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Contents

Federal Register

Vol. 72, No. 244

Thursday, December 20, 2007

Agency for International Development

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72341

Agriculture Department

See Animal and Plant Health Inspection Service

See Forest Service

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72341–72342

Air Force Department

NOTICES

Meetings:

Air Force Academy Board of Visitors, 72346–72347

Animal and Plant Health Inspection Service

RULES

Plant-related quarantine, domestic:

Black stem rust; correction, 72233

Antitrust Division

NOTICES

Competitive impact statements and proposed consent judgments:

CommScope, Inc. and Andrew Corp., 72376–72388

National cooperative research notifications:

Petroleum Environmental Research Forum, 72388

PXL Systems Alliance, Inc., 72388–72389

Semiconductor Test Consortium, Inc., 72389

Southwest Research Institute, 72389

VSI Alliance, 72389–72390

Centers for Disease Control and Prevention

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72361–72364

Children and Families Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72364

Coast Guard

RULES

Drawbridge operations:

Virginia, 72250–72251

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Lower Cowlitz River, WA, 72251–72253

Commerce Department

See Economic Development Administration

Comptroller of the Currency

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72442

Copyright Royalty Board, Library of Congress

RULES

Statutory licenses; rates and terms:

Digital performances of sound recordings and making ephemeral recordings; new subscription service, 72253–72256

Defense Department

See Air Force Department

PROPOSED RULES

Civilian health and medical program of the uniformed services (CHAMPUS):

TRICARE program—

Overpayment recovery, 72307–72316

Federal Acquisition Regulation (FAR):

Travel costs; allowable contractor airfare costs limitation application, 72325–72326

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72345–72346

Economic Development Administration

NOTICES

Adjustment assistance; applications, determinations, etc.:

Ex-L-Tube et al., 72344–72345

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72347

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:

Michigan, 72256–72263

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

California, 72322–72325

NOTICES

Reports and guidance documents; availability, etc.:

Cruise ship discharge assessment, 72353–72355

Executive Office of the President

See Trade Representative, Office of United States

Federal Aviation Administration

PROPOSED RULES

Airworthiness directives:

BAE Systems (Operations) Ltd., 72270–72272

Dassault, 72273–72274

Airworthiness standards:

Special conditions—

Aviation Technology Group, Inc., Javelin Model 100

Series airplane, 72265–72270

NOTICES

Aeronautical land-use assurance; waivers:

Raleigh County Memorial Airport, Beckley, WV, 72436–72437

Airport noise compatibility program:

Austin-Bergstrom International Airport, TX, 72437–72438

Noise exposure maps—
Port Columbus International Airport, OH, 72438–72439

Federal Communications Commission

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72355–72358

Federal Emergency Management Agency

NOTICES

Disaster and emergency areas:

Indiana, 72367–72368

Oklahoma, 72368

Oregon, 72369–72370

Washington, 72370–72371

Disaster loan areas:

Micronesia, 72371

Federal Energy Regulatory Commission

RULES

Electric utilities (Federal Power Act):

Public utilities; market-based rates for wholesale sales of electric energy; capacity and ancillary services, 72239–72243

NOTICES

Composition of proxy groups for determining gas and oil pipeline return on equity; technical conference, 72348–72349

Environmental statements; availability, etc.:

Ice House Partners, Inc., 72349

Hydroelectric applications, 72349–72352

Meetings:

Columbia Gas Transmission Corp.; technical conference, 72352

National Register of Historic Places:

Programmatic agreement for managing properties; restricted service list—

South Carolina Public Service Authority, 72353

Applications, hearings, determinations, etc.:

Jewish Home and Hospital Life Care System, 72347–72348

Louder, Stephen, R., 72348

McClendon, Stan, 72348

Federal Highway Administration

NOTICES

Federal agency actions on proposed highways; judicial review claims:

Nevada County, CA, 72439–72440

Federal Reserve System

RULES

Home mortgage disclosure (Regulation C):

Depository institutions; asset-size exemption threshold increase, 72234–72235

NOTICES

Bank and bank holding companies:

Formations, acquisitions, and mergers, 72359

Federal Trade Commission

NOTICES

Prohibited trade practices:

Multiple Listing Service, Inc., 72359–72361

Forest Service

PROPOSED RULES

National Forest System timber; sale and disposal:

Special forest products and forest botanical products, 72319

NOTICES

Environmental statements; notice of intent:

Bitterroot National Forest, MT, 72342–72343

Meetings:

Lake Tahoe Basin Federal Advisory Committee, 72343–72344

Recreation fee areas:

Inyo National Forest, CA; group campsites, 72344

General Services Administration

PROPOSED RULES

Federal Acquisition Regulation (FAR):

Travel costs; allowable contractor airfare costs limitation application, 72325–72326

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72345–72346

Health and Human Services Department

See Centers for Disease Control and Prevention

See Children and Families Administration

See National Institutes of Health

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

Interior Department

See Land Management Bureau

See National Park Service

International Trade Commission

PROPOSED RULES

Practice and procedure:

General application, adjudication, and enforcement rules; technical corrections, clarification, etc., 72280–72301

Justice Department

See Antitrust Division

NOTICES

Pollution control; consent judgments:

Green, Daniel, et al., 72375–72376

Labor Department

See Mine Safety and Health Administration

See Occupational Safety and Health Administration

Land Management Bureau

NOTICES

Oil and gas leases:

Nevada, 72371

Resource management plans, etc.:

Grand Junction Resource Area, CO, 72371–72372

Library of Congress

See Copyright Royalty Board, Library of Congress

Mine Safety and Health Administration

PROPOSED RULES

Coal mine safety and health:

Underground mines—

Fire extinguishers; availability, 72301–72307

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72390

Petitions for safety standards modification; application, processing, disposition, etc.; correction, 72390–72391

Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation**NOTICES**

Reports and guidance documents; availability, etc.:
BIA-funded school facilities repair, renovation, and construction, 72391–72392

National Aeronautics and Space Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):
Travel costs; allowable contractor airfare costs limitation application, 72325–72326

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72345–72346

National Archives and Records Administration**PROPOSED RULES**

Organization, functions, and authority delegations:
Presidential library facilities; architectural and design standards, 72319–72322

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 72392

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:
Platform lifts and platform lift installations, 72326–72340

NOTICES

Motor vehicle safety standards; exemption petitions, etc.:
Graco Children's Products, Inc., 72440–72441

National Institutes of Health**NOTICES****Meetings:**

- National Cancer Institute, 72364–72365
- National Institute of Allergy and Infectious Diseases, 72365–72366
- National Institute of Dental and Craniofacial Research, 72365
- National Institute of Nursing Research, 72365
- National Institute on Drug Abuse, 72366–72367
- Recombinant DNA Advisory Committee, 72367

National Park Service**PROPOSED RULES****Special regulations:**

- Cape Hatteras National Seashore Off-Road Vehicle Management Rulemaking Advisory Committee; establishment, 72316–72318

NOTICES

Environmental statements; availability, etc.:
Big Lagoon, Muir Beach, Golden Gate National Recreation Area, CA; creek and wetland restoration, 72372–72373

Environmental statements; record of decision:
Bandelier National Monument, NM; ecological restoration plan, 72373–72374
Sequoia-Kings Canyon National Parks, CA; general and comprehensive river management plans, 72374

Meetings:
Flight 93 National Memorial Advisory Commission, 72374–72375
National Register of Historic Places; pending nominations, 72375

Nuclear Regulatory Commission**RULES**

Radiation protection standards:
Occupational dose records, labeling containers, and total effective dose equivalent, 72233–72234

PROPOSED RULES

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Geologic repository operations area; security and material control and accounting requirements, 72522–72562

Occupational Safety and Health Administration**PROPOSED RULES**

Shipyard employment safety and health standards:
General working conditions, 72452–72520

Office of United States Trade Representative

See Trade Representative, Office of United States

Personnel Management Office**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 72394–72395

Pipeline and Hazardous Materials Safety Administration**NOTICES**

Hazardous materials:
Special permit applications delayed; list, 72441–72442

Postal Regulatory Commission**NOTICES**

Practice and procedure:
Market dominant products; service standard measurement and reporting systems, 72395–72419

Securities and Exchange Commission**PROPOSED RULES****Securities:**

- Real estate company registration statement (Form S-11); historical incorporation by reference of previous reporting information, 72274–72280

NOTICES

Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 72419–72426
Boston Stock Exchange, Inc., 72426–72428
Chicago Board Options Exchange, Inc., 72428–72429
International Securities Exchange, LLC, 72429–72430
Municipal Rulemaking Securities Board, 72430–72431
New York Stock Exchange LLC, 72431–72433

Small Business Administration**PROPOSED RULES****Business loans:**

- Lender Oversight Program; comment period extension, 72264–72265

NOTICES

Small business size standards:
Nonmanufacture rule; waivers—
Electromedical and electrotherapeutic apparatus manufacturing, 72433–72434

State Department**RULES**

Exchange Visitor Program:
Sanctions and terminations, 72245–72250
Visas; nonimmigrant documentation:
Consular services; fees schedule, 72243–72245

NOTICES

Culturally significant objects imported for exhibition:

Color Chart: Reinventing Color, 72434

The Color of Life, 72434–72435

Treasures from the Holy Land, 72435

Organization, functions, and authority delegations:

Foreign Assistance Director, 72435

Thrift Supervision Office**RULES**

Savings and loan holding companies; permissible activities, 72235–72239

PROPOSED RULES

Federal savings association bylaws; integrity of directors; withdrawn, 72264

NOTICES

Reports and guidance documents; availability, etc.:

Savings and loan holding company rating system, 72442–72450

Trade Representative, Office of United States**NOTICES**

Harmonized Tariff Schedule:

Chile et al.; sugar and syrup goods and sugar containing products; trade surplus determination, 72392–72394

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See National Highway Traffic Safety Administration

See Pipeline and Hazardous Materials Safety Administration

NOTICES

Committees; establishment, renewal, termination, etc.:

Lengthy airline on-board ground delays; model contingency plans; National Task Force, 72435–72436

Treasury Department

See Comptroller of the Currency

See Thrift Supervision Office

Veterans Affairs Department**NOTICES**

Meetings:

Genomic Medicine Program Advisory Committee, 72450

Separate Parts In This Issue**Part II**

Labor Department, Occupational Safety and Health Administration, 72452–72520

Part III

Nuclear Regulatory Commission, 72522–72562

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR		49 CFR	
301	72233	Proposed Rules:	
10 CFR		571	72326
19	72233		
20	72233		
50	72233		
Proposed Rules:			
60	72522		
63	72522		
73	72522		
74	72522		
12 CFR			
203	72234		
584	72235		
Proposed Rules:			
544	72264		
552	72264		
13 CFR			
Proposed Rules:			
120	72264		
14 CFR			
Proposed Rules:			
23	72265		
39 (2 documents)	72270, 72273		
17 CFR			
Proposed Rules:			
239	72274		
18 CFR			
35	72239		
19 CFR			
Proposed Rules:			
201	72280		
210	72280		
22 CFR			
22	72243		
62	72245		
29 CFR			
Proposed Rules:			
1910	72452		
1915	72452		
30 CFR			
Proposed Rules:			
75	72301		
32 CFR			
Proposed Rules:			
199	72307		
33 CFR			
117 (2 documents)	72250, 72251		
165	72251		
36 CFR			
Proposed Rules:			
7	72316		
223	72319		
1281	72319		
37 CFR			
383	72253		
40 CFR			
52	72256		
97	72256		
Proposed Rules:			
52	72322		
48 CFR			
Proposed Rules:			
31	72325		

Rules and Regulations

Federal Register

Vol. 72, No. 244

Thursday, December 20, 2007

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2007-0072]

Black Stem Rust; Addition of Rust-Resistant Varieties; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; correction.

SUMMARY: We are correcting an error in the amendatory instructions in our direct final rule that added four varieties to the list of rust-resistant *Berberis* species or cultivars in the black stem rust quarantine and regulations. The direct final rule was published in the **Federal Register** on June 12, 2007 (72 FR 32165-32167, Docket No. APHIS-2007-0072) and became effective on August 13, 2007.

DATES: *Effective Date:* December 20, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737-1236; (301) 734-6774.

