels, such as reconfiguring the engine room, which may have little impact on the vessel's capacity. Finally, some fishermen have indicated that restrictive retention limits nullify the need to restrict vessel capacity (GRT and NT). NMFS is aware of these concerns and may consider further modifications to the vessel upgrading restrictions in the future. In this final rule, the 35 percent allowance is expected to provide additional flexibility for owners to upgrade their vessels, whether through construction, conversion, or permit transfer.

Comment 31: I support no action alternative 2a for the upgrading restrictions. Vessel capacity is adequate. Bigger vessels are not needed to harvest swordfish in the Gulf of Mexico. By lifting the upgrading restrictions, NMFS is catering to people who are trying to go to the Grand Banks. Lifting or modifying the upgrading restrictions would only benefit larger swordfish boats that currently catch most of the swordfish. I do not want Atlantic fishermen upgrading their vessels and then moving to the Gulf of Mexico to fish for swordfish.

Response: The final management measures will modify the vessel upgrading criteria for all vessels that concurrently possess Incidental or Directed swordfish and shark permits, and an Atlantic Tunas Longline category permit. This will benefit all commercial vessels that concurrently possess these three permits, not just larger vessels. Vessel owners are not required to upgrade. The revised upgrading criteria will improve the flexibility of vessel owners to make individual business decisions based upon their own unique circumstances. Overall, some vessels may not be optimally configured for current market conditions, and therefore profits may be less than optimal. Without some modification to the current upgrading restrictions, these vessels (primarily PLL vessels) would continue to be limited in their ability to modernize, thus affecting the ability to retain skilled crew, carry observers, and fish further offshore. In addition, limitations on vessel capacity may affect safety at sea because, in general, a larger vessel is more seaworthy than a smaller vessel, especially in rough seas. NMFS cannot accurately predict where newly upgraded vessels will fish, but it is important to provide some additional flexibility to improve their mobility. It is possible that some vessels could move out of the Gulf of Mexico to fish, rather than move into it.

Comment 32: I support no action alternative 2a for the vessel upgrading restrictions. The United States is not failing to catch its swordfish quota because of the size of the vessels. The current fleet capacity can harvest the quota if the boats are provided with more opportunities to fish.

Response: Vessel capacity is one factor, among several, that is potentially preventing the U.S. fleet from landing its full North Atlantic swordfish quota. NMFS believes that allowing for an increase in vessel size and horsepower (HP), will provide more opportunities to increase domestic swordfish catches. For example, increased vessel capacity and HP could allow some operators to fish further offshore, fish longer without offloading, and reduce the time spent transiting to and from fishing grounds.

Comment 33: As a swordfish Handgear permit holder, I am opposed to lifting the upgrading restrictions on handgear vessels (non-preferred alternative 2c). I feel that making numerous permits available would cause far too many buoy gear conflicts with the vast recreational fleet in the Florida Straits.

Response: In the final rule, NMFS is not removing or modifying upgrading restrictions for vessels issued limited access swordfish Handgear permits. Also, NMFS is not making any new commercial swordfish permits available, because they are all limited access. However, upgrading restrictions are being modified specifically for vessels that concurrently possess limited access Atlantic Tunas Longline permits, as well as Directed or Incidental swordfish and shark permits. Most of these vessels fish with PLL gear. HMS regulations also allow vessels with a Directed swordfish permit to fish with buoy gear in the PLL closed areas, if PLL gear is not onboard. Because many vessels that might fish with buoy gear have very high horsepower, several commenters have indicated that the current HP restriction is a limiting factor that prevents many fishermen from obtaining a Directed swordfish permit, along with the other two necessary permits, and deploying buoy gear. Therefore, by removing the HP upgrading restriction for Directed swordfish vessels, buoy gear fishing activity could increase. As described in greater detail in the response to Comment 40, NMFS currently believes that the buoy gear fishery is adequately regulated through limits on the number of buoys that may legally be deployed, gear monitoring and marking requirements, limits on the number of hooks that may be attached, logbook reporting requirements, and other general commercial fishing regulations. NMFS is aware of the concerns expressed regarding buoy gear, and may implement additional regulations on the buoy gear fishery in the future, if necessary.

Comment 34: NMFS received several comments in favor of increasing allowable vessel upgrades, or removing the upgrading restrictions altogether (non-preferred alternative 2d). These comments include: I support immediately taking off the restrictions on vessel size for all vessels possessing HMS limited access permits. If the number of permits is limited, then why manage the size of the boat too? It is not the government's business regarding the

size of the engine that I have on my boat. The government has put enough restrictions on fishermen; in the Pacific PLL fleet all vessels can go up to 100 feet in length, so NMFS should consider this as an alternative; limiting the size of fishing vessels is a problem. Most current swordfish vessels are from 40 to 50 feet in length. Allowing these vessels to be upgraded by 35 percent to 65–foot vessels under preferred alternative 2e makes no sense, because 65–foot vessels have become unprofitable. No new 65–foot vessels have been built in years.

Response: One of the goals of this rulemaking was to develop and implement management measures that would facilitate, in the short term, the ability of U.S. vessels to harvest the ICCAT-recommended domestic swordfish quota. Thus, the Agency selected alternatives that would meet these goals, and that were projected to have comparatively minor environmental impacts. Non-selected alternative 2d would have removed all HMS limited access vessel upgrading and permit transfer upgrading restrictions for ten years. This alternative was not selected because it was projected to result in the most adverse ecological impacts. The universe of affected vessels is substantially larger under alternative 2d, and there would be no limit on the size to which HMS limited access vessels could be upgraded. The final management measures will allow some owners to upgrade their vessels by 35 percent in size (relative to the baseline specifications of the vessel initially issued the limited access permit), with no limits on HP. This would allow, for example, an ''average'' 55–foot baseline vessel to be upgraded to a 74–foot vessel with unlimited HP. NMFS believes that this is a meaningful increase in vessel size, but overall fleet capacity will remain within acceptable limits. It provides vessel owners with more flexibility to make business decisions based upon their own individual needs. NMFS selected this alternative because there will likely be fewer adverse ecological impacts compared to the other alternatives. The North Atlantic swordfish stock is still rebuilding. Also, several species caught as bycatch in the PLL fishery are currently overfished, or protected under the ESA. The final management measures may increase overall fleet capacity, but not to extent that overfishing will occur or bycatch will substantially increase. As additional data become available regarding, among other things, swordfish stock status, sea turtle interactions, levels of bycatch, and the effectiveness of circle hooks and careful handling and release techniques, NMFS may reexamine the HMS limited access vessel upgrading restrictions to determine if additional modifications are warranted.

Comment 35: Which vessels are eligible for the upgrade under preferred alternative 2e? Do they have to fish with PLL gear or just have the permits that would enable them to fish with PLL gear?

Response: In order to be eligible for the 35–percent vessel upgrade in LOA, GRT, and NT, with no restrictions on HP, a vessel must concurrently possess, or be eligible for the renewal of, the following three permits 30 days from the effective date of this final rule: Directed or Incidental swordfish and shark permits, and an Atlantic Tunas Longline category permit. Vessel owners may submit applications to transfer permits so that a vessel concurrently possesses the three necessary permits to be eligible for the 35 percent upgrade. However, NMFS must receive a complete application from the vessel owner no later than 30 days from the effective date of this final rule in order for the vessel to be eligible.

Comment 36: The swordfish industry stagnated and died because it could not build large freezer vessels just when they were needed to meet world market demand. NMFS must find a method to allow larger vessels to economically enter the fleet, such as foreign vessels or large shrimp boats. The U.S. fleet needs much larger vessels to travel further and to utilize onboard freezers.

Response: As indicated in the response to Comment 34, NMFS considered an alternative that would have removed all upgrading restrictions on all vessels possessing HMS limited access permits. However, this alternative was not selected because it was determined to have the most severe adverse environmental impacts. As the frozen seafood market has grown substantially in recent years, NMFS may consider the concept of domestic freezer vessels in the future, if appropriate. Currently about 38 vessels are greater than 70 feet in length, and possess Directed swordfish permits. Under the final management measures, these existing vessels could be upgraded, either through conversion or permit transfer, to 94 feet or more, depending upon the size of the baseline vessel, for use as a freezer vessel 30 days from the effective date of the final regulations. In the longer term, it may be necessary for NMFS to further analyze the potential impacts associated with a swordfish freezer fleet to determine an appropriate number of vessels, permit qualification criteria, environmental impacts, and other items. Under the Magnuson-Stevens Act, no foreign vessels are allowed to fish within the U.S. EEZ, unless that portion of the optimum yield that would be caught by those vessels cannot be harvested by U.S. vessels.

Comment 37: The last U.S. PLL boat was built in 1994. There is no money for the owners of PLL vessels to upgrade their boats. If you want to revitalize the industry, then upgrading is not the way to do it because the remaining fishermen cannot afford it.

Response: Several constituents identified the current vessel upgrading restrictions as one factor, among several, limiting the ability of U.S. vessels to fully harvest the U.S. swordfish quota. Vessel owners are not required to upgrade. The option to upgrade could improve the flexibility of some vessel owners to make individual business decisions, based upon their own unique circumstances.

Comment 38: I support removing HP restrictions on PLL vessels in preferred alternative 2e. Speed is important when selling fresh fish, which the U.S. fleet does.

Response: Removing the HP upgrading restrictions will provide additional flexibility to modify vessels possessing, or eligible to possess, Directed or Incidental swordfish and shark permits, and Atlantic Tunas Longline category permits. These vessels usually fish with stationary PLL gear, rather than with towed gear, so HP may have a relatively minor impact on fishing effort. However, if an owner is able to increase the vessel's speed, it could reduce transit time and provide additional fishing time.

Comment 39: Removing HP upgrading restrictions in preferred alternative 2e will make little difference to PLL vessels. Most longline vessels are not going to go faster with more HP, and it will cost more in fuel. It is not possible to get some boats up on a plane to go faster, even if the HP is increased.

Response: As indicated above in Comment 38, NMFS received contrasting comments regarding the effect of removing the HP upgrading restrictions. NMFS recognizes that some vessels may not be able to travel any faster with a more powerful engine, due to the vessel's hull configuration. However, other vessels might be able to travel faster. NMFS believes that waiving the HP upgrading restrictions on vessels that concurrently possess the three necessary HMS limited access permits will provide some owners with additional flexibility to modify their vessels according to their needs, and potentially provide more fishing time.