SUPPLEMENTARY INFORMATION: In a direct final rule published in the **Federal Register** on June 12, 2007 (72 FR 32165-32167, Docket No. APHIS-2007-0072) and effective on August 13, 2007, we amended the black stem rust quarantine and regulations in 7 CFR part 301 by adding four varieties to the list of rust-resistant *Berberis* species or cultivars in § 301.38-2 of the regulations.

In the amendatory instructions we stated that we were amending paragraph (b) of § 301.38-2 in order to add the four varieties to the list of rust-resistant *Berberis* species or cultivars. However, this was incorrect. We should have

stated that we were amending paragraph (a)(1) of § 301.38-2. This document corrects that error.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.38-2, paragraph (a)(1) is amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

§ 301.38-2 Regulated articles.

- (a) * * *
- (1) * * *

* * * * *
B. thunbergii atropurpurea 'Moretti Select'

* * * * *

B. thunbergii 'Fireball'

* * * * *

B. thunbergii 'Orange Rocket'

* * * * *

B. thunbergii 'Sparkler'

* * * * *

Done in Washington, DC, this 14th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-24678 Filed 12-19-07; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, and 50

RIN 3150-AH40

Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent; Deferral of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; deferral of effective date.

SUMMARY: The Nuclear Regulatory Commission published a final rule amending regulations that would become effective January 3, 2008. The final rule, published December 4, 2007 (72 FR 68043) related to the reporting of annual dose to workers, the definition of Total Effective Dose Equivalent (TEDE), the labeling of certain containers holding licensed material, and the determination of cumulative occupational radiation dose. The NRC is deferring the effective date of the final rule until Office of Budget and Management (OMB) review and clearance of the rule's information collections is completed. NRC anticipates the new effective date for this rule will be February 15, 2008. The NRC will publish a subsequent document to confirm this effective date.

DATES: *Effective Date:* The effective date of the final rule published December 4, 2007 (72 FR 68043) is deferred until February 15, 2008.

ADDRESSES: Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the NRC's PDR Reference staff at (800) 397-4209, (301) 415-4737, or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Stewart Schneider, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-4123; e-mail sxs4@nrc.gov.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission published a final rule amending regulations that would become effective January 3, 2008. The final rule, published December 4, 2007 (72 FR 68043) related to the reporting of annual dose to workers, the definition of Total Effective Dose Equivalent (TEDE), the labeling of certain containers holding licensed material, and the determination of cumulative occupational radiation dose. This final rule will limit the routine reporting of annual doses to those workers whose annual dose exceeds a specific dose threshold or who request a report. The rule will also modify the labeling requirements for certain containers holding licensed material within posted areas in nuclear power facilities, and will amend the definition of TEDE to be consistent with current Commission policy. Finally, this rule will remove the requirement that licensees attempt to obtain cumulative exposure records for workers unless these individuals are being authorized to receive a planned special exposure. These revisions will reduce the administrative and information collection burdens on NRC and Agreement State licensees without affecting the level of protection for either the health and safety of workers and the public, or for the environment.

This final rule will amend information collection requirements contained in 10 CFR parts 19, 20, and 50, and NRC Form 4 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collection requirements were sent for approval to the Office of Management and Budget on November 28, 2007; while the changes to 10 CFR parts 19, 20, and 50, and NRC Form 4 do not contain a new or amended information collection requirements, the NRC has not received final clearance for these amended requirements. Because the rule will reduce the burden for existing information collection requirements, the public burden for the information collections in 10 CFR part 19 and NRC Form 4 is expected to be decreased by 235 and 44 hours per licensee, respectively. This reduction includes the time required for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. Existing requirements were approved by the Office of Management and Budget, approval number(s) 3150-0044, 3150-0014, 3150-0011, and 3150-0005.

In order to allow sufficient time for OMB to complete its review of the information collections requirements imposed in this rule, the NRC is deferring the effective date of the December 4, 2007, amendments to 10 CFR parts 19, 20, and 50 until February 15, 2008.

Dated at Rockville, Maryland, this 13th day of December 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

[FR Doc. E7-24636 Filed 12-19-07; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-1303]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The staff commentary is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment from \$36 million to \$37 million reflects the increase of that index by 2.70% percent during the twelve-month period ending in November 2007. Thus, depository institutions with assets of \$37 million or less as of December 31, 2007, are exempt from collecting data in 2008.

DATES: Effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Dan S. Sokolov or John C. Wood, Counsels, Division of Consumer and Community Affairs, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 et seq.) requires most mortgage lenders located in metropolitan areas to collect data about

their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Prior to 1997, HMDA exempted depository institutions with assets totaling \$10 million or less, as of the preceding year-end. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to \$28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board has adjusted the threshold annually, as appropriate.

For 2007, the threshold was \$36 million. During the twelve-month period ending in November 2007, the CPIW increased by 2.70% percent. As a result, the exemption threshold is raised to \$37 million. Thus, depository institutions with assets of \$37 million or less as of December 31, 2007, are exempt from collecting data in 2008. An institution's exemption from collecting data in 2008 does not affect its responsibility to report data it was required to collect in 2007.

Final Rule

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). The amendment in this notice is technical. Comment 2(e)-2 to section 203.2 of the regulation is amended to implement the increase in the exemption threshold. This amendment merely applies the formula established by Regulation C for determining adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity

for public comment are unnecessary. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under section 203.2 Definitions, 2(e) *Financial Institution*, paragraph 2. is revised.

Supplement I to Part 203—Staff Commentary

* * * * *

*Section 203.2—Definitions
2(e) Financial Institution*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2008, the asset-size exemption threshold is \$37 million. Depository institutions with assets at or below \$37 million as of December 31, 2007 are exempt from collecting data for 2008.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 14, 2007.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E7–24612 Filed 12–19–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket ID OTS–2007–0007]

RIN 1550–AC10

Permissible Activities of Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is revising its regulations, at 12 CFR 584.2 and 584.2–2, to expand the permissible activities of savings and loan holding companies (SLHCs) to the full extent permitted

under the Home Owners' Loan Act (HOLA). In addition, OTS is amending 12 CFR 584.4 to conform the regulation to the statute that it is intended to implement, and to set forth standards that OTS will use to evaluate applications submitted pursuant to the statutory application requirement.

DATES: This rule is effective April, 2008.

FOR FURTHER INFORMATION CONTACT:

Donald W. Dwyer, Director, Applications, Examination and Supervision—Operations, (202) 906–6414; or Kevin A. Corcoran, (202) 906–6962, Deputy Chief Counsel for Business Transactions, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 27, 2007, OTS published a notice of proposed rulemaking (NPR) that proposed certain changes to the OTS Holding Company Regulations.¹ In the NPR, OTS proposed to expand the activities permissible for SLHCs. In addition, OTS proposed to revise its regulations at 12 CFR 584.4 to: (i) Conform to the statute it implements by providing that OTS may approve acquisitions by SLHCs of more than five percent of the voting shares of a savings association that is not a subsidiary of the acquiring SLHC, or more than five percent of the voting shares of a SLHC that is not a subsidiary of the acquiring SLHC; (ii) provide approval standards for applications submitted under the regulation; and (iii) reorganize the regulation.

A. Holding Company Activities

With respect to holding company activities, under section 10(c)(9) of the HOLA,² SLHCs generally are permitted to engage only in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act (BHCA),³ or activities that are listed in section 10(c)(2) of the HOLA.⁴ Section 10(c)(2)(F)(i) permits SLHCs to engage in activities:

which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 1843(c) of this title, unless the Director, by regulation,

¹ 72 FR 14246 (Mar. 27, 2007).

² 12 U.S.C. 1467a(c)(9).

³ 12 U.S.C. 1843(k).

⁴ 12 U.S.C. 1467a(c)(2). SLHCs that were SLHCs on May 4, 1999, and meet certain other requirements, are excepted from the activities limitations of section 10(c)(9) of the HOLA. See 12 U.S.C. 1467a(c)(9)(C).

prohibits or limits any such activity for savings and loan holding companies. * * *⁵

As authorized by the statute, OTS limited the activities permitted for SLHCs under section 10(c)(2)(F)(i) of the HOLA. OTS regulations implementing section 10(c)(2)(F)(i) have limited the activities that are permissible under this authority to activities that the Board of Governors of the Federal Reserve System (FRB) has permitted for bank holding companies under regulations implementing section 4(c)(8) of the BHCA.⁶

In the NPR, OTS observed that the regulatory scheme for SLHCs has changed significantly since the regulations were first promulgated in 1987. In 1987, most SLHCs were excepted from activities restrictions. After the passage of the Gramm-Leach-Bliley Act⁷ in 1999, all new SLHCs have been, with limited exceptions, subject to activities restrictions.

In addition, since 1987 many foreign entities have acquired, or have expressed interest in acquiring, a savings association. To the extent that sections 4(c)(9) and 4(c)(13) of the BHCA, and regulations that the FRB has promulgated thereunder, authorize bank holding companies with foreign operations to engage in certain activities, it would appear appropriate to provide the same authority to SLHCs.

For many years, bank holding companies have been permitted to engage in the activities described in section 4(c) of the BHCA, consistent with the regulations of the FRB. OTS is not aware of any safety and soundness or other reason why SLHCs should not be permitted to engage in the same activities.

Accordingly, OTS proposed to revise its regulations to enable SLHCs to engage in activities that the FRB has permitted under any regulation that the FRB has promulgated under section 4(c) of the BHCA.

B. Approval Requirement for Certain Acquisitions by SLHCs

Section 10(e)(1)(A)(iii) of HOLA prohibits SLHCs from directly or indirectly acquiring, without OTS approval, more than five percent of the voting shares of a savings association that is not a subsidiary of the acquiring SLHC, or more than five percent of the voting shares of a SLHC that is not a subsidiary of the acquiring SLHC.⁸

⁵ 12 U.S.C. 1467a(c)(2)(F)(i).

⁶ 12 U.S.C. 1843(c)(8).

⁷ Pub. L. 106–102, 113 Stat. 338, section 401.

⁸ 12 U.S.C. 1467a(e)(1)(A)(iii). The statute establishes eight exceptions from the approval

The Holding Company Regulations, at 12 CFR 584.4, implement section 10(e)(1)(A)(iii) of HOLA. The American Homeownership and Economic Opportunity Act of 2000⁹ (AHEO Act) amended section 10(e)(1)(A)(iii) to replace the former absolute prohibition on SLHCs acquiring more than five percent of the voting shares of a savings association or SLHC not a subsidiary of the acquiring SLHC (subject to the exceptions noted above), with a regulatory approval requirement. In the NPR, OTS proposed to replace the absolute prohibition in the regulation with an approval requirement, to make the regulation consistent with the statute.

In addition, although the AHEO Act established a regulatory approval requirement for the acquisitions in question, the statute did not establish approval standards for applications submitted as a result of the approval requirement. OTS proposed to amend the regulation to set forth approval standards for applications submitted under section 10(e)(1)(A)(iii) and § 584.4.

Finally, in light of the amendments to § 584.4 proposed above, OTS proposed to reorganize § 584.4.

II. Public Comments

OTS received six comments regarding the NPR. Three were from trade associations in which savings associations are members, one was from a savings association, one was from an SLHC, and one was from a trade association in which credit unions are members.

All of the comments except one expressed support for the proposed amendments. The comment that did not support the proposed amendments did not object to the expansion of permissible holding company activities or the revisions to section 584.4, but asserted that the proposed regulation would provide “insufficient transparency” because the provisions relating to permissible holding company activities did not provide for public comment in the event an application was required.¹⁰

requirement. See 12 U.S.C. 1467a(e)(1)(A)(iii)(I)–(VIII). In addition, section 10(e)(1)(A)(iii) prohibits multiple SLHCs from acquiring or retaining more than five percent of the voting shares of any company not a subsidiary that is engaged in any business activity other than the activities specified in section 10(c)(2) of HOLA.

⁹Pub. L. 106–569 (Dec. 27, 2000), at section 1202, 114 Stat. 3032.

¹⁰The same commenter also asserted that OTS should undertake greater efforts to ensure that information regarding SLHC activities and acquisitions is widely disseminated on a national basis to those in the financial services industry who

OTS has considered the comment and has decided not to require public notice and comment for applications required under the holding company activities regulations. The application provisions of the holding company activities regulations have been in place since the 1980s, and have not required publication. OTS is not aware of any negative consequences that have resulted from the lack of a publication requirement. Moreover, the relevant statute, section 10(c)(4) of HOLA, does not require publication. Also, no public comment is required for SLHCs to engage in financial holding company activities, which generally are broader than bank holding company activities. Finally, in the event that OTS concludes that public comment is appropriate in a particular case, OTS may require public notice and comment.