Comment 40: We cannot support the proposed rule as written because the unlimited HP upgrade is not restricted to vessels that specifically fish with PLL gear. The Draft Environmental Assessment indicates that NMFS desired to restrict the upgrade to PLL vessels, but the proposed regulations do not reflect this intent. The limitation that currently keeps vessels from entering the buoy gear fishery is the HP limitation, and the fact that most available limited access swordfish permits do not match the typical high HP boats used in the recreational fishery off South Florida. We recommend and support limiting HP upgrades only to vessels that will fish with PLL gear. Otherwise, there could be an increase in buoy gear sets in the East Florida Coast Closed Area. If NMFS allows unlimited HP upgrades under preferred alternative 2e, those commercial swordfish permits will go to the Miami area, and not be used by vessels that fish with PLL gear. PLL boats will upgrade and use their Directed swordfish permit and upgraded boat to fish with buoy gear off the Florida East Coast, or the Directed swordfish permits will be bought by recreational fishermen in the Miami and Fort Lauderdale areas who want to become part-time commercial buoy gear fishermen. There are enough transferable permits available for those who wish to enter the buoy gear fishery with the serious intent of making a living. NMFS should allow the upgrades, provided that the permit holder forfeits the right to fish in the closed zones if they upgrade their permit or buy a permit that they plan to upgrade. If the HP for a commercial swordfish permit were increased, the holder would waive the right to fish in the PLL closed zones. Alternatively, we recommend limiting HP upgrades to vessels that will only fish with PLL gear. Restricting the gear types on upgraded permits would not affect vessels in any other HMS fisheries. Keeping the buoy gear fishery a small fishery with controlled growth would reduce gear conflicts and allow for a sustainable fishery. The intent was for the permits to be used to make PLL boats go farther offshore and stay out longer.

Response: The intent of this final rule is to provide additional opportunities for U.S. vessels to harvest a larger portion of the ICCAT-recommended domestic swordfish quota. It is not intended solely to make PLL boats fish further offshore or for these vessels to take longer trips, although that could be a secondary benefit if additional swordfish landings occur with few additional adverse ecological impacts. The vessel upgrading restrictions are administered largely through the issuance of permits, as the allowable upgrade specifications for each vessel are printed directly on its limited access swordfish and shark permit. With the exception of the swordfish Handgear permit and some tuna permits, HMS vessel permits are currently issued by species, and not by gear. NMFS rejected an alternative to waive the upgrading restrictions on vessels possessing swordfish Handgear permits in the Draft Environmental Assessment because the upgrades would not be limited, and also to reduce buoy gear conflicts with recreational users. In this final rule, NMFS is modifying vessel size upgrading restrictions and removing HP upgrading restrictions on vessels concurrently possessing Incidental or Directed swordfish and shark permits, and an Atlantic Tunas Longline category permit. These three permits are necessary to fish for HMS with PLL gear, or to land swordfish commercially (other than with the swordfish Handgear permit). Because buoy gear is authorized only for vessels possessing either a Directed swordfish permit (along with the other two permits) or a swordfish Handgear permit, NMFS recognizes that, as a result of waiving the HP upgrading restrictions for vessels possessing a Directed swordfish permit, some current recreational fishermen may seek to obtain a Directed swordfish permit and the other two commercial permits to fish with buoy gear in the East Florida Coast PLL closed area. However, the Agency believes that the actual number of recreational fishermen choosing to pursue this commercial activity is likely to be limited, although it does warrant future monitoring. The start-up costs associated with obtaining the three commercial limited access permits and all of the required fishing and safety gear are sizeable. Furthermore, accurate recordkeeping and reporting are essential. This could potentially necessitate the formation of a corporation and a career change, if conducted on anything other than a part-time basis. Reporting forms and weighout slips must be submitted after each trip, or monthly if no fishing occurs. Additionally, vessel owners and operators must remain cognizant of, and adhere to, all commercial fishing regulations. If selected, these vessels would also be required to carry observers. In the 2006 Consolidated HMS FMP, NMFS recently authorized the use of buoy gear, and clarified its usage, by implementing several new restrictions for swordfish Directed and Handgear permit holders deploying buoy gear. These are the only permits with which buoy gear may be deployed. The new restrictions included a limit on the allowable number of hooks per buoy gear, a limit on the number of floatation devices that may be deployed, and gear monitoring requirements. The permit and upgrading restrictions are not based upon gear type, whereas the closed areas are administered by gear type. To restrict the new vessel upgrading requirements only to Directed swordfish permit holders that do not, or will not, fish in the PLL closed areas would require permit restructuring under a separate rulemaking. As additional information regarding buoy gear becomes available through the HMS logbook and research efforts, NMFS will reevaluate the fishery and its current regulations, if necessary.

Comment 41: We support the increase in size and HP for PLL vessels in preferred alternative 2e, because it provides greater safety and range for each trip, which should provide a better opportunity to land the U.S. swordfish quota. Larger vessels fishing further from closed zones within U.S. waters should also reduce user group conflicts. However, if the increases in length and HP also result in larger drums and longer longlines on PLL vessels, restrictions should be implemented to restrict the longline length to no more than the current average length to avoid longer soak times and increased incidental catch mortality.

Response: NMFS' Draft Atlantic Pelagic Longline Take Reduction Plan (available at *http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm*), which was prepared to reduce bycatch of marine mammals in the Atlantic PLL fishery, has recommended that PLL vessels establish a 20 nautical-mile upper limit on mainline length for all PLL sets within the Mid-Atlantic Bight region. NMFS is preparing a proposed rule to implement this plan.

Comment 42: Commercial fishermen are concerned that waiving the upgrading restrictions for HP will encourage additional recreational vessels to transfer commercial permits to their charter vessels and land swordfish commercially.

Response: For a charter vessel to sell swordfish commercially, the vessel owner must obtain either a swordfish Handgear permit, or three required permits (Directed or Incidental swordfish and shark permits, and an Atlantic Tunas Longline category permit). Upgrade restrictions for swordfish Handgear permits are not being modified in this final rule. If the vessel owner obtains the other three required permits, that owner cannot

obtain an HMS CHB category permit, as specified in § 635.4(d)(3). For this reason, NMFS does not believe that a large number of vessel owners will relinquish their HMS CHB permit for the opportunity to sell swordfish. It would likely necessitate a substantial change in business activites, from carrying paying recreational passengers to commercial fishing. Also, as discussed in the response to Comment 40, the start-up and operating costs are likely to be sizeable. However, the Agency believes that if some current CHB fishermen choose to become commercial fishermen as a result of this final rule, overall positive benefits could result. It would assist the Agency's efforts in harvesting the ICCAT-recommended U.S. swordfish quota.

Other Swordfish Management Measures

Pelagic Longline Closed Areas

Comment 43: The current PLL closed areas are important biological areas that protect many species of juvenile fish. They should be closed to all vessels, both recreational and commercial.

Response: The current HMS time/area closures apply to either PLL or bottom longline (BLL) gear. The first time/area closure for HMS was implemented in 1999 off New Jersey to reduce bluefin tuna discards in the PLL fishery. Since then, additional PLL closures have been implemented in the DeSoto Canyon (2000), Florida East Coast (2001), Charleston Bump (2001), and the Northeast Distant Area (2001). The Northeast Distant time/area closure was later modified in 2004 to a Gear Restricted Area, where only large circle hooks with special bait are allowed. In 2005, NMFS implemented the Mid-Atlantic shark BLL closed area. The goals of all the HMS time/area closures are to: (1) reduce bycatch; (2) minimize the reduction in target catches; and, (3) minimize or reduce non-target HMS (i.e., bluefin tuna and billfish) catch levels. There are currently no areas closed to recreational HMS fishing gears (i.e., rod and reel and handline), primarily because these gears are actively tended, and have few interactions with marine mammals and protected species. However, due to the large number of recreational anglers, NMFS will continue to investigate methods to reduce post release mortality in the recreational fishery.

Comment 44: The primary reason that the United States is not catching its swordfish quota is because PLL vessels cannot fish in the PLL closed areas. Many PLL vessels went out of business due to the PLL time/area closures. Because the prime fishing grounds are closed, PLL vessels must fish in areas that do not produce many swordfish. The only way that the United States can increase its swordfish catch is to immediately reopen some of the PLL closed areas. Otherwise, the United States will lose some of its baseline swordfish quota by 2008. Also, swordfish catches will likely continue to decline as the few remaining PLL boats go out of business due to inadequate fishing opportunities. The commercial fishing industry is fast approaching a ''point of no return.'' Vessel owners will not invest in a larger vessel to continue in a business that is restricted in growth. The longer a fishery recovery program is drawn out, the faster that the fishing infrastructure will decay. There may soon be no docks left for HMS vessels to land swordfish in certain areas. NMFS should not encourage people to upgrade or buy a newer or larger boat, unless it can provide assurances that it will not regulate them out of business in the future. NMFS could open selected closed areas using intensive observer coverage. This would allow for an increase in catch while simultaneously providing important data. If any adverse trends are detected, the areas could immediately be closed. If NMFS opens some closed areas, the boats may be willing to give a percentage of their gross revenues to cover the cost of observers. To reduce bycatch, the PLL fleet has already transitioned to circle hooks, uses careful release and disentanglement gear, and is prohibited from using live bait in the Gulf of Mexico.

The commercial PLL industry requests to work with NMFS on an Exempted Fishing Permit (EFP) that would provide data on PLL gear and lead to the eventual reopening of the PLL closed areas. The first PLL time/area closure that should be reconsidered is the area extending from the Straits of Florida up to, and including, the Charleston Bump area. This area is currently producing large volumes of high quality swordfish that average about 80 lb each. The bycatch of marine mammals and protected species in this area is low. There is also real time information available from mandatory Vessel Trip Reports and dealer reports. This information would support what appears to be a revitalized fishery when compared to landings in the same area ten years ago.

NMFS should also consider a small-scale, cooperative research program (six to seven pelagic longline vessels) in the Charleston Bump time-area closure with 18/0 circle hooks and 100 percent observer coverage to monitor catch, discards and protected species interactions. This would provide important data on the swordfish population and the impacts of circle hooks and bait restrictions that have gone into effect since the inception of the closure. There are not many small fish, sea turtles, or marine mammals in the Charleston Bump at that time of the year. There are also a limited number of directed swordfish vessels, so adverse ecological impacts would likely be minimal. Re-opening the area would allow for a short-term increase in commercially harvested swordfish on the market during the late winter and early spring.

Finally, NMFS should reopen the southern portion of the DeSoto Canyon, because more area than necessary is closed in the Gulf of Mexico. Smaller boats cannot travel farther out west to fish in the Gulf of Mexico. The northern portion of the DeSoto Canyon should remain closed because it is a nursery ground for swordfish.

In conclusion, NMFS has already implemented many bycatch mitigation measures for PLL vessels, based on the NED experimental fishery. Another experimental fishery in the current PLL time-area closures would provide additional important information. Re-opening portions of the PLL closed areas is essential to fully harvest the U.S. swordfish quota.

Response: The current time/area closures were implemented for specific management objectives. NMFS may modify the existing closures, as appropriate, to allow utilization of a given fishery, consistent with the Consolidated HMS FMP, once the objective of the time/area closure had been met. However, NMFS must balance many factors when considering whether to re-open or to modify the HMS time/area closures. These include the bycatch of protected species, non-target species, and undersized fish. Also, socio-economic issues must be considered. A reexamination of the PLL closed areas, using information that has become available since the implementation of circle hooks in the PLL fishery, may be warranted because much of that information was not available during the recent development of the Consolidated HMS FMP.

NMFS has received an application for an EFP to collect data from PLL vessels in the East Florida Coast and Charleston Bump closed areas to gather data on circle hook performance, and target and bycatch species composition. This information could be compared with historical PLL logbook and observer data to determine if the new PLL practices warrant a review of fishing in

the PLL closed areas. NMFS published a notice in the **Federal Register** on March 13, 2007, to solicit public comments on the EFP request. NMFS published an additional notice in the **Federal Register** on April 11, 2007, extending the comment period to April 25, 2007. The comment period was extended again to June 20, 2007, through publication of a notice in the **Federal Register** on May 7, 2007, based upon a request by the South Atlantic Fishery Management Council and others.

Finally, the Agency recently established new criteria in the Consolidated HMS FMP to be considered when deciding whether to add, change, or modify time/area closures. These criteria include, but are not limited to, the following: (1) ESA related issues, concerns, or requirements; (2) bycatch rates of protected species, prohibited HMS, or non-target species; (3) bycatch rates and post-release mortality rates of bycatch species associated with different gear types; (4) new or updated landings, bycatch, and fishing effort data; (5) evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; (6) social and economic impacts; and (7) the practicability of implementing new or modified closures compared to other bycatch reduction options. For ICCAT managed species, NMFS will also consider the overall effect of U.S. catches on that species before implementing time/area closures. If the public believes that modification of an existing closure or the establishment of a new closure is warranted based upon these criteria, they may submit a petition for rulemaking to NMFS. It should contain sufficient information to consider the substance of the petition. The specific information that should be included in the petition is described in the Consolidated HMS FMP. Based upon the results of such an analysis, NMFS will determine whether to reopen or modify the PLL closed areas.

Comment 45: NMFS must not implement any new regulations that would allow PLL fishing in the closed areas, or increase longline activity for the U.S. commercial fleet in the vicinity of the U.S. EEZ. These PLL closures are the only reason why swordfish abundance has increased. The recreational fishery has improved for every pelagic species, not just swordfish, since the PLL time/area closures were first implemented. These areas are extremely important management features that benefit swordfish, billfish, tuna, and protected species and must remain intact. There are still many undersized swordfish in these areas. If NMFS allows PLL vessels in the closed areas, the swordfish fishery will collapse again.

Response: As indicated in response to Comment 44, the current time/area closures were implemented for specific management objectives. NMFS may modify existing closures, as appropriate, consistent with the FMP, once the objective of the time/area closure has been met. Additionally, because fisheries, fishing gear, fishing practices, and stock status change over time, NMFS must periodically examine the continued need for the existing time/area closures. The criteria that NMFS will consider are described in the response to Comment 44. Based upon the results of such an analysis, NMFS will decide whether or not to reopen or modify the PLL closed areas.

Comment 46: Swordfish abundance has increased because of the PLL closed areas. The DeSoto Canyon provides Florida recreational fishermen in the Gulf of Mexico with better fishing opportunities. The Mississippi Canyon and Green Canyon are also biologically rich areas. Perhaps NMFS should consider reopening portions of the DeSoto Canyon in exchange for closing portions of the Mississippi or Green Canyons. This could benefit species that reside or transit the western Gulf of Mexico.

Response: These are options that NMFS could consider in the future. In analyzing the time/area closures, NMFS will strive to balance protection for overfished species, undersized fish, threatened and endangered species, and marine mammals, while providing opportunities for financially solvent fisheries.

Recommendations for Future Management

Comment 47: To increase swordfish landings and/or improve management, NMFS should consider restructuring its HMS permit system. Specific suggestions include: (1) place swordfish in the General Category tuna permit; (2) allow Incidental swordfish permits to be converted to directed swordfish permits; (3) remove the restriction that requires three permits to fish for swordfish; (4) reinstate lapsed permits in the Barnegat Light area; (5) allow for the leasing of inactive permits; (6) allow all vessels that hold an Illex moratorium permit to apply for an Incidental swordfish permit; (7) implement a commercial rod and reel permit (not limited access) that would allow sport fishermen to sell their swordfish; and (8) issue more swordfish permits.

Response: NMFS notes these very specific and informative comments from the public and will take them into consideration in the future, as warranted.

Comment 48: If U.S. fishermen substantially increase their swordfish catch from July to October, along with the Canadian production, the market will not be able to support all of the fresh product in the first couple of years, which is when we need to make a difference. To retain the U.S. swordfish quota, NMFS should allow U.S. vessel owners to deploy large freezer vessels (50 meters or larger with −60° C freezers) to substantially increase catches without destroying the fresh swordfish market. These types of vessels can stay at sea for two to three months at a time. The Grand Banks are fishable from June-November, so these vessels could take two trips annually to the Grand Banks, and then fish offshore in the south during winter months, freezing the entire catch at −60° C. The vessels would be fishing rather than steaming back and forth to the dock. The landed fish would be sold on an entirely different market than fresh product. This is what the United States needs to catch its swordfish quota, and it would not affect local fresh markets. It would also create an exportable product. To deploy a vessel of this caliber in time for the 2007 Grand Banks season, U.S. vessel captains need permission to contract or lease an existing, ready-to-fish vessel. This would be a vessel flagged outside of the United States. For the short term (three to five years), U.S. owners should be allowed to obtain existing foreign-flagged vessels. Then, after three to five years, they should be allowed to bring these same vessels under U.S. ownership and flag. It would be necessary to consider permits for these vessels too. Perhaps NMFS should allow for a 50–percent or larger increase, instead of a 35–percent increase in vessel upgrading.

Response: As indicated in the response to Comment 36, NMFS may consider the concept of freezer vessels fishing for swordfish. Under the final management measures, some vessels potentially could be upgraded, through conversion or permit transfer, to be utilized as freezer vessels, depending upon the size of the baseline vessel. In the longer-term, it may be necessary to further analyze the potential impacts associated with a freezer fleet to determine the appropriate number of vessels, permit qualification criteria, and environmental impacts. Under the Magnuson-Stevens Act, foreign vessels may only harvest the portion of the

optimum yield that will not be harvested by vessel of the United States. Foreign vessels fishing in the U.S. EEZ must also comply with the requirements of Title II of the Magnuson-Stevens Act.

Comment 49: It is important to open the Windward Passage and the area off the Yucatan to allow a larger percentage of the Atlantic swordfish fleet to fish in the winter.

Response: The Windward Passage is a strait in the Caribbean Sea, between Cuba and Haiti. The waters off the Yucatan peninsula are largely within Mexican jurisdiction. Therefore, NMFS does not have the authority to open these waters to U.S. vessels.

Comment 50: The swordfish market has collapsed in terms of price. The problem is not with the fish, but with the prices that commercial longliners receive for their swordfish. These boats fish for tunas because of the price. There is a limited U.S. market for fresh swordfish. Therefore, market revitalization to increase public demand for swordfish is critical. Promotional marketing of domestic swordfish would help reduce imports. Also, NMFS must combat media perceptions that swordfish are unsafe due to mercury, and that swordfish are endangered. U.S. fishermen get hurt every year by swordfish imports from Canada, especially in September when the domestic ex-vessel price plummets from over $4/lb to around $2/lb.

Response: Market considerations are important. In October 2006, NMFS announced the results of a government-sponsored study conducted by the National Academy of Sciences addressing seafood safety and the health benefits associated with eating seafood. NMFS intends to continue to distribute fact-based information to the public regarding seafood consumption. For example, it is important to publicize the fact that swordfish are almost fully rebuilt to refute persistent perceptions that the stock is severely overfished. Exploring potential cooperative efforts with the seafood industry may further serve to promote domestic markets. Also, NMFS published a final rule in the **Federal Register** (April 11, 2007, 72 FR 18105) that provides for the establishment of Seafood Promotion Councils designed to help market and promote seafood to U.S. consumers, to eliminate confusion by providing the public with accurate information on the health benefits of eating seafood, and to assist the seafood industry to better market its products.

Comment 51: NMFS must stop swordfish imports from flooding the U.S. market with cheap product. The United States should require that imported pelagic species be harvested according to the same conservation standards as domestic fish.

Response: NMFS continues to conduct bilateral and multilateral outreach efforts with foreign countries, particularly regarding the use of circle hooks. In addition, the international provisions of the newly re-authorized Magnuson-Stevens Act will support the United States' continued efforts at the international level to pursue conservation measures comparable to the United States, while taking into account differing conditions.

Comment 52: NMFS should establish in-season adjustments to PLL closed areas to improve the ability of the longline fleet to better harvest the swordfish quota. Flexibility is necessary to adjust pre-established criteria, as is currently conducted in the bluefin tuna fishery. For example, in the Charleston Bump Area, the average swordfish size is increasing. The objective of that closed area has been met, but the area is still closed due to a lack of flexibility in the regulations. The swordfish industry has been denied a reasonable opportunity to catch a greater share of the U.S. quota, because NMFS lacks the authority to modify or waive closures on a real-time basis.