Four of the remaining comments made specific suggestions regarding the proposed regulation.

One commenter requested that OTS clarify that any SLHC that seeks to exercise powers that the FRB has provided to bank holding companies pursuant to sections 4(c)(9) or 4(c)(13) of the BHCA must comply with the terms and conditions that the FRB has applied to bank holding companies under FRB regulations, including the Qualifying Foreign Banking Organization (QFBO) test, and 12 CFR 211.602.

It is OTS’s position that SLHCs that exercise powers pursuant to section 4(c)(9) of the BHCA must comply with the QFBO test, and that SLHCs that exercise powers pursuant to section 4(c)(13) of the BHCA must comply with 12 CFR 211.602. OTS believes that the regulation, as proposed, and as promulgated today, makes clear that SLHCs that propose to engage in activities that are permissible for bank holding companies under section 4(c) of

are interested in following these activities. OTS considers this comment to be beyond the scope of the NPR. In any event, information regarding acquisitions of depository institutions by SLHCs is publicly available, and information regarding the activities of SLHCs with securities registered under the Securities Exchange Act of 1934 is publicly available.

The commenter also asserted that the OTS Application Processing Regulations should be revised to require a meeting to occur where a commenter raises an objection to a transaction. This comment also is beyond the scope of the NPR. OTS recently amended 12 CFR 516.170 to eliminate the requirement that a meeting be held under such circumstances, and state, instead, that OTS will grant a meeting request if it “finds that written submissions are insufficient to address facts or issues raised in an application, or otherwise determines that a meeting will benefit the decision-making process.” See 69 FR 68239, at 68242 (Nov. 24, 2004). The amendment revised the meeting provisions to conform more closely to those of the other banking agencies.

the BHCA generally must do so pursuant to the conditions set forth in the FRB’s regulations. In this regard, the regulation provides that “the services and activities permissible for bank holding companies pursuant to regulations that the [FRB] has promulgated pursuant to section 4(c) of the [BHCA] are permissible for [SLHCs and their non-savings association subsidiaries].”

Another commenter asserted that, since 1999, the FRB has approved certain bank holding company activities that were not approved as of 1999 on an informal basis through the issuance of interpretations. The commenter urges OTS to confirm that if the “activity has been approved by an interpretation of Section 4(c)(8) for bank holding companies, * * * the activity be considered approved for savings and loan holding companies.”

The HOLA and OTS regulations provide that if an activity has been permitted under the FRB’s regulations, promulgated under section 4(c) of the BHCA, it is permissible for SLHCs. If the FRB has interpreted those regulations to permit certain activities, OTS would generally adhere to those interpretations. However, without knowing the facts and circumstances regarding a particular interpretation, OTS cannot confirm the commenter’s position with respect to any particular interpretation.

The same commenter has requested that OTS clarify that OTS’s procedures and requirements for SLHC activities remain separate and distinct from those of the FRB for bank holding companies. The commenter asserts that imposition of additional regulatory procedures and requirements for SLHCs would require further public notice and comment.

OTS regulations, at 12 CFR 584.2–2, set forth the procedures for filing with OTS for permission to engage in bank holding company activities.

As noted in the preamble to the NPR, Section 10(c)(4) of the HOLA generally requires prior OTS approval with respect to the activities described in section 10(c)(2)(F)(i) of the HOLA. Certain of these activities are already permitted under other OTS regulations without prior OTS approval, or are permitted under FRB regulations without prior FRB approval. In the preamble to the NPR, OTS proposed, in order to avoid imposing additional restrictions on currently permissible activities, and to provide for parity between bank holding companies and SLHCs to the extent possible, to provide in the regulation that activities that are authorized under section 10(c)(2)(F)(i) of HOLA, but are also permissible under

other provisions of section 10(c) of the HOLA or under FRB regulations without prior FRB approval are preapproved.

OTS, in preparing this final regulation, has carefully considered the provisions of section 10(c)(4) of the HOLA, and of OTS regulations. Section 10(c)(4) of HOLA requires that OTS, in reviewing an application by an SLHC to engage in a bank holding company activity under authority of section 10(c)(2)(F)(i) of the HOLA, consider whether the performance of the activity in question can reasonably be expected to produce benefits to the public that outweigh possible adverse effects of such activity, the managerial resources of the companies involved, and the adequacy of the financial resources, including capital, of the companies involved.¹¹

Because the standard requires OTS to consider factors relating to the specific company and activity, OTS believes that preapproval of such activities is not appropriate for all SLHCs.¹² However, OTS conducts comprehensive consolidated supervision of SLHCs, including assessing financial and managerial resources at each holding company examination, and on a routine basis through ongoing offsite monitoring. OTS, therefore, believes that an SLHC that received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of "1" or "2" thereafter, on its most recent examination, and is not deemed to be in a troubled condition¹³ meets the statutory criteria pertaining to managerial and financial resources. In addition, OTS believes that, where an SLHC that has the requisite managerial and financial resources proposes to commence an activity *de novo*, the activity would not lead to undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices.¹⁴

¹¹ 12 U.S.C. 1467a(c)(4)(B).

¹² The final regulation provides that if the activity is permissible for an SLHC under authority other than section 10(c)(2)(F)(i) of the HOLA, the application requirements of § 584.2-2 are inapplicable.

¹³ "Troubled condition" is defined at 12 CFR 563.555. An SLHC is deemed to be in a troubled condition if it has an unsatisfactory rating under OTS's holding company rating system, or has been informed in writing by OTS that it has an adverse effect on its subsidiary savings association; is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association; or is informed in writing by OTS that it is in troubled condition.

¹⁴ OTS believes that the *de novo* activity would, by its nature, add a competitor to any relevant market, and also reduce the concentration of resources; also, where the SLHC meets the managerial and financial resources standards, it

Accordingly, OTS is amending the Holding Company Regulation to provide that where any SLHC that proposes to engage in an activity on a *de novo* basis is rated satisfactory or above and is not in a troubled condition, the activity is preapproved.¹⁵

Finally, one commenter, a savings association subsidiary of a mutual holding company (MHC), requested that OTS clarify one of the effects of the proposal on permissible activities for MHCs.

Under 12 CFR 575.11(a), an MHC may engage in any business activity specified in section 10(c)(2) or section 10(c)(9) of the HOLA. Because OTS previously limited the bank holding company activities that SLHCs may engage in under section 10(c)(2)(F)(i) to the section 4(c)(8) activities, activities described in other subsections of section 4(c) generally have not been permissible for MHCs.

Section 4(c)(6) of the BHCA permits bank holding companies to hold less than five percent of the outstanding shares of any company. Today's amendment to the holding company activities regulations results in § 575.11(a) authorizing mutual holding companies to engage in the activity of holding less than five percent of the stock of any entity.

The comment notes that a separate section of the MHC regulations, 12 CFR 575.10(a)(6), includes language that appears to contradict this result. Section 575.10(a)(6) provides that an MHC may make controlling or non-controlling investments in the stock of entities other than savings associations or SLHCs only under certain circumstances. One of the requirements is that the company in which the investment is made be engaged exclusively in activities that are permissible for MHCs pursuant to section 575.11(a), or that the stock may be purchased by a federal savings association under the OTS subordinate organization regulations or by a state savings association under the law of the relevant state.

The commenter's concern is that while § 10(c)(2) and § 575.11(a), by their terms, permit MHCs to hold up to five percent of the voting stock of any entity, § 575.10(a)(6) appears to indicate that even where the investment in a company's stock is less than five

will have the means to avoid harmful conflicts, and unsound financial practices.

¹⁵ This treatment of activities is consistent with section 10(c)(4)(C) of HOLA, which provides that: In prescribing any regulation or considering any application under this paragraph, the Director may differentiate between activities commenced *de novo* and activities commenced by the acquisition, in whole, or in part, of a going concern.

percent, the company's activities must be permissible under § 575.11.

Assume, for example, that an MHC proposes to acquire 3.9 percent of the stock of a retail store. The acquisition of the shares would be permissible under § 575.11(a), because section 10(c)(2) of HOLA (through the reference to section 4(c) of the BHCA, under section 10(c)(2)(F)(i)) allows an MHC to hold less than five percent of the voting stock of any company. The activity raises an issue under § 575.10(a)(6), because, while the MHC itself may be engaged in a permissible activity under § 575.11, certain language in § 575.10(a)(6) appears to require the company in which the investment is made to be engaged only in permissible activities. Since the company is engaged in retail activities, there is an issue as to whether the investment is outside the scope of § 575.10(a)(6).

OTS concludes that it is appropriate to interpret § 575.10(a)(6) as not prohibiting an MHC from making non-controlling investments in another entity where that investment includes less than five percent of the entity's voting stock, regardless of the specific activities in which the entity engages. Otherwise, the ability of MHCs to engage in activities within the scope of section 4(c)(6) of the BHCA would be meaningless for MHCs. In addition, § 575.10(a) implements section 10(o)(5) of HOLA, which, by its terms, allows MHCs to engage in, among other things, the activities described in section 10(c)(2) of the HOLA. Furthermore, section 10(o)(7) of HOLA provides that, unless the context otherwise requires, an MHC is subject to the requirements of section 10 regarding SLHCs.

The commenter also requested that OTS confirm that no prior notice or application to OTS is required under the MHC regulations for an MHC to engage in activities that are authorized for bank holding companies under section 4(c) of the BHCA, including investments in less than five percent of the stock of another entity.

Section 10(o)(7) of the HOLA provides that, unless the context otherwise requires, MHCs are subject to the other requirements of section 10 of the HOLA regarding regulation of SLHCs. Accordingly, MHCs are subject to the filing requirements under section 10(c)(4) of the HOLA discussed above, regarding activities that are permissible under section 4(c) of the BHCA, which are set forth in section 584.2-2(a). Moreover, under section 575.11(a), MHCs are required to file with OTS to engage in any activity, and would be required to file under section 575.11(a) to engage in an activity, even when the

activity is excepted from the holding company filing requirements under the proviso in section 584.2-2(a). OTS may reconsider this requirement in a subsequent rulemaking. Revisions to the MHC filing requirement, however, are beyond the scope of this rulemaking. Finally, OTS has informally taken the position that an application is not required under section 575.11(a) where an MHC proposes to hold less than five percent of the voting stock of another entity.

IV. Findings and Certifications

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS 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 proposed collection of information was submitted to OMB for review and approval (44

U.S.C. 3507(d)). None of the public comments suggested that the information collection should be modified. Any material modifications will be submitted to OMB for review and approval.

Estimated Number of Respondents: 4.

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 8 hours.

Rule section	Subject	Number of respondents	Number of responses per respondent	Average annual burden hours per response	Annual disclosure & recordkeeping burden
584.2-2	Application to engage in certain activities	2	1	2	4
584.4	Application by SLHC to acquire non-controlling interest exceeding five percent of non-subsidiary savings association or SLHC.	2	1	2	4

B. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA), the Director of OTS has certified that this final rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA. 5 U.S.C. 603.

D. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. 2 U.S.C. 1532. OTS has determined that this final rule would not have such an impact. Rather, the rule would provide that nonexempt SLHCs have broader authority to engage in activities than are specified under current regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

■ For the reasons stated in the preamble, the Office of Thrift Supervision amends 12 CFR part 584 as follows:

PART 584—SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

■ 2. Revise the part heading for part 584 to read as shown above.

■ 3. Revise § 584.2(b)(6)(i) to read as follows:

§ 584.2 Prohibited activities.

* * * * *
(b) * * *
(6) * * *

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

* * * * *

■ 4. Revise § 584.2-2(a) to read as follows:

§ 584.2-2 Permissible bank holding company activities of savings and loan holding companies.

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to regulations that the Board of Governors of the Federal Reserve System has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of

subsidiary savings associations: *Provided*, That no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Office pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of “1” or “2” thereafter, in its most recent examination, and is not in a troubled condition as defined in § 563.555, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both § 584.2-1 of this part and this section, the procedures of § 584.2-1 of this part shall govern.

* * * * *

■ 5. Revise § 584.4 to read as follows:

§ 584.4 Certain acquisitions by savings and loan holding companies.