Response: In-season adjustments are pre-specified modifications to existing management measures, and are typically used to change subquotas, retention limits, or some time/area closures such as restricted fishing days (RFDs,) based on landing trends, seasonal distribution of the species, availability, abundance, migration patterns, and other factors. The impacts associated with in-season adjustments are limited, and have already been analyzed in other supporting documents. For time/area closures that are more significant in scope, NMFS specified seven criteria in the Consolidated HMS FMP that may be considered when implementing or adjusting time/area closures. These are described in the response to Comment 44.

Comment 53: The United States needs to show other countries that circle hooks are reducing bycatch while fostering an economically viable fishery. This would encourage other countries to use them and reduce bycatch throughout the Atlantic Ocean.

Response: NMFS has conducted, and will continue to conduct, bilateral and multilateral outreach efforts with foreign countries regarding the use of circle hooks. In 2004, NMFS demonstrated the use of circle hooks at ICCAT. In 2005, ICCAT passed a non-binding measure regarding the use of circle hooks. These types of activities, in combination with economically viable domestic fisheries, may be an effective way to reduce bycatch throughout the Atlantic Ocean.

Comment 54: NMFS received comments regarding the need to either increase or decrease the swordfish minimum size requirement. Comments include: The swordfish minimum size should be increased to at least 55 inches. This would allow the fish to grow larger and rebuild the stock. NMFS should reduce the minimum swordfish size to increase catches. This would be more effective than the preferred alternatives at attaining the U.S. quota.

Response: The current minimum size and weight for swordfish is 29 inches (73 cm) from cleithrum to caudal keel (CK); 47 inches (119 cm) lower jaw fork length (LJFL); or 33 lb (15 kg) dressed weight (dw). These minimum sizes are established by ICCAT. However, the United States does have some discretion to negotiate a higher minimum size, considering domestic requirements. NMFS will consider this in the future, as appropriate.

Comment 55: We do not support enacting measures to revitalize the PLL fishery, per se, because the gear results in intolerable levels of bycatch of protected and other species. Therefore, NMFS is urged to investigate other gears that will allow the United States to capture its swordfish quota without excessive bycatch.

Response: This final rule is intended to facilitate the ability of U.S. vessels to fully harvest the domestic swordfish quota. The PLL fleet is a major component of the swordfish fishery. Therefore, NMFS believes that appropriate measures to revitalize the domestic PLL fleet are necessary, as are other measures to increase swordfish landings in other sectors. The number of active vessels that reported fishing with PLL gear has declined by approximately 68 percent since 1997, the last year that the United States fully harvested its swordfish quota. However, in that same time period, the swordfish stock has rebuilt from 65 percent of B_{msy} to 99 percent of B_{msy}. This indicates that a balanced approach is necessary to increase swordfish landings, while ensuring that the fishery remains sustainable and that bycatch is minimized to the extent practicable. The HMS PLL fishery is currently subject to many regulations that were implemented to reduce bycatch and bycatch mortality. These include circle hook requirements, bait restrictions, mandatory possession and use of careful handling and release equipment, protected species safe handling, release, and identification certification

workshops, and time/area closures. In addition, PLL vessels must utilize VMS, submit logbook reports, and adhere to retention limits, quotas, minimum sizes, prohibited species restrictions, and other regulations. The measures in this final rule are anticipated to modestly increase swordfish landings, with only minor environmental impacts. NMFS will consider additional actions in the future. In the meantime, NMFS encourages investigations of other gears that will allow the United States to fully capture its swordfish quota without excessive bycatch.

Comment 56: NMFS should allow greenstick gear in the Longline and General category tuna fisheries because the reduction in billfish bycatch in the tuna fishery may significantly offset any potential negative impact that swordfish revitalization may have on billfish bycatch. Greenstick gear is the most environmentally friendly method to commercially harvest tunas (including bluefin tuna) because it minimizes the discard mortality of undersized tunas and virtually eliminates any billfish bycatch.

Response: NMFS did not modify the list of authorized gears to include green stick gear in the Consolidated HMS FMP due to confusion over the gear and concerns regarding bluefin tuna stock status. Rather, NMFS clarified the use of the gear and stated it would conduct additional outreach regarding its use. NMFS is continuing to examine the use of green stick gear and its impact on the environment, as well as its social and economic benefits and consequences.

Comment 57: NMFS should implement the same regulations for swordfish that currently apply to yellowfin tuna in the CHB fishery. NMFS should allow charter boats to conduct either charter or commercial trips and allow the swordfish to be sold.

Response: HMS CHB vessels may sell up to three yellowfin tuna per person per day when engaged on a for-hire trip, and there are no limits on the amount of yellowfin tuna that may be retained and sold when on a non for-hire trip. CHB vessels may not sell swordfish, unless the vessel also possesses a swordfish Handgear permit. This restriction was first implemented when swordfish were overfished, and the United States was fully harvesting its quota prior to 1997. Because these conditions have changed, NMFS may further analyze and reconsider the restriction in the future.

Comment 58: Please consider limiting or banning buoy gear. We oppose granting additional buoy permits, and favor 100 percent VMS coverage for vessels fishing with buoy gear. Other restrictions on the buoy gear fishery must be considered, including circle hook requirements and geographical restrictions. Fishermen are concerned about the significant growth of this fishery in the last few months. Gear conflicts are a constant concern by both commercial and recreational interests. Keeping the buoy gear fishery small, with controlled growth, would reduce conflicts and allow for a sustainable fishery.

Response: NMFS received many comments regarding the buoy gear fishery, especially as it occurs in the Straits of Florida. The public is reminded that, prior to 2006, the HMS buoy gear fishery was largely unregulated. NMFS significantly restricted the fishery in the Consolidated HMS FMP by authorizing buoy gear only for swordfish Handgear and Directed permit holders, limiting the number of floatation devices that could be deployed, limiting the number of hooks per buoy gear, and requiring that monitoring devices be attached to each gear. In addition, NMFS amended the definition of handline by requiring that they remain attached to vessels. The effect of these regulations was to limit the buoy gear fishery only to commercial fishermen, reduce the likelihood of lost gear, and provide for the collection of logbook information. As logbook and other research information become available, NMFS will consider whether additional regulations or restrictions are necessary.

Comment 59: We oppose the issuance of any type of commercial swordfish permit to current recreational fishermen to fish in the closed zones. Making numerous commercial permits available would cause far too many buoy gear conflicts with the recreational fleet in the Florida Straits.

Response: All commercial swordfish permits are limited access, which means that no new permits are being issued. However, persons may obtain an existing commercial limited access fishing permit through the permit transfer regulations specified at § 635.4(l). The PLL and BLL closed areas apply only to those specific gears, and are not for the exclusive use of recreational fishing. For example, in the East Florida Coast closed area, holders of swordfish Handgear or Directed permits may fish for swordfish using handgear and buoy gear. Similarly, commercial shark permit holders may fish for sharks using BLL gear in this area. As logbook and other research information regarding buoy gear become available, NMFS will consider whether additional regulations or restrictions are necessary.

Comment 60: Careful handling and release equipment should be required for HMS CHB, especially in the Gulf of Mexico. Terminal tackle should be removed to help increase post-release survival.

Response: Terminal tackle should be removed from all species prior to their release in order to increase post-release survival. Current HMS regulations require that all fish that are not retained must be released in a manner that will ensure the maximum probability of survival, but without removing the fish from the water. Billfish that are not retained must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water. NMFS' Southeast Regional Office (SERO) recently published Amendment 18A to the Gulf of Mexico Reef Fish Management Plan on August 9, 2006 (71 FR 45428). Amendment 18A required that all for-hire reef fish permitted vessels must possess and utilize release gear and careful handling protocols to reduce injuries to sea turtles and smalltooth sawfish. SERO estimated that 1,500 - 1,600 for-hire reef fish vessels would be affected by this requirement. Because many reef fish permitted for-hire vessels in the Gulf of Mexico also possess an HMS CHB permit, they are already required to possess and utilize careful handling and release equipment. Depending upon future analyses, NMFS may consider requiring other HMS permitted vessels to possess and utilize careful handling and release equipment.

Comment 61: NMFS should keep the live bait prohibition for PLL vessels in the Gulf of Mexico, because live bait results in higher rates of white marlin bycatch. If white marlin is listed under the ESA, most fisheries will be out business.

Response: The live bait prohibition for HMS PLL vessels is not being modified in this final rule. However, NMFS has received several requests to reconsider the regulation because mandatory circle hooks have effectively reduced marlin bycatch and bycatch mortality. As more information becomes available through logbooks, observer data, and research efforts, NMFS may re-evaluate this requirement.

Comment 62: Any effort to increase U.S. recreational swordfish landings is worthless unless adequate data collection methods are in place to monitor and report these landings. Accurate data is important. NMFS should reach out to the recreational fishing industry to work on these improvements. Outside of Florida, recreational swordfish landings are considered rare events and are not likely

to be recorded by traditional data collections like the Marine Recreational Fisheries Statistical Survey (MRFSS), the Large Pelagic Survey (LPS), and the Recreational Billfish Survey (RBS). MRFSS is fatally flawed, especially for swordfish. It is difficult for MRFSS surveyors to see if people are swordfish fishing because they are typically caught at night, oftentimes on a tuna or snapper/grouper trip. Therefore, there may not be many swordfish recorded in the MRFSS survey. NMFS should start using CHB logbooks to assess recreational swordfish landings. Additionally, NMFS should consider using a catch card program for swordfish similar to programs used by Maryland and North Carolina for BFT.

Response: Accurate recreational landings data are important. For this reason, all non-tournament swordfish landings by HMS Angling category permit holders are required to be reported by calling (800) 894–5528. In Maryland and North Carolina, vessel owners should report their swordfish landings at state-operated reporting stations. For information on these state's reporting stations, please call (410) 213–1531 (MD) or (800) 338–7804 (NC). Swordfish landed in a registered tournament may be reported by the tournament operator. However, vessel owners are responsible for reporting if the tournament operator does not. HMS CHB permit holders must complete a logbook with landings information and submit it to NMFS, if selected. Finally, the newly re-authorized Magnuson-Stevens Act has new MRFSS-related provisions which NMFS will address, as required under the Act.