(a) *Acquisitions by a savings and loan holding company of more than five percent of a non-subsidiary savings association or savings and loan holding company.* No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall, without prior written OTS approval, acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not

a subsidiary. A savings and loan holding company seeking approval of an acquisition under this section must file an application under 12 CFR part 516, subpart A. Applications filed under this section are subject to the publication, public comment, and meeting provisions of 12 CFR part 516, subparts B, C, and D. OTS will review applications filed under this section under the review standards set forth for savings and loan holding company applications in section 10(e)(2) of the HOLA, § 574.7(c) of this chapter, and § 563e.29(a) of this chapter.

(b) *Certain acquisitions by multiple savings and loan holding companies.* No multiple savings and loan holding company (other than a savings and loan holding company described in § 584.2a(a)(1)(ii) of this part) may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire or retain more than five percent of the voting shares of any company that is not a subsidiary that is engaged in any business activity other than those specified in § 584.2(b) of this part.

(c)(1) *Exception for certain acquisitions of voting shares of savings associations and savings and loan holding companies.* Paragraphs (a) and (b) of this section do not apply to voting shares of a savings association or of a savings and loan holding company—

(i) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(ii) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(iii) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(iv) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding three years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(v) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(vi) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided*, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not, in the

aggregate, exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(vii) Acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to § 574.8 of this chapter.

(2) The aggregate amount of shares held under this paragraph (c) (other than pursuant to paragraphs (c)(1)(i) through (iv) and (c)(1)(vi)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(d) *Acquisitions of uninsured institutions.* No savings and loan holding company may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

Dated: December 14, 2007.

By the Office of Thrift Supervision

John M. Reich,

Director.

[FR Doc. E7-24676 Filed 12-19-07; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04-7-003; 121 FERC ¶ 61,260]

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities

Issued December 14, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order Clarifying Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is clarifying: the effective date for compliance with the requirements of Order No. 697; which entities are required to file updated market power analyses for the Commission's regional review; the data required for the horizontal market power analyses; and what constitute "seller-specific terms and conditions" that sellers may list in

their market-based rate tariffs in addition to the standard provisions listed in Appendix C to Order No. 697.

FOR FURTHER INFORMATION CONTACT: Paige C. Bullard, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6462.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order Clarifying Final Rule

I. Introduction

1. On June 21, 2007, the Commission issued Order No. 697,¹ in which the Commission revised and codified its market-based rate policy for public utilities. In the instant order, we make several clarifications. First, we clarify that, notwithstanding that Order No. 697 did not require market-based rate sellers to make immediate compliance filings amending their market-based rate tariffs, the Commission intended that all requirements and limitations applicable to market-based rate sellers set forth in Order No. 697 should become effective on September 18, 2007. Second, we clarify that transmission-owning utilities with market-based rate authority and their affiliates with market-based rate authority must file updated market power analyses for the Commission's regional review as discussed herein. Third, we clarify the data to be used in submitting the horizontal market power indicative screens and the Delivered Price Test (DPT) analysis.

This requirement will apply to new applications for market-based rate authorization and updated market power analyses, including the updated market power analyses that must be submitted for the Commission's regional review. As discussed below, for purposes of the market power analyses to be submitted in December 2007, we will extend the date for filing such analyses until 30 days after the date of issuance of this order. Fourth, we clarify that "seller-specific terms and conditions" that go beyond the standard provisions required in Appendix C of Order No. 697, and that sellers are permitted to list in their market-based rate tariffs, are those tariff provisions that are commonly found in power sales agreements, such as creditworthiness, force majeure, dispute resolution, billing, and payment provisions.

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 FR 39904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007).

II. Background

2. In order to codify and revise its market-based rate policy for wholesale sellers of electric energy, capacity, and ancillary services, as well as streamline the administration of the market-based rate program, the Commission in Order No. 697 modified its regulations governing market-based rate authorization. Order No. 697 became effective on September 18, 2007.

III. Discussion

3. In Order No. 697, the Commission determined that continuing to allow basic inconsistencies in market-based rate tariffs due to the lack of consistent form and content of certain key provisions was unjust and unreasonable under sections 205 and 206 of the Federal Power Act (FPA). As such, the Commission required that all market-based rate sellers revise their respective tariffs to contain standard required provisions.² Order No. 697 adopted two standard required provisions that each market-based rate seller must include in its tariff: (1) A provision requiring compliance with Commission regulations at 18 CFR Part 35, Subpart H; and (2) a provision identifying all limitations and exemptions regarding the seller's market-based rate authority.³ Order No. 697 also adopted a set of standard applicable provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable based upon the services that are provided by a seller.⁴

A. Effective Date of Order No. 697

4. Rather than requiring sellers to make immediate compliance filings amending their market-based rate tariffs, Order No. 697 instead required sellers to amend their market-based rate tariffs to include the required standard provisions, as well as the required applicable provisions, at the earliest of: (1) The next time they file any other amendment to their market-based rate tariffs; (2) when they report a change in status; or (3) when they file their updated market power analyses.⁵

5. As the Commission stated in Order No. 697, regardless of the date on which market-based rate sellers make their compliance filings, the tariff provision providing that failure to abide by the regulations will constitute a tariff violation is considered part of each seller's current market-based rate tariff as of the effective date of Order No. 697,

September 18, 2007.⁶ Notwithstanding that Order No. 697 did not require sellers to make immediate compliance filings amending their market-based rate tariffs,⁷ the Commission intended that all requirements and limitations applicable to market-based rate sellers set forth in Order No. 697 should become effective on September 18, 2007. To the extent that some sellers may not be aware that, effective September 18, 2007, provisions in their market-based rate tariffs that are inconsistent with the requirements of Order No. 697 are no longer in effect, we provide this clarification. While we do not attempt in this order to provide an exhaustive list of all of the applicable requirements of Order No. 697, we do provide a number of examples below for illustrative purposes.

6. For example, the Commission adopted in § 35.39(d) of the affiliate restrictions codified in Order No. 697 a two-way information sharing restriction.⁸ The Commission recognized that some sellers may need to adjust their activities to comply with the two-way information restriction. The Commission stated that any sellers whose activities had been governed by a code of conduct with a one-way information restriction will be deemed to have adopted a two-way information restriction as of the effective date of Order No. 697.⁹

7. Similarly, in Order No. 697, the Commission concluded that adequately protecting customers from the potential exercise of market power required that it continue to apply mitigation to all of a seller's sales in the balancing authority area in which a seller is found, or presumed, to have market power.¹⁰ In this regard, the Commission rejected proposals that it limit mitigation to sales that "sink" in the balancing authority area where the mitigated seller is found, or presumed, to have market power.¹¹ Some mitigated sellers have tariff language that is inconsistent with the Commission's current policy as set forth in Order No. 697. These mitigated sellers' tariffs currently only prohibit sales at market-based rates that "sink" in a balancing authority area in which the mitigated seller has been found, or

presumed, to have market power. We clarify that, although the Commission may have previously accepted these sellers' provisions, effective September 18, 2007, all sellers are subject to the requirements of Order No. 697 and thus may not limit mitigation to sales that "sink" in the balancing authority area where the mitigated seller has been found, or presumed, to have market power. Rather, such sellers are required to comply with the mitigation policy as stated in Order No. 697.

8. Accordingly, we clarify that, effective September 18, 2007, provisions in a seller's previously-approved market-based rate tariff that are inconsistent with the requirements of Order No. 697 are no longer in effect. However, we will not pursue any violations that resulted from the new requirements in Order No. 697 that were inconsistent with a seller's previously-approved market-based rate tariff prior to 30 days after the issuance of this clarification order.

B. Entities Required To File Updated Market Power Analyses for the Commission's Regional Review

9. In Order No. 697, the Commission determined that it would conduct a regional review of updated market power analyses and set forth in Appendix D the schedule for such review.¹² The first round of updated market power analyses, for the Northeast, are due in December 2007. Order No. 697 states that "[t]he transmission-owning utilities, which have the information necessary to perform [simultaneous import limit] studies, will be required to file their updated market power analyses first."¹³ Appendix D of Order No. 697 lists "Transmission Operators" as filing updated market power analyses in the regional reviews. Because there may be confusion concerning which entities are required to file updated market power analyses as a result of the use of the term "transmission operators" in Appendix D of Order No. 697, we clarify that transmission-owning utilities with market-based rate authority and their affiliates with market-based rate authority must file the updated market power analyses for the Commission's regional review. Accordingly, the term "Transmission Operators" in Appendix D should instead be "Transmission Owners." A revised version of the relevant table in Appendix D is attached.

10. Further, we clarify that market-based rate sellers that are affiliated with

⁶ *Id.*

⁷ *Id.*

⁸ 18 CFR 35.39(d) (2007).

⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 588.

¹⁰ *Id.* P 817. Although the Commission used the term "mitigated market" in Order No. 697, we believe that "balancing authority area in which a seller is found, or presumed, to have market power" is a more accurate way to describe the area in which a seller is mitigated. Accordingly, we use that phrase herein.

¹¹ *Id.* P 818.

¹² *Id.* P 882.

¹³ *Id.* P 889.

² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 912-913.

³ *Id.* P 914-916.

⁴ *Id.* P 916.

⁵ *Id.* P 924.

transmission-owning utilities and are located in the same region¹⁴ as their transmission-owning utility affiliate (either physically located in that region such as a generation affiliate, or making sales in that region such as an affiliated power marketer) must file their updated market power analyses during the same review period as their transmission-owning utility affiliate. For example, Order No. 697 stated that the first set of updated market power analyses (for the Northeast) would be filed in December 2007. This set of analyses should include transmission-owning utilities with market-based rate authority and all of their affiliates with market-based rate authority located in the same region (either physically located in that region such as a generation affiliate, or making sales in that region). The second set of updated market power analyses would include all other sellers in the Northeast and is due in June 2008.

C. Required Data for Horizontal Market Power Analyses

11. It has come to the Commission's attention that, for the purposes of the horizontal market power analysis, there may be confusion regarding whether market shares calculated for the market share screen and the DPT analysis should be based on the four quarters of the calendar year or the four seasons as defined in the April 14 Order.¹⁵ As a result, there may be confusion concerning which data and market share calculations must be submitted as part of sellers' updated horizontal market power analyses. As we explained in Order No. 697, the wholesale market share analysis measures for each of the four seasons whether a seller has a dominant position in the market based on the number of megawatts of uncommitted capacity owned or controlled by the seller as compared to the uncommitted capacity of the entire relevant market.¹⁶ Order No. 697 states that the Commission will continue to require the use of historical data for both of the horizontal market power indicative screens and the DPT analysis in evaluating whether a seller may possess market power, and states that "in light of adopting a regional approach with regard to regularly scheduled updated market power

analyses, we will require the use of the actual historical data for the previous calendar year."¹⁷ However, the Commission's April 14 Order, in describing the seasons for the DPT, defines the study periods (seasons) as: Summer (June/July/August); Fall (September/October/November); Winter (December/January/February); and Spring (March/April/May).¹⁸ We understand that some have interpreted Order No. 697 as revising the study periods to be the four quarters of the calendar year instead of the four seasons. This was not the intention of Order No. 697. Accordingly, we clarify that market shares calculated for the market share screen and the DPT analysis should continue to be based on the four seasons.¹⁹

12. In addition, we also clarify that, as a general matter, the market share studies performed in market-based rate filings for both the preliminary screens and the DPT analysis should be based on the most recent available actual historical data for each full season. However, we recognize that it may be appropriate to allow exceptions to this general principle in certain limited circumstances. We describe below how this general principle should be applied to applicants making various types of market-based rate filings:

a. *Updated market power analyses (triennial reviews) for transmission-owning applicants:* Transmission-owning applicants filing triennial reviews in June or December should base their market share analysis on the actual historical data for the four seasons (winter (December–February), spring (March–May), summer (June–August) and fall (September–November)) ending November 30 of the previous calendar year consistent with Appendix D.²⁰

b. *Updated market power analyses for applicants that do not own transmission:* Applicants that do not own transmission should base their market share analysis in their triennial reviews on actual historical data using the same seasons that were used in the triennial reviews filed by the transmission owners in their region consistent with Appendix D. For example, for transmission owners in the Southeast filing triennial reviews in June of 2008, the seasonal analysis would be based on the following:

December 2005, January 2006 and February 2006 for winter; March 2006, April 2006 and May 2006 for spring; June 2006, July 2006 and August 2006 for summer; September 2006, October 2006 and November 2006 for fall (because at the time of filing these months had the most recently available actual historical data for each of those complete seasons). All other applicants in the Southeast should base their studies on these same seasons when they file their triennials six months later in December 2008.²¹

c. *Transmission-owning applicants for initial market-based rate authorization or submission of a change in status filing:* Transmission-owning applicants filing applications for initial market-based rate authorization, or those submitting a change in status filing, should rely on the most recent available actual historical data for each complete season of: Winter (December–February), spring (March–May), summer (June–August) and fall (September–November).

d. *All other applicants:* All other applicants filing applications for initial market-based rate authorization or submitting change in status filings and, which have to rely on other studies because they do not have access to all the needed data, should rely on the same vintage data that were used in the triennial reviews filed by the transmission owners in their region within the past year.²² If triennial reviews were not filed by the transmission owners in their region within the past year, then the applicants covered under this part may base their market share analysis on either (i) the most recently available actual historical data for each complete season of: Winter (December–February), spring (March–May), summer (June–August) and fall (September–November), or (ii) the same seasons in their market share studies that were used in the most recently filed triennial studies submitted by the transmission owners in their region, provided that the non-transmission owning applicant shows what its market shares would have been in each season

²¹ As set forth in Order No. 697, Applicants that do not own transmission are required to file their triennials six months after the transmission owners in that region filed their triennials. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 889.