Comment 63: NMFS should consider allowing recreational anglers 48 hours to report their recreational swordfish and billfish catches, instead of 24 hours. This would increase recreational reporting and, thus, recorded U.S. swordfish landings.

Response: Currently, all recreational landings of swordfish must be reported to NMFS within 24 hours of landing. This ensures timely and accurate data collection. NMFS may consider extending the time period, if warranted, if it does not compromise data collection. The Agency is also currently testing an on-line reporting system to facilitate recreational reporting.

Comment 64: NMFS should allow recreational fisherman to retroactively report previous swordfish landings. It would substantially increase historical recreational swordfish catches.

Response: The recreational reporting requirement has been in place since 2003. NMFS is concerned that data quality and accuracy would be compromised if an amnesty program were implemented to allow for retroactive reporting of recreational landings. Unless the angler kept very detailed catch records, much of the data would be based upon personal recollection and have limited usefulness. It would also be very difficult to verify the reports.

Comment 65: NMFS needs to employ a tagging system where only legal, tagged swordfish may be sold and distributed. This would help to track the removal of swordfish biomass.

Response: NMFS received numerous comments regarding the illegal sale of recreationally caught swordfish. A tagging system could reduce this activity. Tags have been used effectively in the bluefin tuna fishery for many years, and could be appropriate for the swordfish fishery. However, domestic swordfish landings have historically been much higher than bluefin tuna landings, so the logistics associated with administering a swordfish tagging program would have to be addressed.

Comment 66: Recreational fisherman need to have the current regulations presented to them in a way that makes them understand how to identify catches, know if they are legal, and know if they need to be reported. Perhaps mandatory workshops should be required for recreational fishermen. NMFS could also include information on fishing regulations and species identification with permit mailings or when renewing permits.

Response: It is important for recreational fishermen to know and understand the regulations that affect their fishery. Due to the size and diversity of the HMS recreational fishing community, and because some anglers may fish only a few times a year, this sector presents a unique challenge. In addition to current outreach methods such as the HMS website and the e-mail list, additional outreach efforts are being explored with local newspapers, magazines, and other websites. Mandatory workshops for recreational anglers are not being considered at this time because they would likely be expensive and difficult to administer, given the large number of recreational anglers.

Comment 67: Socio-economic data on recreational swordfishing is almost non-existent. NMFS must thoroughly evaluate socio-economic ramifications before making any major changes in swordfish fishery dynamics. This is a requirement of the Magnuson-Stevens Act.

Response: The recreational swordfish fishery has developed relatively rapidly within the past three to six years, as the swordfish stock has continued to rebuild. For this reason, detailed socio-economic data are limited. However, NMFS collects mandatory recreational swordfish landings data and mandatory swordfish tournament registration forms. In addition, NMFS has received many comments from recreational fishery participants in recent years regarding a variety of proposed management measures. Swordfish fishing is an important and growing recreational activity off the southeast coast of Florida, and is starting to spread to other regions as well. NMFS thoroughly considered verifiable information available on the socio-economic ramifications of the final management measures on the recreational swordfish fishing community during this rulemaking. As the swordfish stock continues to rebuild and the recreational fishery continues to grow, it will be necessary to obtain more socio-economic data regarding this activity.

Questions Regarding the U.S. ICCAT Swordfish Quota

Comment 68: How many years is the current swordfish quota from ICCAT valid for?

Response: In 2006, ICCAT-recommended a 3,907 mt (ww) U.S. North Atlantic swordfish quota for 2007 and 2008.

Comment 69: Are dead discards counted against the ICCAT swordfish quota or used in stock assessments?

Response: Yes. Estimated dead discards from scientific observer and logbook sampling programs are counted against the U.S. North Atlantic swordfish quota, and are used in the swordfish stock assessments conducted by ICCAT's SCRS.

Comment 70: If the United States loses its ICCAT swordfish quota, would it affect recreational fisheries in this country as well?

Response: It is possible that recreational fisheries could be directly or indirectly affected if the United States loses a portion of its swordfish quota. Recreational swordfish landings are included within the Incidental quota allocation, currently at 300 mt. Depending upon the size of any potential reduction in the overall U.S. swordfish quota, the Incidental quota allocation or recreational retention limits could be reduced correspondingly. Indirect impacts could occur if foreign nations are given a larger quota share, and those foreign vessels exert additional fishing effort on swordfish without measures to reduce the bycatch of protected species, undersized swordfish, and billfish. This

is one of the primary reasons why NMFS believes it is imperative to retain the historical U.S. North Atlantic swordfish quota share.

Comment 71: If the U.S. swordfish quota is not being caught by 2009, does NMFS have a contingency plan?

Response: NMFS intends to continue monitoring U.S. swordfish landings and may adjust management measures in the future to provide additional opportunities for U.S. vessels to land the domestic swordfish quota.

Changes from the Proposed Rule

In addition to minor edits, NMFS has made the following two changes to the proposed rule.

1. In the final rule, at § 635.4(l)(2), NMFS has modified paragraphs (ii)(B), and (ii)(C) by removing language specifying that a vessel's horsepower, length overall, gross registered tonnage, and net tonnage may be increased only once, subsequent to the issuance of a limited access permit. Also, in the final rule at § 635.4(l)(2), paragraph (ii)(C) modifies the current regulations by removing language specifying that if any of the three specifications of vessel size are increased, any increase in the other two must be performed at the same time. These changes were made to provide additional flexibility for permit holders to incrementally upgrade their vessels, and to expedite the issuance and renewal of HMS permits. Under current regulations, NMFS must review over seven years worth of permit renewal information for each application submitted by the owner of an upgraded vessel to determine if the original vessel, or its replacement, has already been upgraded, even if the upgraded vessel is within the allowable upgrade specifications. If an upgrade has already occurred, several pieces of correspondence are often necessary to resolve the situation. NMFS believes that removing the regulation specifying that a vessel may only be upgraded once will not compromise the intent of the vessel upgrading restrictions and will have limited ecological impacts, because all of the upgraded vessels would still need to comply with the allowable upgrade specifications. This modification is within the range of alternatives considered in the EA/RIR/IRFA, and will provide additional flexibility for all HMS limited access permit holders to incrementally upgrade their vessels, while expediting the issuance and renewal of HMS permits.

2. In the final rule at § 635.4(l)(2)(x), NMFS has clarified the procedures, and specified the required permits, to qualify for the 35 percent limited access vessel size upgrade allowance, with no restrictions on horsepower. These changes were made to better inform the public of the requirements, and to facilitate implementation of the new regulations.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C., 1801 *et seq.*, and ATCA, 16 U.S.C. 971. NMFS has determined that the final rule and its related Environmental Assessment (EA) are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable laws.

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). A summary of the information presented in the FRFA follows.

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires the Agency to state the objective and need for the rule. As stated in the proposed rule, the objective of this final rule is to provide a reasonable opportunity for U.S. vessels to more fully harvest the ICCAT-recommended domestic swordfish quota, consistent with the Magnuson-Stevens Act and ATCA, by modifying North Atlantic swordfish retention limits and HMS limited access vessel upgrading restrictions.

Section 604(a)(2) of the RFA requires the Agency to summarize significant issues raised by the public comments in response to the IRFA, summarize the assessment of the Agency of such issues, and state any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's response are included in this final rule. NMFS did not receive any comments that were specific to the IRFA, but did receive a limited number of comments related to economic issues and concerns. These comments are responded to with the other comments (see Comments 20, 34, and 37). The specific economic concerns are also summarized here.

A comment was received expressing concern that increasing the Incidental swordfish retention limit would put more swordfish in the market, and therefore have negative economic consequences by reducing the price that Directed swordfish permit holders receive for their swordfish. NMFS recognizes that an increase in the volume of incidentally-caught swordfish could impact swordfish prices received by all permit holders. However, some constituents have indicated to NMFS that the current 2–fish Incidental retention limit does not justify the additional effort and costs of fishing for, or landing, swordfish, and then bringing it to market. These constituents stated that the current 2–fish Incidental retention limit has contributed to an inadequate infrastructure and marketing channel in some areas that is not suitable for handling swordfish. A 30–fish retention limit should provide more of an incentive to land and market incidentally-caught swordfish, without a significant disruption to swordfish prices. Increased participation by Incidental swordfish permit holders could help to develop a more consistent supply of swordfish, and thus lead to a more robust market for swordfish products, and help to stabilize prices.

NMFS also received public comment regarding the availability of capital to pay for vessel upgrading. There was concern that relaxing the vessel upgrading restrictions would not revitalize the swordfish fishery, because many fishermen could not afford to upgrade their vessels, or were unable to obtain loans for vessel upgrades. However, other constituents identified the current vessel upgrading restrictions as one factor, among several, that is limiting the ability of the U.S. vessels to more fully harvest the U.S. swordfish quota. NMFS recognizes that each business is unique. Some vessel owners may choose to upgrade their vessels, whereas others will not. Owners are not required to upgrade vessels under this final rule. The option to upgrade could improve the flexibility of some vessel owners to make individual business decisions, based upon their unique circumstances. This could result in larger, more modern, U.S. swordfish vessels, and increased swordfish landings.

Finally, some commenters indicated that a 35 percent upgrade in vessel size was not sufficient for their business purposes. NMFS believes that a 35 percent increase in vessel size, which would allow an ''average'' 55–foot vessel to be upgraded to a 69 - 74–foot vessel depending upon whether a vessel has already been upgraded by 10 percent, is a meaningful increase in vessel size. There are approximately 50

vessels greater than 70 feet in length that would qualify for the new upgrading provisions. These vessels could be upgraded to more than 90 feet in length and possibly be converted to freezer vessels, upgrades which some commenters suggested are necessary. NMFS believes it is important to keep fleet capacity commensurate with resource abundance to ensure the sustainability of the swordfish fishery. Until additional analysis is completed and other logistical issues are resolved, NMFS believes that it is necessary to keep overall fleet capacity within some limits.

No changes were made to the final rule as a result of these comments.