²² Applicants in this category include those that do not own transmission or do not have affiliates that own transmission, as well as those that file a market power study as part of their change in status filing. Although applicants do not typically submit market power studies as part of their change in status filings, sometimes they do, and at other times the Commission may require the submission of a market power study at the time of a change in status filing.

¹⁴ In Order No. 697, the Commission identified six regions (Northeast, Southeast, Central, Southwest Power Pool, Southwest, and Northwest) for purposes of the regional market power update review process. *Id.* P 885.

¹⁵ *AEP Power Marketing Inc.*, 107 FERC ¶ 61,018 at n.85 (April 14 Order), *order on rehearing*, 108 FERC ¶ 61,026 (2004).

¹⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 34 (citing April 14 Order at P 100).

¹⁷ *Id.* P 298.

¹⁸ April 14 Order at n.85.

¹⁹ Summer (June/July/August); Fall (September/October/November); Winter (December/January/February); and Spring (March/April/May).

²⁰ The relevant tables in Appendix D to Order No. 697 have been revised to reflect this clarification and are attached herewith.

based on those studies, and states whether there would be a significant increase in the market shares during any season if more recent data had been used (as well as the basis for this claim).²³

13. In light of these clarifications, we will extend the deadline for filing the first set of regional triennial studies that we directed in Order No. 697 from December 2007 to 30 days after the date of issuance of this order. Furthermore, we will not require those entities that have already submitted their updated market power studies for the December filing period to file revisions to those studies if they were based on calendar year quarters, rather than the approach set forth in (a) above.

D. Seller-Specific Terms and Conditions

14. In Order No. 697, the Commission required that all sellers include in their respective market-based rate tariffs certain standard required provisions and standard applicable provisions to the extent that they are applicable based on the services provided by the seller.²⁴ The Commission also explained that it would permit sellers to list in their market-based rate tariffs additional terms and conditions that go beyond the standard provisions set forth in Appendix C.²⁵ The Commission stated that it recognized benefits to both sellers

and customers of having terms and conditions relevant to the seller's market-based rate power sales available in one document.

15. In order to ensure full compliance with the tariff requirements set forth in Order No. 697, we clarify that "seller-specific terms and conditions" are those provisions that are commonly found in power sales agreements, such as creditworthiness, force majeure, dispute resolution, billing, and payment provisions. As the Commission noted in Order No. 697, it has been our practice not to evaluate these types of terms and conditions once the seller is authorized to sell power at market-based rates, but to allow them to be included in the market-based rate tariff that is on file with the Commission. We clarify, however, that we did not intend that "seller-specific terms and conditions" include other "services" offered by the seller beyond those set forth in Appendix C.

IV. Conclusion

16. In sum, to the extent that it was not clear in the Final Rule that all requirements and limitations of Order No. 697 became effective on September 18, 2007, we hereby clarify that sellers are required to comply with all of the requirements of Order No. 697 as of the effective date of the Final Rule, even if

sellers have previously-approved tariff provisions to the contrary. Thus, any sales made after September 18, 2007 are expected to be in compliance with the requirements of Order No. 697. We also clarify that both transmission-owning utilities with market-based rate authority and their affiliates with market-based rate authority are required to file updated market power analyses for the Commission's regional review as discussed herein. We clarify that we will require use of the actual historical data through November of the previous calendar year, including data from December of the prior year, for both of the horizontal market power screens and the DPT analysis as discussed herein. Additionally, we clarify that "seller-specific terms and conditions" are those tariff provisions that are commonly found in power sales agreements, such as creditworthiness, force majeure, dispute resolution, billing, and payment provisions. "Seller-specific terms and conditions" do not, however, include other "services" offered by the seller.

By the Commission.
Nathaniel J. Davis, Sr.,
Deputy Secretary.

Regional Review Schedule for Sellers Filing Triennial Reviews

APPENDIX D

Entities required to file	Filing period (anytime during the month)	Study period
Schedule for Transmission Owning Utilities With Market-Based Rate Authority and Their Affiliates in the Same Region		
Northeast Transmission Owners	December, 2007	Dec. 1, 2005–Nov. 30, 2006.
Southeast Transmission Owners	June, 2008	Dec. 1, 2005–Nov. 30, 2006.
Central Transmission Owners	December, 2008	Dec. 1, 2006–Nov. 30, 2007.
SPP Transmission Owners	June, 2009	Dec. 1, 2006–Nov. 30, 2007.
Southwest Transmission Owners	December, 2009	Dec. 1, 2007–Nov. 30, 2008.
Northwest Transmission Owners	June, 2010	Dec. 1, 2007–Nov. 30, 2008.
Northeast Transmission Owners	December, 2010	Dec. 1, 2008–Nov. 30, 2009.
Southeast Transmission Owners	June, 2011	Dec. 1, 2008–Nov. 30, 2009.
Central Transmission Owners	December, 2011	Dec. 1, 2009–Nov. 30, 2010.
SPP Transmission Owners	June, 2012	Dec. 1, 2009–Nov. 30, 2010.
Southwest Transmission Owners	December, 2012	Dec. 1, 2010–Nov. 30, 2011.
Northwest Transmission Owners	June, 2013	Dec. 1, 2010–Nov. 30, 2011.
Schedule for All Other Entities		
All others in Northeast that did not file in December including all power marketers that sold in the Northeast.	June, 2008	Dec. 1, 2005–Nov. 30, 2006.
All others in Southeast that did not file in June including all power marketers that sold in the Southeast and have not already been found to be Category 1 sellers.	December, 2008	Dec. 1, 2005–Nov. 30, 2006.
All others in Central that did not file in December including all power marketers that sold in the Central and have not already been found to be Category 1 sellers.	June, 2009	Dec. 1, 2006–Nov. 30, 2007.

²³ We note that the Commission reserves the right to require an updated market power analysis at any time and may request the applicant to use the most recently available actual historical data for each

complete season of: Winter (December–February), spring (March–May), summer (June–August) and fall (September–November).

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914–917. These standard provisions are listed in Appendix C to Order No. 697.

²⁵ *Id.* P 919, 927.

APPENDIX D—Continued

Entities required to file	Filing period (anytime during the month)	Study period
All others in SPP that did not file in June including all power marketers that sold in SPP and have not already been found to be Category 1 sellers.	December, 2009	Dec. 1, 2006–Nov. 30, 2007.
All others in Southwest that did not file in December including all power marketers that sold in the Southwest and have not already been found to be Category 1 sellers.	June, 2010	Dec. 1, 2007–Nov. 30, 2008.
All others in Northwest that did not file in June including all power marketers that sold in the Northwest and have not already been found to be Category 1 sellers.	December, 2010	Dec. 1, 2007–Nov. 30, 2008.
Others in Northeast that did not file in December and have not been found to be Category 1 sellers.	June, 2011	Dec. 1, 2008–Nov. 30, 2009.
Others in Southeast that did not file in June and have not been found to be Category 1 sellers.	December, 2011	Dec. 1, 2008–Nov. 30, 2009.
Others in Central that did not file in December and have not been found to be Category 1 sellers.	June, 2012	Dec. 1, 2009–Nov. 30, 2010.
Others in SPP that did not file in June and have not been found to be Category 1 sellers.	December, 2012	Dec. 1, 2009–Nov. 30, 2010.
Others in Southwest that did not file in December and have not been found to be Category 1 sellers.	June, 2013	Dec. 1, 2010–Nov. 30, 2011.
Others in Northwest that did not file in June and have not been found to be Category 1 sellers.	December, 2013	Dec. 1, 2010–Nov. 30, 2011.

[FR Doc. E7–24736 Filed 12–19–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 22

RIN 1400–AC42

[Public Notice: 6035]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule amends the Schedule of Fees for Consular Services. Specifically, it raises from \$100 to \$131 the fee charged for the processing of an application for a nonimmigrant visa (MRV) and Border Crossing Card (BCC) and increases the immigrant visa fee by \$20.00. The Department of State is adjusting the fees as an emergency measure to ensure that sufficient resources are available to meet the costs of processing non-immigrant and immigrant visas in light of increased security measures put in place since 2004 and fee collection mandates on behalf of the Federal Bureau of Investigation.

DATES: *Effective date:* This interim final rule becomes effective January 1, 2008.

Comment date: The Department of State will accept written comments from interested persons up to February 29, 2008.

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

- Persons with access to the Internet may view this notice and submit comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.
- *Mail (paper, disk, or CD-ROM):* U.S. Department of State, Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1004, 2401 E Street, NW., Washington, DC 20520.
- *E-mail:* fees@state.gov. You must include the RIN (1400–AC42) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Suzanne Inzerillo, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202–663–3923, telefax: 202–663–2499; e-mail: fees@state.gov.

SUPPLEMENTARY INFORMATION:

Background

What Is the Authority for This Action?

The majority of the Department of State’s consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701 (which directs that certain government services be self-sustaining to the extent possible), and/or title 22 U.S.C. 4219, which as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services provided by U.S. embassies and consulates. In addition, a number of statutes address specific fees. A cost-based, nonimmigrant visa processing fee for

the machine readable visa (MRV) and for a combined border crossing and nonimmigrant visa card (BCC) (see 22 CFR 41.32) is authorized by section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236 (April 30, 1994), as amended. Various statutes permit the Department to retain some of the consular fees it collects, including the MRV and MRV/BCC fees. Section 103 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173 (May 14, 2002), amended section 140(a) of Public Law 103–236 to permit the Department to retain all MRV fees until they are expended. Public Law 103–317 (FY 95 CJS Appropriation Act, 8 U.S.C. 1356 note) gives retention authority for an increase to IV fees “caused by processing an applicant’s fingerprints.”

Consistent with OMB Circular A–25 guidelines, the Department conducted a Cost of Service Study (COSS) from January 2003 to June 2004 to update the Schedule of Fees for Consular Services. The results of that study were the foundation of the current Schedule, which was published as a final rule on February 2, 2005, at Volume 70, No. 21 FR Doc. 05–1930. The Schedule went into effect on March 8, 2005. The \$100 MRV fee, however, was based on the previous COSS completed in 2002 and was not raised as a result of the 2004/2005 COSS, which indicated that the actual cost for MRV services was \$107.32. The Department intends to initiate collection of the fee at the increased rate on January 1, 2008. Furthermore, on January 1, 2008, the

FBI will begin charging the Department of State for fingerprint and name checks. The additional charges will cover the FBI fees, and the collection of 10 prints and systems related costs.

The increase in the Immigration visa application fee is merely the sum of the fee that Department must remit to the FBI for each set of prints taken and the collection costs to the Department.

Why Is the Department Raising the MRV and BCC Fees to \$131, and the Immigrant Visa Application Fee to \$355 at This Time?