Section 604(a)(3) of the RFA requires the Agency to describe and estimate the number of small entities to which the final rule will apply. NMFS considers all commercial permit holders to be small entities as reflected in the Small Business Administration's (SBA) criteria (gross receipts less than $4.0 million, the SBA size standard for defining a small versus a large business entity). The final action to increase incidental swordfish retention limits could directly affect 48 vessel owners possessing valid Incidental swordfish permits. The final actions to modify recreational swordfish retention limits could directly affect approximately 4,173 HMS Charter/headboat permit holders and 25,238 HMS Angling category permit holders. The proposed action to modify PLL vessel upgrading restrictions could directly affect approximately 176 vessel owners possessing valid swordfish permits (i.e., concurrently possessing Directed or Incidental swordfish permits, Directed or Incidental shark permits, and an Atlantic Tunas Longline category permit). In total, the final actions could directly affect 29,587 HMS permit holders. Of these, 4,349 commercial permit holders (the combined number of HMS Charter/headboat permit holders and valid swordfish-permitted PLL vessel owners) are considered small business entities according to the Small Business Administration's standard for defining a small entity (Angling category permit holders are not considered businesses). Other small entities involved in HMS fisheries such as processors, brokers, ship builders, tackle shops, bait suppliers, marinas, and gear manufacturers might also be indirectly affected by the final regulations. However, the final rule does not apply directly to them. Rather, it applies only to permit holders and fishermen.

Section 604(a)(4) of the RFA requires NMFS to describe the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirements of the report or record. This final rule does not contain any new reporting, recordkeeping, or other compliance requirements that will require new Paperwork Reduction Act filings. Vessel owners and operators must comply with the revised swordfish retention limits and upgrading regulations in the same manner that they have been required to comply with existing swordfish retention limits and upgrading regulations. However, the regulations contained in this rule are less restrictive than the current provisions.

Section 604(a)(5) of the RFA requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Additionally, the RFA (5 U.S.C. 603(c)(1) through (4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all commercial permit holders to be small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the compliance requirements only for small entities. Thus, there are no alternatives that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above) because all of the alternatives considered were intended to increase the domestic harvest of Atlantic swordfish, while maintaining important bycatch reduction measures. With regards to category three above, all of the alternatives for modifying vessel upgrading restrictions are based upon performance standards. In particular, the selected alternative does not mandate a particular change to vessel design, but rather provides additional flexibility for vessel owners to decide how best to upgrade their vessels.

NMFS analyzed six different alternatives to increase swordfish retention limits, and five different alternatives to modify HMS limited access vessel upgrading restrictions. As described below, NMFS has provided justification for the selection of the preferred alternatives to achieve the desired objectives.

Alternative 1a is considered the no action, or status quo, alternative for modifying recreational and incidental swordfish retention limits. Under current regulations, vessels issued valid Incidental swordfish limited access permits, other than those in the squid trawl fishery, are allowed to retain, possess or land no more than two swordfish per vessel per trip in or from the Atlantic Ocean north of 5° N. lat. Vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery are allowed to retain, possess, or land no more than five swordfish per trip from the same area. HMS Angling and Charter/headboat vessel permit holders are allowed to retain one North Atlantic swordfish per person, up to three per vessel per trip.

Under alternative 1a, there would be no change in the current baseline economic and social impacts associated with previously implemented North Atlantic swordfish retention limits. This alternative was not selected because it may be contributing to persistent underharvests of the domestic swordfish quota. Nineteen percent of trips reported by Incidental swordfish permit holders in the HMS logbook from 2002 - 2005 reported swordfish discards. If any of these swordfish discards were attributable to exceeding the current two fish limit, then these discards could potentially represent lost revenues associated with the status quo alternative. The current recreational swordfish retention limit of one fish per person, up to three per trip, may be lowering the demand for charter and headboat trips, especially when several people are on board, since each person may not be able to retain a swordfish.

Under alternative 1b, the North Atlantic swordfish retention limit for vessels issued valid Incidental swordfish limited access permits would be removed, except that, for vessels issued valid Incidental swordfish permits that participate in the squid

trawl fishery, the limit would be increased to ten, until 70 percent of the adjusted domestic semi-annual North Atlantic swordfish quota is projected to be landed. After 70 percent of the directed semi-annual is projected to be landed, the Incidental swordfish retention limit would revert back to two swordfish per trip, and five swordfish per trip for squid trawl vessels, for the remainder of the semi-annual period.

Alternative 1b was not selected because it could potentially have the most significant adverse ecological impacts if vessel owners with Incidental swordfish permits alter their strategies and choose to deploy additional sets to target swordfish. The potential economic gain from this alternative would be associated with increased landings from two swordfish per trip up to as many as 605 swordfish per trip (the highest number of swordfish reported landed by a directed vessel) minus what vessels could make tuna fishing during the same time if they switch entirely to swordfish fishing. Using the mean weight of swordfish landed in 2005 of 75.7 lb and the mean ex-vessel price of $3.71 per lb in 2005, the estimated value of potentially retaining up to an additional 603 swordfish could be as high as $169,351 per trip. However, this should only be considered an upper bound, especially because it does not take into account reductions in the retention of other species that might occur in order to make room to hold swordfish on the vessel. More typically, vessels issued Directed swordfish permits during the period from 2002 to 2005 kept an average of 60 to 77 swordfish per trip. That would equate to potentially $16,289 to $21,064 in additional revenue per trip for Incidental swordfish permit holders that engage in directed fishing for swordfish, assuming their capability to harvest swordfish is the same as the Directed swordfish permit holders.

Alternative 1b would also increase the swordfish retention limit from 5 to 10 swordfish for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery. This effectively doubles the current retention limit for these vessels. From 1998 - 2004, all squid trawl vessels landed a combined average of 6.3 mt (ww) of swordfish per year. Increasing the limit for squid trawl vessels by an additional five swordfish per trip could potentially increase total annual landings of swordfish by all squid trawl vessels to 12.6 mt (ww) in total per year. This increase of 6.3 mt (ww) of swordfish would be worth a total of $38,743 per year among all squid trawl vessels, based on the 2005 average ex-vessel price of swordfish of $3.71 per lb and a ratio of whole weight to dressed weight of 1.33.

Alternative 1c, a selected alternative, would increase the North Atlantic swordfish retention limit for vessels issued valid Incidental swordfish limited access permits to 30 fish per vessel per trip; and for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery, would increase the limit to 15 fish per vessel per trip. This alternative was selected because it will provide an opportunity for Incidental swordfish permit holders to land swordfish that might otherwise be discarded, but prevent a large increase in additional directed fishing effort on swordfish. As many as 52 swordfish have been reported discarded on a single trip by Incidental swordfish permit holders, although most trips report few discards. A 30 fish limit is just below the median number of swordfish that have been landed by Directed swordfish permit holders from 2002 - 2005 (36 fish). Thus, this alternative is expected to have limited adverse ecological impacts, because fishing effort is not expected to greatly exceed current levels.

The economic benefits associated with this alternative are estimated by taking the difference between the value of two swordfish and the value of 30 swordfish. Using the mean weight of swordfish landed in 2005 of 75.7 lb and the mean ex-vessel price of $3.71 per lb in 2005, the estimated value of potentially retaining an additional 28 swordfish under this alternative is $7,864 per vessel per trip. Using logbook records from 2005, it is projected that total annual landings of swordfish could increase from 10,787 to 34,879 lb, if all reported discards were converted to landings, up to 30 fish. Using the average ex-vessel price of $3.71 per lb for 2005, the estimated total value of these additional landings would be $89,381 amongst all active Incidental swordfish vessels per year.

Alternative 1c would also increase the swordfish retention limit from 5 to 15 swordfish for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery. This would triple the current retention limit for these vessels. From 1998 - 2004, all squid trawl vessels landed an average of 6.3 mt (ww) of swordfish in total per year. Increasing the limit for squid trawl vessels by an additional ten swordfish per trip could potentially increase annual landings by all squid trawl vessels to 18.9 mt (ww) in total per year. This increase of 12.6 mt (ww) of swordfish would be worth a total of $77,487 per year among all squid trawl vessels, based on the same prices and ratios discussed above in alternative 1b.

Alternative 1d would increase the North Atlantic swordfish retention limit for vessels issued valid Incidental swordfish limited access permits to 15 fish per vessel per trip; and, for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery, would increase the limit to 10 fish per vessel per trip.

Alternative 1d would provide an opportunity for Incidental swordfish permit holders to land swordfish that otherwise might be discarded, and would prevent a large increase in additional directed fishing effort on the swordfish. Therefore, this alternative would have only limited adverse ecological impacts because effort would be expected to remain at current levels. However, alternative 1d was not selected because a 15 fish limit is significantly below the mean number of swordfish landed by Directed swordfish permit holders (36 fish), although it is much higher than the current limit of two fish. It would not be as effective as the selected alternative at increasing domestic swordfish landings.

The economic benefits of alternative 1d are estimated by taking the difference between the value of two swordfish and the value of 15 swordfish. Using the mean weight and ex-vessel price of swordfish landed in 2005, as described in alternative 1c above, the estimated value of potentially retaining an additional 13 swordfish under this alternative is $3,651 per vessel per trip. Using logbook records from 2005, it is projected that total annual landings of swordfish could increase from 10,787 lb to 30,350 lb, if all reported discards were converted to landings, up to 15 fish. Using the average ex-vessel price of $3.71 per lb for 2005, the estimated total value of these additional landings would be $72,579 amongst all active Incidental swordfish vessels per year.

Alternative 1d would increase the swordfish retention limit from 5 to 10 swordfish for vessels issued valid Incidental swordfish limited access permits that participate in the squid trawl fishery. This doubles the current retention limit for these vessels. From 1998 - 2004, all squid trawl vessels landed an average of 6.3 mt (ww) in total per year. Increasing the limit for squid trawl vessels by an additional five swordfish per trip could potentially increase annual landings by squid trawl vessels to 12.6 mt (ww) per year. This increase of 6.3 mt (ww) of swordfish

would be worth a total of $38,743 among all squid trawl vessels per year, based on the same prices and ratios discussed above in alternative 1b.