The primary reason for increasing the fees is that in January 2008, the Department will begin paying fees to the FBI for checking the fingerprints against the FBI's Integrated Automated Fingerprint Identification System (IAFIS) and for running visa applicant names through Security Advisory Opinion (SAO) processes.

In addition, the \$100 MRV fee that went into effect on November 1, 2002 was based on estimates of visa demand, taking the 2001 COSS as a baseline. The fee was calculated taking into account the costs of worldwide nonimmigrant visa operations, visa demand, and other related costs. The 2004 COSS subsequently determined that the MRV and BCC fees should be set at \$107.32 based on revised costs and demand. However, in response to public comment and its own concern over the cost to the applicant, the Department of State determined that it would continue to charge \$100 per applicant rather than the actual cost to the Department of \$107.32.

Because of the need for additional measures to enhance border security, however, the costs to the Department of processing non-immigrant visas have since risen even further. The increased costs include the cost of collecting ten fingerprints from applicants at all visa processing locations and performing name checks on all applicants. Based on these increased costs, the Department has determined that an MRV and BCC fee of \$131 will be required to recover the full cost of processing nonimmigrant visa applications during the anticipated period of the current Schedule of Fees. Failure to increase the fees at this time could jeopardize the Department's ability to continue critical programs, including the enhanced border security measures recently undertaken. Given the uncertainty with respect to actual applicant volume, the fee may need to be adjusted in the future.

The FBI fingerprint fee will also be assessed in all immigrant visa cases. In order to recoup the Department's cost of collecting and providing the 10

fingerprints to the FBI as well as the FBI fee for the fingerprint check, the immigrant visa fee will increase by \$20.00 to \$355. Since the Department has the authority to retain fees, this increase will be used to pay the FBI fee and fund the department's associated collection costs.

The estimated total increase in cost for nonimmigrant visa applicants is \$310,000,000 (\$31.00 per applicant, with an estimated 10,000,000 applicants).

The estimated total increase in cost for immigrant visa applicants is \$14,000,000 (\$20 per applicant, with an estimated 700,000 applicants).

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim final rule, with a 60-day provision for post-promulgation public comments, and with an effective date less than 30 days from the date of publication, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Delaying implementation of this rule would be contrary to the public interest because failure to increase the fees on January 1 would jeopardize the Department's ability to continue critical programs, including visa screening procedures that are necessary for national security. As explained above, the FBI will begin charging the Department a fee to process the fingerprints of visa applicants and to perform name checks of those applicants beginning January 1. The Department's ability to perform this screening is of vital public interest because it is an essential component of efforts to enhance the nation's border security.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

OMB considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to OMB for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements. It will affect OMB collection numbers 1405-0018 and 1405-0015 by increasing the public cost burden.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Passports and visas.

■ Accordingly, 22 CFR part 22 is amended as follows:

PART 22—[AMENDED]

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105-277, 112 Stat. 2681 et seq.; Pub. L. 108-447, 118 Stat. 2809 et seq.; E.O. 10718, 22 FR 4632, 3 CFR, 1954-1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966-1970 Comp., p. 570.

■ 2. Section 22.1 is amended by:
 ■ a. Revising item No. 21(a) and (b), and item 32 to read as set forth below:
 ■ b. Removing item 35(f).

§ 22.1 Schedule of fees.

* * * * *

Item No.	Fee
* * * * *	
Nonimmigrant Visa Services	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Nonimmigrant visa [21-MRV Processing]	\$131
(b) Border crossing card—10 year (age 15 and over) [22-131 BCC 10 Year]	131
* * * * *	
Immigrant and Special Visa Services	
32. Immigrant visa application processing fee (per person) [31-IV Application]	355
* * * * *	

Dated: December 11, 2007.
Patrick Kennedy,
Under Secretary of State for Management,
Department of State.
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DEPARTMENT OF STATE

22 CFR Part 62
[Public Notice: 6033]
RIN 1400-AC29

Rule Title: Exchange Visitor Program—Sanctions and Terminations

AGENCY: Department of State.
ACTION: Final Rule.

SUMMARY: The Department of State (Department) published a Proposed Rule regarding sponsor sanctions and program terminations, together with a request for comments, on May 31, 2007. A total of 49 comments were submitted, reviewed and evaluated. The Department herewith adopts the Proposed Rule, with minor edits, as a Final Rule.

DATES: *Effective Date:* This Final Rule is effective January 22, 2008.

SUPPLEMENTARY INFORMATION: The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the U.S. Department of State (Department), have promulgated regulations governing the Exchange Visitor Program. Those regulations now appear at 22 CFR Part 62. The regulations governing sanctions appear at 22 CFR 62.50, and regulations governing termination of a sponsor's designation, at 22 CFR 62.60 through 62.62. The ultimate goals of the sanctions regulations are to further the foreign policy interests of the United

States, and to protect the health, safety, and welfare of Exchange Visitor Program participants. These regulations largely have remained unchanged since 1993, when the USIA undertook a major regulatory reform of the Exchange Visitor Program, as administered by the Office of Exchange Coordination and Designation (Office).

On May 31, 2007, the Department published a Proposed Rule on sanctions and terminations with a comment period ending July 30, 2007. 72 FR 30302-30308. Forty-nine (49) parties filed comments, which the Department reviewed and evaluated. Two membership organizations filed comments on behalf of a large number of individual designated program sponsors. Twenty-five (25) commenting parties favored the Proposed Rule. The remaining commenting parties criticized the Proposed Rule in one or more respects, and several parties recommended changes to the Proposed Rule.

Having thoroughly reviewed the comments and the changes that commenting parties recommended, the Department has determined that it will, and hereby does, adopt the Proposed Rule, with minor edits, and promulgates it as a Final Rule. The Department's evaluation of the written comments and recommendations follows.

As the Department noted in the Supplementary Information accompanying the Proposed Rule,

The [Fulbright-Hays] Act authorizes the President to provide for such exchanges if it would strengthen international cooperative relations. The language of the Act and its legislative history make it clear that the Congress considered international educational and cultural exchanges to be a significant part of the public diplomacy efforts of the President in connection with Constitutional prerogatives in conducting

foreign affairs. Thus, exchange visitor programs that do not further the public diplomacy goals of the United States should not be designated initially, or retain their designation. Accordingly, it is imperative that the Department have the power to revoke program designations or deny applications for program redesignation when it determines that such programs do not serve the country's public diplomacy goals.

The above statement is the underpinning for the Department's entire approach to the sanctions regime of the Exchange Visitor Program.

Comment Analysis

One of the overall criticisms of the Proposed Rule was that the Department eliminated the requirement that it find alleged violations of Part 62 to be willful or negligent before imposing sanctions. Fifteen (15) comments were opposed to the change. The Department believes that such criticism is without merit. A program sponsor, prior to being designated or redesignated, must demonstrate that it (i.e., the responsible officer and alternate responsible officer(s)), its employees, and third parties acting on its behalf have the knowledge and ability to comply and remain in continual compliance with all provisions of Part 62. [§ 62.3(b)(1); § 62.9(a) and (f)(1) and (2); and § 62.11(a).] Since knowledge and ability to comply and remain in full compliance with the regulations are fundamental requirements of sponsor designation, it is essentially irrelevant whether a sponsor violates regulations willfully, negligently, or even inadvertently. Violations, whether or not willful or negligent, may harm the national security or the public diplomacy goals of the United States, or pose a threat to the health, safety or welfare of program participants, and the Department must have the capacity to

respond appropriately. Moreover, the process set forth in the revised sanctions regulations provides that a sponsor being sanctioned may submit a statement in opposition to or mitigation of the proposed sanction. This process provides the sponsor with the opportunity to explain the circumstances of the alleged violation, and to argue that a lesser sanction, or no sanction at all, would be appropriate in view of those circumstances. In addition, the review process available for significant sanctions provides a second opportunity for the sponsor to make its case before a panel of three Review Officers not connected with the Exchange Visitor Program, thus affording additional protection from the arbitrary or capricious imposition of sanctions. A total of sixteen (16) comments were in favor of the change.

Twelve (12) commenting parties opined that the criteria for imposing sanctions are extremely broad and do not provide an adequate basis for the Department to determine, for example, under what circumstances it would propose to terminate rather than suspend a sponsor's designation or impose lesser sanctions. It should be noted in this regard that four of the six grounds for imposing sanctions are the same as those in the prior rule. The two new grounds—actions that may compromise the national security of the United States or undermine its foreign policy objectives—are of a nature that inherently requires broad discretion in the choice of appropriate sanctions. Moreover, as previously noted, the process for imposing and reviewing proposed sanctions affords a sponsor ample opportunity to argue that alternative sanctions would be more appropriate.

Nineteen (19) of the commenting parties criticized the lack of an agency review process for the "lesser sanctions," in which the decision of the Office is the final Department decision [§ 62.50(b)]. One (1) comment was in favor. However, the lack of a review process for "lesser sanctions" is unchanged from the prior rule. Under the prior rule, reduction in the size of a sponsor's program was deemed a "lesser sanction" (and thus not subject to further agency review) if it was limited to a reduction in participants of 10 percent or less or, in the case of a geographical reduction, if it would not cause a significant financial burden for the sponsor. The only change in the Proposed Rule was an increase in the potential size of the reduction, from 10 to 15 percent, and the reminder that subsequent 10-percent reductions may be imposed in the case of continued

violations (a possibility that was inherent in the prior rule). The reason for the more limited process for "lesser sanctions" remains the same as in the prior rule: Their relatively minor impact on sponsors does not justify the burden and expense, for both the Department and sponsors, of the more extensive process afforded for more significant sanctions. The modest increase of 5 percent in the size of a potential program reduction does not, in the Department's view, alter this rationale.

Fourteen (14) commenting parties criticized the basis for and the process by which the Department will implement a suspension. The prior rule allowed for "suspension" and "summary suspension." In practice, the Department never utilized the suspension provision of the regulations, and that provision is eliminated in the Final Rule, which redesignates "summary suspension" as "suspension." Under the prior rule, only one ground for this sanction existed: Endangering the health, safety or welfare of a participant. The Final Rule adds another ground, the necessity of which became apparent after the events of 9/11: Damaging the national security interests of the United States. The Department believes that the continued necessity for it to be able to act swiftly, and with immediate effect, in such circumstances is self-evident. Moreover, it should be noted that the summary process for such suspensions has been improved for sponsors in two respects. First, a sponsor is afforded additional time in which to submit an initial opposition to the suspension. Second, such an opposition is received, reviewed and decided at a higher level, by the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (PDAS) rather than by the Office. As under the prior rule, the sponsor may seek further agency review of this decision, by a three-member review panel.

Thirteen (13) of the commenting parties criticized new language providing that the Department may determine that a class of designated programs compromises the national security of the United States or no longer furthers the public diplomacy mission of the United States [§ 62.62]. Three (3) comments were in favor of this regulation. If the Department makes such a determination, it may revoke the designations, or deny applications for redesignation, of sponsors of that class of exchange visitor programs. As the Department noted in the Supplementary Information accompanying the Proposed Rule, the Exchange Visitor Program is part of the Department's public

diplomacy efforts in furtherance of the President's Constitutional prerogatives in conducting foreign affairs. Accordingly, the Department noted, termination of a program category because it no longer furthers the Department's public diplomacy mission, or compromises national security, has always been inherently within the discretion of the Department. Following 9/11, the Department concluded that its regulations should make that authority, and the means by which it would be exercised, explicit.

Thirteen (13) of the commenting parties opposed the elimination of a trial-type hearing in appeals of significant sanctions. Moreover, those same parties opine that the criteria for imposing a suspension are more stringent than the criteria for revoking a designation or denying an application for redesignation of a program.

It is entirely appropriate that the grounds for the suspension sanction be drawn far more narrowly than those for the other significant sanctions. Suspension represents a rapid response to an urgent problem, with expedited procedures including the possibility of an immediately effective sanction, not stayed by any opposition or request for review. In this, it is unlike any other sanction. That is why it is reserved for violations whose seriousness justifies it: Cases in which national security is compromised, or in which a danger is posed to the health, safety or welfare of participants. It would be inappropriate to apply its procedures to other violations; and it would be equally inappropriate to restrict the availability of other sanctions to its narrow grounds.

With regard to the elimination of trial-type review procedures for significant sanctions, the Department has found that such procedures are costly, time-consuming and burdensome for both the Department and sponsors. As noted in the Supplementary Information accompanying the Proposed Rule, such procedures are not required by any applicable statute, and are not necessary to afford due process. Under the Final Rule, sponsors are afforded notice and ample, repeated opportunities to be heard. When the Office proposes a significant sanction, a sponsor may submit to the PDAS an opposition, including factual and legal arguments and additional documentary material, such as affidavits and other evidence. Following a statement in response by the Office, the PDAS issues a written, reasoned decision confirming, withdrawing or modifying the sanction. The sponsor may then seek review of the PDAS decision, before a three-member panel, no member of which

may be from the Bureau of Educational and Cultural Affairs (of which the Office forms a part, and which is supervised by the PDAS). Once again, the sponsor has the opportunity to file a statement setting forth arguments of fact and law, accompanied by documentary evidence and other attachments. Following a statement in response by the PDAS, the review panel may, at its discretion, convene a brief meeting with the parties, solely for the purpose of clarifying the written submissions. Then the review panel issues a written, reasoned decision confirming, withdrawing or modifying the sanction. This procedure affords ample notice and opportunity to be heard, with a reasoned decision on a clear record. If the program sponsor is not satisfied with the decision ultimately reached by the Review Officers, it continues to have the same opportunities as before to seek relief in an appropriate court.

Finally, ten (10) of the commenting parties requested that sponsors be given the opportunity to cure alleged violations before the Department imposes sanctions. The Department believes that if it were to provide sponsors in all cases the automatic right to cure an alleged violation or deficiency with no risk that an actual sanction will be imposed, then the deterrent effect of the sanctions regime effectively would be eliminated. However, as a practical matter, the Office seldom proposes formal sanctions without first engaging in informal discussions seeking to bring the sponsor into voluntary compliance. Moreover, although there is no *right* to cure, a sponsor facing the imposition of sanctions certainly may offer a settlement or, in submitting its statement in opposition to or mitigation of the sanction, show it has cured the alleged violations and argue for a less severe sanction, or no sanction at all, and may request a meeting to present its views.

Seven (7) comments favored, and two opposed, the paper review set forth at § 62.50(f). The comments stated that a review should also include statements and information provided by exchange visitor participants, concerned citizens, and school officials.

Thirteen (13) comments were received in favor of a sponsor's not being able to reapply for designation for a minimum of five (5) years once a designation has been revoked.

For the foregoing reasons, the Department is promulgating the Proposed Rule as a Final Rule.

Regulatory Analysis

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department of State published a proposed rule and invited and received public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Department of State does not consider the proposed rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to 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. The rule has been provided to the Office of Management and Budget (OMB) for review.

Paperwork Reduction Act

This Final 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 62

Cultural Exchange Programs.
 ■ Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The Authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Pub. L. 105–277, Div. G, 112 Stat. 2681–761 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Pub. L. 107–56, Sec. 416, 115 Stat. 354; and Pub. L. 107–173, 116 Stat. 543.

■ 2. Section 62.50 is revised to read as follows:

§ 62.50 Sanctions.

(a) *Reasons for sanctions.* The Department of State (Department) may impose sanctions against a sponsor upon a finding by its Office of Exchange Coordination and Designation (Office) that the sponsor has:

- (1) Violated one or more provisions of this Part;
- (2) Evidenced a pattern of failure to comply with one or more provisions of this Part;
- (3) Committed an act of omission or commission, which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or

(4) Otherwise conducted its program in such a way as to undermine the foreign policy objectives of the United States, compromise the national security interests of the United States, or bring the Department or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this Part, the Department, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions (“lesser sanctions”) on a sponsor upon a finding that the sponsor engaged in any of the acts or omissions set forth in paragraph (a) of this section:

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(ii) A declaration placing the exchange visitor sponsor's program on probation, for a period of time determined by the Department in its discretion, signifying a pattern of violation of regulations such that further violations could lead to suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) Up to a 15 percent (15%) reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity. If the sponsor continues to violate the regulations in this Part, the Department may impose subsequent additional reductions, in ten-percent (10%) increments, in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity.

(2) Within ten (10) days after service of the written notice to the sponsor imposing any of the sanctions set forth in paragraph (b)(1) of this section, the sponsor may submit to the Office a statement in opposition to or mitigation of the sanction. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. Sponsors shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. Upon review and consideration of such submission, the Office may, in its discretion, modify, withdraw, or confirm such sanction. All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The decision of the Office is the final Department decision with regard to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section.

(c) *Suspension.* (1) Upon a finding that a sponsor has committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, or of damaging the national security interests of the United States, the Office may serve the sponsor with written notice of its decision to suspend the designation of the sponsor's program for a period not to exceed one hundred twenty (120) days. Such notice must specify the grounds for the sanction and the effective date thereof, advise the sponsor of its right to oppose the suspension, and identify the procedures for submitting a statement of opposition thereto. Suspension under this paragraph need not be preceded by the

imposition of any other sanction or notice.

(2)(i) Within five (5) days after service of such notice, the sponsor may submit to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (Principal Deputy Assistant Secretary, or PDAS) a statement in opposition to the Office's decision. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. A sponsor shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. The submission of a statement in opposition to the Office's decision will not serve to stay the effective date of the suspension.

(ii) Within five (5) days after receipt of, and upon consideration of, such opposition, the Principal Deputy Assistant Secretary shall confirm, modify, or withdraw the suspension by serving the sponsor with a written decision. Such decision must specify the grounds therefore, and advise the sponsor of the procedures for requesting review of the decision.

(iii) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The procedures for review of the decision of the Principal Deputy Assistant Secretary are set forth in paragraphs (d)(3) and (4), (g), and (h) of this section, except that the submission of a request for review will not serve to stay the suspension.

(d) *Revocation of designation.* (1) Upon a finding of any act or omission set forth at paragraph (a) of this section, the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to revoke the sponsor's Exchange Visitor Program designation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Revocation of designation under this paragraph need not be preceded by the imposition of any other sanction or notice.

(2) (i) Within ten (10) days after service of such written notice of intent to revoke designation, the sponsor may submit to the Principal Deputy Assistant Secretary a statement in opposition to or mitigation of the proposed sanction, which may include a request for a meeting.

(ii) The submission of such statement will serve to stay the effective date of the proposed sanction pending the

decision of the Principal Deputy Assistant Secretary.

(iii) The Principal Deputy Assistant Secretary shall provide a copy of the statement in opposition to or mitigation of the proposed sanction to the Office. The Office shall submit a statement in response, and shall provide the sponsor with a copy thereof.

(iv) A statement in opposition to or mitigation of the proposed sanction, or statement in response thereto, may not exceed 25 pages in length, double-spaced and, if appropriate, may include additional documentary material. Any additional documentary material may include an index of the documents and a summary of the relevance of each document presented.

(v) Upon consideration of such statements, the Principal Deputy Assistant Secretary shall modify, withdraw, or confirm the proposed sanction by serving the sponsor with a written decision. Such decision shall specify the grounds therefor, identify its effective date, advise the sponsor of its right to request a review, and identify the procedures for requesting such review.

(vi) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) Within ten (10) days after service of such written notice of the decision of the Principal Deputy Assistant Secretary, the sponsor may submit a request for review with the Principal Deputy Assistant Secretary. The submission of such request for review will serve to stay the effective date of the decision pending the outcome of the review.

(4) Within ten (10) days after receipt of such request for review, the Department shall designate a panel of three Review Officers pursuant to paragraph (g) of this section, and the Principal Deputy Assistant Secretary shall forward to each panel member all notices, statements, and decisions submitted or provided pursuant to the preceding paragraphs of paragraph (d) of this section. Thereafter, the review will be conducted pursuant to paragraphs (g) and (h) of this section.

(e) *Denial of application for redesignation.* Upon a finding of any act or omission set forth at paragraph (a) of this section, the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to deny the sponsor's application for redesignation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition

thereto. Denial of redesignation under this section need not be preceded by the imposition of any other sanction or notice. The procedures for opposing a proposed denial of redesignation are set forth in paragraphs (d)(2), (d)(3), (d)(4), (g), and (h) of this section.

(f) *Responsible officers.* The Office may direct a sponsor to suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in paragraph (a) of this section. The procedures for suspending or revoking a responsible officer or alternate responsible officer are set forth at paragraphs (d), (g), and (h) of this section.

(g) *Review officers.* A panel of three Review Officers shall hear a sponsor's request for review pursuant to paragraphs (c), (d), (e), and (f) of this section. The Under Secretary of State for Public Diplomacy and Public Affairs shall designate one senior official from an office reporting to him/her, other than from the Bureau of Educational and Cultural Affairs, as a member of the Panel. The Assistant Secretary of State for Consular Affairs and the Legal Adviser shall each designate one senior official from their bureaus as members of the Panel.

(h) *Review.* The Review Officers may affirm, modify, or reverse the sanction imposed by the Principal Deputy Assistant Secretary. The following procedures shall apply to the review:

(1) Upon its designation, the panel of Review Officers shall promptly notify the Principal Deputy Assistant Secretary and the sponsor in writing of the identity of the Review Officers and the address to which all communications with the Review Officers shall be directed.

(2) Within fifteen (15) days after service of such notice, the sponsor may submit to the Review Officers four (4) copies of a statement identifying the grounds on which the sponsor asserts that the decision of the Principal Deputy Assistant Secretary should be reversed or modified. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. A sponsor shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the Principal Deputy Assistant Secretary, who shall, within fifteen (15) days after receipt of such statement, submit four (4) copies of a statement in response. Any such statement may not exceed 25 pages in length, double-spaced; and any

attachments thereto shall not exceed 50 pages. The Principal Deputy Assistant Secretary shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the sponsor. No other submissions may be made unless specifically authorized by the Review Officers.

(3) If the Review Officers determine, in their sole discretion, that a meeting for the purpose of clarification of the written submissions should be held, they shall schedule a meeting to be held within twenty (20) days after the receipt of the last written submission. The meeting will be limited to no more than two (2) hours. The purpose of the meeting will be limited to the clarification of the written submissions. No transcript may be taken and no evidence, either through documents or by witnesses, will be received. The sponsor and the representative of the Principal Deputy Assistant Secretary may attend the meeting on their own behalf and may be accompanied by counsel.

(4) Following the conclusion of the meeting, or the submission of the last written submission if no meeting is held, the Review Officers shall promptly review the submissions of the sponsor and the Principal Deputy Assistant Secretary, and shall issue a signed written decision within thirty (30) days, stating the basis for their decision. A copy of the decision will be delivered to the Principal Deputy Assistant Secretary and the sponsor.

(5) If the Review Officers decide to affirm or modify the sanction, a copy of their decision shall also be delivered to the Department of Homeland Security and to the Bureau of Consular Affairs of the Department of State. The Office, at its discretion, may further distribute the decision.

(6) Unless otherwise indicated, the sanction, if affirmed or modified, is effective as of the date of the Review Officers' written decision, except in the case of suspension of program designation, which is effective as of the date specified pursuant to paragraph (c) of this section.

(i) *Effect of suspension, revocation, or denial of redesignation.* A sponsor against which an order of suspension, revocation, or denial of redesignation has become effective may not thereafter issue any Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) or advertise, recruit for, or otherwise promote its program. Under no circumstances shall the sponsor facilitate the entry of an exchange

visitor into the United States. An order of suspension, revocation, or denial of redesignation will not in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program applicants or participants.

(j) *Miscellaneous.*

(1) *Computation of time.* In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is fewer than eleven (11) days, intermediate Saturdays, Sundays, or Federal legal holidays are excluded in the computation.

(2) *Service of notice to sponsor.* Service of notice to a sponsor pursuant to this section may be accomplished through written notice by mail, delivery, or facsimile, upon the president, chief executive officer, managing director, General Counsel, responsible officer, or alternate responsible officer of the sponsor.

■ 3. Subpart E is revised to read as follows:

Subpart E—Termination and Revocation of Programs

Sec.

62.60 Termination of designation.

62.61 Revocation.

62.62 Termination of, or Denial of Redesignation for, a Class of Designated programs.

62.63 Responsibilities of the Sponsor upon Termination or Revocation.

Subpart E—Termination and Revocation of Programs

§ 62.60 Termination of designation

Designation will be terminated upon the occurrence of any of the circumstances set forth in this section.