Alternative 1e, a selected alternative, would implement a North Atlantic swordfish retention limit for HMS Charter/headboat vessels of one fish per paying passenger, up to six swordfish per trip for charter vessels and 15 swordfish per trip for headboat vessels. This alternative would maintain the current recreational limit of one swordfish per person, but increase the allowable upper retention limit from three to six fish for charter vessels, or from three fish to fifteen fish for headboat vessels. This alternative was selected because for-hire vessels often carry multiple paying passengers. A six-fish upper vessel retention limit for charter vessels was the only alternative analyzed for this sector, besides the no action alternative, because these vessels are licensed to carry a maximum of six passengers per trip. Although headboats can carry upwards of 50 passengers, a 15–fish retention limit was analyzed because it would provide a better opportunity for anglers on headboats to land a swordfish, while maintaining a recreational aspect to the charter/headboat fishery. In addition, given the lack of data for swordfish retention by anglers, a 15 fish limit would still preclude potential negative effects on the swordfish stock. Thus, alternative 1e provides a reasonable opportunity for paying passengers to land swordfish, and may increase U.S. swordfish landings. Few adverse ecological impacts are anticipated under this alternative as swordfish are nearly rebuilt, and the recreational rod and reel fishery has been determined to have only minor impacts on protected species.

In 2005, approximately 25 percent of the swordfish reported landed by Charter/headboat vessels in the HMS non-tournament recreational reporting database were in groups of three fish on the same date. Even though a quarter of the trips may have been limited in the amount of swordfish retained under the existing vessel trip limit, the benefits of raising the limit could extend beyond those trips. The economic benefits would result from additional bookings of charter trips, because the perceived value of a trip for an angler may be increased by the ability to land more fish. The 2004 average daily HMS charterboat rate for day trips was $1,053. The willingness-to-pay for swordfish charter trips is likely to be much higher than this value. Increased charter and headboat bookings could lead to positive economic multiplier impacts to tackle shops, boat dealers, hotels, fuel suppliers, and other associated local and regional businesses.

Alternative 1f, a selected alternative, would implement a North Atlantic swordfish recreational retention limit for HMS Angling category vessels of one fish per person per trip, up to four swordfish per vessel per trip. This alternative would maintain the current recreational limit of one swordfish per person, but increase the upper retention limit from three fish to four fish per vessel per trip. A four-fish upper vessel retention limit for angling vessels was the only alternative analyzed for this sector, besides the no action alternative, because it would provide a modest increase in the opportunity to land a swordfish, while maintaining a recreational aspect to the fishery. Because there were 25,238 vessels issued HMS Angling category permits, as of February 1, 2006, an increase in the upper retention limit of more than one fish per angling vessel was considered, but rejected, due to concerns about potentially excessive recreational landings. HMS Angling category vessels do not carry paying passengers, so a higher limit based on the number of paying passengers onboard was also considered, but rejected. Thus, alternative 1f provides a reasonable opportunity for recreational anglers to land swordfish, and may increase U.S. swordfish landings. Few adverse ecological impacts are anticipated under this alternative as swordfish are nearly rebuilt, and the recreational rod and reel fishery has been determined to have only minor impacts on protected species.

Approximately seven percent of the swordfish reported landed by Angling category vessels in the HMS non-tournament recreational reporting database were in groups of three fish on the same day. Therefore, the increase from three to four swordfish per vessel per trip under this alternative would likely affect a similar percentage of trips. The economic benefit of this alternative would derive from an increased perceived value of a recreational angling trip, due to the ability to land more fish. Recreational anglers might take more trips, which could lead to some multiplier benefits to tackle shops, boat dealers, hotels, fuel suppliers, and other related businesses. The average expenditure on HMS related trips is estimated to be $122 per person per day based on the recreational fishing expenditure survey add-on to the NMFS' Marine Recreational Fisheries Statistical Survey (MRFSS). The expenditure data include the costs of tackle, food, lodging, bait, ice, boat, fuel, processing, transportation, party/charter fees, access/boat launching, and equipment rental.

Alternative 2a is the no action, or status quo, alternative for modifying HMS limited access vessel upgrading restrictions, because it would retain the existing regulations. Under current regulations, owners may upgrade vessels or transfer permits to another vessel only if the vessel upgrade or permit transfer does not result in an increase in horsepower (HP) of more than 20 percent, or an increase of more than 10 percent in length overall (LOA), gross registered tonnage (GRT), or net tonnage (NT), relative to the respective specifications of the first vessel issued the initial limited access permit (the baseline vessel). If any of the three vessel size specifications is increased, any increase in the other two must be performed at the same time. The current regulations also specify that vessel horsepower and vessel size may be increased only once. However, vessel size may be increased separately from an increase in vessel horsepower. These regulations have been in effect since 1999.

Alternative 2a was not selected because it may be contributing to persistent underharvests of the domestic ICCAT- recommended swordfish quota. It may also be contributing to a decline in the number of active PLL vessels (i.e., vessels reporting landings) by limiting vessel owners' ability to optimally configure their vessels to maximize profits given changing ecological, regulatory, and market conditions.

Under alternative 2a, there would be no change in the current baseline economic and social impacts associated with previously implemented North Atlantic swordfish vessel upgrade restrictions. By itself, the status quo alternative does not create any new economic burdens on HMS limited access permit holders. However, it would likely continue several negative economic impacts associated with upgrade restrictions. First, as previously mentioned, vessels may not be optimally configured for current market conditions, and therefore profits may be less than optimal. Second, current upgrade restrictions may make it burdensome for some vessels to comply with HMS observer accommodation requirements, due to inadequate bunk or berthing space. Third, some fishing vessels may wish to enhance their crew quarters in order to better attract labor. Finally, limitations on vessel upgrading may be affecting safety at sea. A larger vessel is generally more seaworthy than a smaller vessel, especially in rough seas. Current restraints on vessel size

may also affect the ability to modernize or purchase new vessels. Without changes to upgrading restrictions, the number of active vessels in the swordfish PLL fleet may continue to decline, and persistent underharvests of the annual swordfish quota may continue to accrue. The following alternatives may allow for greater flexibility and provide for a more efficient deployment of the swordfish fleet.

It is not possible to precisely quantify the economic impacts associated with the alternatives to modify HMS limited access permit vessel upgrading restrictions. This is because the decision to upgrade is a business decision, and depends largely upon whether the returns expected from an upgrade outweigh the costs of planning the upgrade, construction, financing, time to complete the necessary work, age of the current vessel, and the forgone revenues associated with being out of the fishery while vessel work is being completed. The potential economic benefits of vessel upgrades largely depend upon future harvests, ex-vessel prices, fuel prices, and labor costs. These factors fluctuate, often dramatically, with market forces from year to year making any estimated benefits difficult to assess. Independent of those factors, however, vessel owners will gain the economic benefits associated with having the increased flexibility to adjust vessel configurations in terms of length and horsepower to best fit their business needs. In addition, vessel owners under the following alternatives would be better able to comply with HMS observer accommodation requirements, and thus avoid lost fishing time. The potential to expand bunk and berthing areas could enhance the quality of life for crew and captains, provide intangible comfort benefits, and also potentially reduce the actual costs of retaining labor. Finally, the potential to upgrade vessels may have important positive safety implications, especially for smaller vessels operating far offshore in areas prone to extreme weather.

Under each of the following alternatives, vessel owners will have to weigh the costs of potentially upgrading the length or horsepower of their vessels by the potential economic benefits associated with an upgrade. Many vessel owners may choose not to upgrade, even with relaxed upgrade restrictions, because of the capital costs associated with upgrading. The main economic benefit associated with the following alternatives will likely be from not having to acquire a permit from a larger vessel, including the associated transaction costs, when an owner wishes to increase vessel size or horsepower.

The capital costs associated with potential upgrades are difficult to estimate. Large vessel length upgrades are not likely to occur by modifying existing vessels, according to several marine engineers and shipyards that NMFS contacted. They are more likely to result from the purchase of another vessel and the subsequent transfer of permits to that vessel. Horsepower upgrades are more likely to occur on existing vessels in conjunction with an engine replacement due to capital depreciation.

NMFS contacted several shipyards regarding the potential costs of new vessels and upgrades to existing vessels. The shipyards agreed that it is probably more economical to perform large increases in vessel length by acquiring another larger vessel, than by modifying existing vessels. However, the estimated cost of building a new vessel is uncertain because few new vessels have been built since the upgrade restrictions were implemented in 1999, according to the shipyards contacted. The overall cost of upgrading would likely depend on the current size of the vessel, the age of the vessel, where the work will be done, financing costs, and whether an existing used vessel is available with the desired specifications, versus constructing a new vessel. For example, a 68 foot PLL vessel over 20 years old recently had a sales price of $245,000, according to a vessel broker list. To better quantify the associated costs and potential scope of vessel upgrades, NMFS sought comments from the public on the current market costs of upgrading PLL and swordfish Handgear vessels, but did not receive any new information.

Alternative 2b would waive HMS limited access vessel upgrading and permit transfer upgrading restrictions for all vessels that are authorized to fish with pelagic longline gear for swordfish and tunas for 10 years, after which a new vessel baseline would be established and the current 10 percent LOA, GRT, NT; and 20 percent HP restrictions would go back into effect. A ten-year sunset provision was selected for this alternative because it provides a reasonable amount of time for owners to purchase or upgrade vessels, but establishes a deadline to account for any unanticipated future changes in the fishery or status of stocks.

This alternative would likely have positive economic benefits for PLL vessel owners because it could provide increased operational flexibility for business owners to modify their vessels. However, it is not possible to predict how many vessels would be upgraded under this alternative, as any estimate is predicated upon the decisions of many different owners. Waiving vessel upgrade restrictions for PLL vessels could produce secondary and regional economic impacts. Shoreside support businesses such as shipyards, marine architects, and other commercial vessel suppliers could receive increased business from owners wanting to upgrade their vessels. Fish dealers may need to expand their operations to handle any greater supplies of swordfish that could result from increased fleet capacity. It is also possible that the value of limited access permits could be reduced by waiving the upgrade restrictions. The supply of usable permits for vessel owners that want to upgrade under the current limited access regulations is restricted, because permits have to meet certain characteristics in order to be transferred to a different vessel. Removing the upgrading restrictions would give a potential new entrant into the fishery a larger selection of permits to choose from, since they would be able to select from a larger pool of potential permits for sale. This increased supply could reduce the value of limited access permits. However, any improvements in the profitability of the fishery might increase demand for permits and could potentially offset any decrease in permit value.

Alternative 2b was not selected because there would be no limit on the size to which PLL vessels could be upgraded. Therefore, unquantifiable adverse ecological impacts could occur, especially over the long term. However, it is also possible that larger PLL vessels might operate further offshore, thereby reducing some adverse impacts in nearshore areas.

Alternative 2c would waive HMS limited access swordfish handgear vessel upgrading and permit transfer upgrading restrictions for 10 years, after which a new baseline would be established and the current restrictions would go back into effect. A ten-year sunset provision was selected for this alternative because it provides a reasonable amount of time for owners to purchase or upgrade vessels, but establishes a deadline to account for any unanticipated future changes in the fishery or status of stocks.

This alternative would likely have positive economic benefits for swordfish Handgear permit holders because it could increase operational flexibility for business owners to modify their vessels according to their business needs. However, for the same reasons

discussed above, it is not possible to predict how many vessels would be upgraded under this alternative, or the anticipated economic impacts, because the estimate is predicated upon the decisions of many different vessel owners. In general, similar direct and indirect economic benefits to vessel owners, dealers, shipyards, processors, and shoreside support businesses that were discussed under alternative 2b could result.

Alternative 2c was not selected because it could result in unquantifiable adverse ecological impacts, especially over the long term, as there would be no limit on the size to which swordfish Handgear vessels could be upgraded. In addition, because the swordfish handgear fleet is currently most active in the East Florida Coast PLL closed area, ecological benefits associated with the area, including reductions in the bycatch of undersized swordfish, and non-target and protected species, could be compromised with a large expansion of the swordfish handgear fishery.

Alternative 2d would waive all HMS limited access vessel upgrading and permit transfer upgrading restrictions for 10 years, after which a new baseline would be established and the current restrictions would go back into effect. This alternative would likely have the largest potential economic benefits as well as the largest potential adverse ecological costs, particularly on sharks, because the universe of impacted entities is the largest among all of the alternatives, and there would be no limit on the size to which vessels could be upgraded. For this reason, it was rejected.

Alternatives 2b and 2c would be limited to vessels that are eligible to fish for swordfish and tunas with PLL gear, and swordfish Handgear vessels, respectively. Alternative 2d includes those vessels, as well as all other HMS limited access vessels, including those eligible to fish for sharks with bottom longline gear. Therefore, approximately 376 additional vessels would be eligible for unlimited upgrades under alternative 2d. While all of these additional shark vessels could be upgraded under this alternative, few are anticipated to take immediate advantage of the opportunity because of current regulatory conditions in the domestic shark fishery. Incidental shark permit holders are governed by retention limits for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Directed shark permit holders are governed by retention limits for LCS. Because of these retention limits, vessel size may not be a limiting factor in the shark fishery. Nevertheless, because many shark fisheries are overfished with overfishing occurring, the potential for adverse ecological impacts from increased effort on these species exists under alternative 2d. Other economic benefits and costs are similar to Alternatives 2b and 2c, including any secondary economic impacts to shoreside industries.

Alternative 2e, the selected alternative, would establish new HMS limited access vessel upgrading and permit transfer upgrading restrictions only for HMS vessels that are authorized to fish with pelagic longline gear for swordfish and tunas (i.e., vessels that concurrently possess Directed or Incidental shark and swordfish permits, and an Atlantic Tunas Longline category permit), equivalent to 35 percent LOA, GRT, and NT, as measured relative to the baseline vessel specifications (i.e., the specifications of the vessel first issued an HMS limited access permit), and remove horsepower upgrading and permit transfer upgrading restrictions for these vessels. This alternative was selected because it could improve the ability of U.S. vessels to fully harvest the domestic ICCAT-recommended swordfish quota, but imposes some limits on vessel upgrading by restricting the universe of potentially impacted entities to certain vessels only, and by limiting the magnitude of allowable upgrades.

Alternative 2e is anticipated to have slightly lower economic benefits to permit holders than alternative 2d, and would likely have a very similar outcome to alternative 2b, except that a few major upgrades would not qualify and there would be no reversion back to the current regulations after 10 years. For the same reasons discussed above under alternative 2a, however, it is not possible to accurately predict how many vessels will be upgraded, or the anticipated future capacity of the fishery, because the prediction is dependent upon the business decisions of many individual boat owners.

For an ''average'' 55–foot swordfish vessel, this alternative could result in a 69 - 74 foot vessel, depending upon whether the vessel has already been upgraded. At the opposite end of the spectrum, it is also possible that all eligible vessels could increase by 25 - 35 percent or, conversely, none of the eligible vessels would be upgraded. Eligible vessel owners would gain the economic benefits associated with having increased operational flexibility to adjust vessel configurations in terms of length and horsepower to best fit their business needs. However, that flexibility would be capped by imposing a 35 percent limit on increases in vessel length, gross tonnage, and net tonnage, unlike alternatives 2b, 2c, and 2d which have no limits on the size of upgrades.

Other economic benefits and costs of alternative 2e are similar to those discussed under alternatives 2b, 2c, and 2d, including any secondary economic impacts to shoreside industries.

This final rule contains no new collection-of-information requirements subject to review and approval by OMB under the PRA.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Management, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 29, 2007.

Samuel D. Rauch III

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

■ For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.4, paragraphs (l)(2)(i), (l)(2)(ii) introductory text, (l)(2)(ii)(B), (l)(2)(ii)(C), (l)(2)(iv), the first sentence in paragraph (l)(2)(v), and the first sentence in paragraph(l)(2)(vi) are revised; and paragraph (l)(2)(x) is added to read as follows:

§ 635.4 Permits and fees.

* * * * *

(l) * * *

(2) * * *

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraphs (l)(2)(ii) or (x) of this section, as applicable, and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii),(iii), and (x) of this section.

(ii) Except as specified in paragraph (l)(2)(x) of this section, an owner may

upgrade a vessel with a shark, swordfish, or tuna longline limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

* * * * *

(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

(iv) In order to transfer a swordfish, shark or tuna longline limited access permit to a replacement vessel, the owner of the vessel issued the limited access permit must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit to another vessel, subject to requirements specified in paragraphs (l)(2)(ii) or (x) of this section, if applicable. The owner must return the current valid limited access permit to NMFS with a complete application for a limited access permit, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and tuna longline limited access permit transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. * * *

(vi) For limited access permit transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and limited access permit(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s), subject to the requirements specified in paragraphs (l)(2)(ii), (iii), and (x) of this section, if applicable. * * *

* * * * *

(x) The owner of a vessel that, on August 6, 2007, concurrently possesses, or is eligible to renew, a directed or incidental swordfish limited access permit, a directed or incidental shark limited access permit, and an Atlantic Tunas Longline category permit is eligible to upgrade that vessel, or transfer its limited access permits to another vessel, subject to the following restrictions:

(A) For eligible vessels, as defined in paragraph (l)(2)(x), any increase in the three specifications of vessel size (length overall, gross registered tonnage, and net tonnage), whether through refitting, replacement, or transfer, may not exceed 35 percent of the vessel baseline specifications, as defined in paragraph (l)(2)(ii)(A) of this section. Horsepower for eligible vessels is not limited for purposes vessel upgrades or permit transfers under paragraph (l)(2)(x).

(B) If a vessel owner wants to request a transfer of limited access permits in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x), the transferee must submit a complete application(s), as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed application(s) are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received after August 6, 2007.

(C) Owners of directed or incidental swordfish limited access permit(s), directed or incidental shark limited access permit(s), and Atlantic Tunas Longline category permit(s) that are not assigned to a specific vessel may request transfer of these permits to a vessel in order to be eligible for the upgrading restrictions under paragraph (l)(2)(x). The transferee must submit complete applications, as specified in paragraphs (h),(i),(j), and (l)(1) of this section, according to the procedures at paragraphs (l)(2)(iv), (v), or (vi) of this section, as applicable, to an address designated by NMFS, so that the completed applications are received by NMFS by August 6, 2007. Vessels will not be eligible for the upgrading restrictions under paragraph (l)(2)(x) if applications are incomplete or received by NMFS after August 6, 2007.

* * * * *

■ 3. In § 635.22, paragraph (f) is revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(f) *North Atlantic swordfish.* The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

(1) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are charter boats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to six North Atlantic swordfish per vessel per trip.

(2) Vessels issued an HMS Charter/Headboat permit under § 635.4(b), that are headboats as defined under § 600.10 of this chapter, may retain, possess, or land no more than one North Atlantic swordfish per paying passenger and up to 15 North Atlantic swordfish per vessel per trip.

(3) Vessels issued an HMS Angling category permit under § 635.4(c), may retain, possess, or land no more than one North Atlantic swordfish per person and up to four North Atlantic swordfish per vessel per trip.

■ 4. In § 635.24, paragraphs (b)(1) and (2) are revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(b) * * *

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 30 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat., except as specified in paragraph (b)(2) of this section.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish may retain, possess, land, or sell no more than 15 swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

[FR Doc. E7–10727 Filed 6–6–07; 8:45 am]

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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 414/P.L. 110–29

To designate the facility of the United States Postal Service located at 60 Calle McKinley, West in Mayaguez, Puerto Rico, as the "Miguel Angel García Méndez Post Office Building". (June 1, 2007; 121 Stat. 219)

H.R. 437/P.L. 110–30

To designate the facility of the United States Postal Service located at 500 West Eisenhower Street in Rio Grande City, Texas, as the "Lino Perez, Jr. Post Office". (June 1, 2007; 121 Stat. 220)

H.R. 625/P.L. 110–31

To designate the facility of the United States Postal Service located at 4230 Maine Avenue in Baldwin Park, California, as the "Atanacio Haro-Marin Post Office". (June 1, 2007; 121 Stat. 221)

H.R. 1402/P.L. 110–32

To designate the facility of the United States Postal Service located at 320 South Lecanto Highway in Lecanto, Florida, as the "Sergeant Dennis J. Flanagan Lecanto Post Office Building". (June 1, 2007; 121 Stat. 222)

H.R. 2080/P.L. 110–33

To amend the District of Columbia Home Rule Act to conform the District charter to revisions made by the Council of the District of Columbia relating to public education. (June 1, 2007; 121 Stat. 223)

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