(a) *Voluntary termination.* A sponsor notifies the Department of its intent to terminate its designation voluntarily and withdraws its program in SEVIS via submission of a "cancel program" request. The sponsor's designation shall terminate upon submission of such notification. Such sponsor may apply for a new program designation.

(b) *Inactivity.* A sponsor fails to comply with the minimum program size or duration requirements, as specified in § 62.8 (a) and (b), in any 12-month period. Such sponsor may apply for a new program designation.

(c) *Failure to file annual reports.* A sponsor fails to file annual reports for two (2) consecutive years. Such sponsor is eligible to apply for a new program designation.

(d) *Failure to file an annual management audit.* A sponsor fails to file an annual management audit, if such audits are required in the relevant program category. Such sponsor is eligible to apply for a new program designation upon the filing of the past due management audit.

(e) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply for designation of the new entity, and it may continue to administer the exchange visitor activities of the previously-designated program while the application for designation is pending before the Department of State:

(1) With respect to a for-profit corporation, a major change in ownership or control is deemed to have occurred when one third (33.33%) or more of its stock is sold or otherwise transferred within a 12-month period;

(2) With respect to a not-for-profit corporation, a major change of control is deemed to have occurred when 51 percent (51%) or more of the board of trustees or other like body, vested with its management, is replaced within a 12-month period.

(f) *Non-compliance with other requirements.* A sponsor fails to remain in compliance with Federal, State, local, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation, or licensure.

(g) *Failure to apply for redesignation.* A sponsor fails to apply for redesignation, pursuant to the terms and conditions of § 62.7, prior to the conclusion of its current designation period. If so terminated, the former sponsor may apply for a new program designation, but the program activity will be suspended during the pendency of the application.

§ 62.61 Revocation.

The Department may terminate a sponsor's program designation by revocation for cause as specified in § 62.50. Such sponsor may not apply for a new designation for five (5) years following the effective date of the revocation.

§ 62.62 Termination of, or denial of redesignation for, a class of designated programs.

The Department may, in its sole discretion, determine that a class of designated programs compromises the national security of the United States or no longer furthers the public diplomacy mission of the Department of State. Upon such a determination, the Office shall:

(a) Give all sponsors of such class of designated programs not less than thirty (30) days' written notice of the revocation of Exchange Visitor Program designations for such programs, specifying therein the grounds and effective date for such revocations; or

(b) Give any sponsor of such class of designated programs not less than thirty (30) days' written notice of its denial of the sponsor's application for redesignation, specifying therein the grounds for such denial and effective date of such denial. Revocation of designation or denial of redesignation on the above-specified grounds for a class of designated programs is the final decision of the Department.

§ 62.63 Responsibilities of the sponsor upon termination or revocation.

Upon termination or revocation of its program designation, a sponsor must:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation; and

(b) Notify exchange visitors who have not entered the United States that the program has been terminated or revoked, unless a transfer to another designated program can be obtained.

Dated: December 11, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2007-0149]

Drawbridge Operation Regulations; Elizabeth River—Eastern Branch, at Norfolk VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern Railroad (NS# V2.8) Bridge, at mile 2.7, across the Elizabeth River—Eastern Branch at Norfolk, VA. This deviation allows the drawbridge to remain closed-to-navigation beginning at 7 a.m. on Monday, December 10, 2007, until and including 6 p.m. on Friday, December 21, 2007, and from 7 a.m. on Monday, January 21, 2008, until and including 6 p.m. on Sunday, February 3, 2008, to facilitate rehabilitation of the operating machinery of the swing span.

DATES: This deviation is effective from 7 a.m. on December 10, 2007 to 6 p.m. on February 3, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6422.

SUPPLEMENTARY INFORMATION: The NS# V2.8 Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of six feet, above mean high water.

Norfolk Southern Railways, the bridge owner, has requested a temporary deviation from the current operating regulations set out in 33 CFR Part 117.1007(a).

To facilitate the repairs to the operating machinery, the NS# V2.8 Bridge will be maintained in the closed-to-navigation position beginning at 7 a.m. on Monday, December 10, 2007, until and including 6 p.m. on Friday, December 21, 2007 and from 7 a.m. on Monday, January 21, 2008 until and including 6 p.m. on Sunday, February 3, 2008.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 7, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7-24740 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2007-0148]

Drawbridge Operation Regulations; York River, at Yorktown, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Coleman Memorial Bridge, at mile 7.0, across York River at Yorktown, VA. This deviation allows the drawbridge to remain closed-to-navigation beginning at 7 a.m. on Saturday, December 15, 2007, until and including 11:59 p.m. on Saturday, December 22, 2007 and from 7 a.m. on Monday, on December 24, 2007 until and including 11:59 p.m. on Monday, December 31, 2007, to facilitate mechanical repairs to the operating machinery of the swing span.

DATES: This deviation is effective from 7 a.m. on December 15, 2007 to 11:59 p.m. on December 31, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6422.

SUPPLEMENTARY INFORMATION: The Coleman Memorial Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of 60 feet, above mean high water.

The contractor, on behalf of the Commonwealth of Virginia Department of Transportation (VDOT)—the bridge owner, has requested a temporary deviation from the current operating

regulations set out in 33 CFR Part 117.1025 to close the swing bridge to navigation to perform necessary mechanical repairs to the swing span assembly. The repairs will consist of removing and replacing the balance wheels and bronze bushings on the north and south swing spans.

To facilitate the repairs, the Coleman Memorial Bridge will be maintained in the closed-to-navigation position beginning at 7 a.m. on Saturday, December 15, 2007, until and including 11:59 p.m. on Saturday, December 22, 2007 and from 7 a.m. on Monday, December 24, 2007, until and including 11:59 p.m. on Monday, December 31, 2007.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 7, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7-24741 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD 13-07-049]

RIN 1625-AA00

Safety Zone: Lower Cowlitz River Dredging Operation; Longview, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Cowlitz River, in the vicinity of Cottonwood Island at the entrance of the Cowlitz River extending up the Cowlitz River 1.5 river miles. The Captain of the Port, Portland, Oregon is taking this action to safeguard individuals and vessels from safety hazards associated with dredging operations. Entry into this safety zone is prohibited unless authorized by Captain of the Port, Portland or the Master of the on-scene dredge vessel.

DATES: This rule is effective from Monday, November 12, 2007 8 a.m. through Friday, February 29, 2008 at 5 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD13-07-049] and are available for inspection or copying at U. S. Coast Guard Sector Portland, 6767 North Basin Ave., Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Petty Officer Josh Lehner, c/o Captain of the Port Portland, 6767 N. Basin Ave., Portland, Oregon 97217 at 503-240-9301.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard did not receive notice of this operation until 12 days prior to the beginning of the operation. The dredging operation will involve multiple dredges, floating and submerged pipelines and other potential navigation hazards from the west bank of the Old Cowlitz River to the northwest tip of Cottonwood Island and 1.5 river miles up the Cowlitz River including the mouth of Carrols Channel and the Old Mouth Cowlitz. The pipeline and associated dredge gear will pose a hazard to navigation due to its location blocking the channel.

If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is establishing a temporary safety zone regulation to allow for safe dredging operations. This operation is necessary for flood control on the Cowlitz River. Silt has built up at the lower end of the Cowlitz River causing an increased risk of flooding in the vicinity of Kelso, Longview, and Castle Rock, WA. This safety zone will be in effect during the time of Monday, November 12, 2007 to Friday, February 29, 2008 while there is dredge gear in the water. This safety zone will be enforced by the Captain the Port,

Portland or his designated representative. Entry into this Safety Zone is prohibited unless authorized by the Captain of the Port, his designated representative, or the Master of the on-scene dredge vessel. Transit through the Safety Zone is prohibited without an escort from a vessel associated with the on-scene dredge operations or a representative of the Captain of the Port. To request an escort to transit the Safety Zone contact the on-scene dredge Master on VHF-FM channel 16 or 13 or via search light or sound making device 30 minutes in advance of desired transit. The Captain of the Port may be assisted by other federal and local agencies in the enforcement of this zone.

Discussion of Rule

This rule, for safety concerns, will control individuals and vessel movement in a regulated area surrounding the dredging operation. Due to safety concerns and likely delays, entry into this zone is prohibited unless authorized by the Captain of the Port, his designated representative, or the Master of the on-scene dredge vessel. Boaters must request and receive authorization to enter the safety zone from the Captain of the Port, his designated representative, or the Master of the on-scene dredge and be escorted by a vessel associated with the dredge operations or by a representative of the Captain of the Port. These measures are taken due to the significant hazard to navigation presented by suspended anchor wires tied off to the shoreline. Dredge gear and submerged pipelines also present a hazard to navigation in and under the waters in the lower area of the Cowlitz River.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary. This expectation is based on the fact that this rule will be in effect for the minimum time necessary to safely conduct the dredging operation. While this rule is in effect, traffic will be allowed to pass through the zone with authorization and escort of the Master of the on-scene dredge or a designated representative of the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the designated area at the corresponding time as drafted in this rule. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Traffic will be allowed to pass through the zone with the authorization and escort of the Master of the on-scene dredge or a designated representative of the Captain of the Port. This portion of the river is not typically used by commercial boating entities and most of the traffic expected in this area is generally recreational in nature and will occur on weekends when dredge operations will be suspended. In addition the location of dredging operations is below the area used by drift boat fishermen. Before the effective period, we will issue maritime advisories widely available to users of the river. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID,

which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a safety zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section 165.T13–043 is added to read as follows:

§ 165.T13–043 Safety Zone: Lower Cowlitz River Dredging Operation in the Captain of the Port Portland Zone.

(a) *Safety Zone.* The following area is designated a safety zone—

(1) *Location.* The waters encompassed by the following points: 46° 05'50"N 122° 55'52"W southeastward to 46° 05'30"N 122° 55'11"W turning northwest to 46° 05'44"N 122° 54'19"W continuing along the southeasterly bank of the Cowlitz River to 46° 06'34"N 122° 53'27"W crossing the river bank to bank to 46° 06'33"N 122° 53'35"W following the northerly bank of the Cowlitz River back to the point of origin. This safety zone will include the entrance to Carrols Channel and the Old Mouth Cowlitz.

(2) *Effective time and date.* 8 a.m. on Monday, November 12, 2007 to 5 p.m. on Friday, February 29, 2008.

(b) *Regulations.* (1) Entry into this Safety Zone is prohibited unless authorized by the Captain of the Port, his designated representative, or the Master of the on-scene dredge vessel.

(2) Transit through the Safety Zone is prohibited without an escort from a

vessel associated with the on-scene dredge operations or a representative of the Captain of the Port.

(3) To request an escort to transit the Safety Zone contact the on-scene dredge Master on VHF–FM channel 16 or 13 or via search light or sound making device 30 minutes in advance of desired transit.

Dated: November 9, 2007.

Russell C. Proctor,
CDR, U.S. Coast Guard, Acting Captain of the Port, Portland, OR.

[FR Doc. E7–24768 Filed 12–19–07; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 383

[Docket No. 2005–5 CRB DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations that set the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing from the inception of the new subscription service through December 31, 2010.

DATES: These regulations become effective on January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Public Law No. 104–39, which created an exclusive right for copyright owners of sound recordings subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt noninteractive digital subscription transmissions. 17 U.S.C. 114(f).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 (“DMCA” or “the Act”), Public Law No. 105–304, to cover additional digital audio transmissions. These include transmissions made by “new subscription services.” For purposes of the section 114 license, a “new subscription service” is “a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.” 17 U.S.C. 114(j)(8).

In addition to expanding the section 114 license, the DMCA also created a statutory license to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by new subscription services. 17 U.S.C. 112(e).

On October 31, 2005, pursuant to section 114(f)(2)(C), XM Satellite Radio, Inc. (“XM”) filed with the Copyright Royalty Judges (“Judges”) a Petition to Initiate and Schedule Proceeding for a New Type of Subscription Service for a “new type of subscription service [which] performs sound recordings on digital audio channels programmed by the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television channels as part of a ‘basic’ package of service and not for a separate fee.” XM Petition at 1. The petition noted that this new subscription service was to commence on or about November 15, 2005. *Id.*

On December 5, 2005, pursuant to 17 U.S.C. 804(b)(3)(C)(ii), the Judges published a notice in the **Federal Register** announcing commencement of the proceeding to set rates and terms for royalty payments under sections 114 and 112 for the activities of the new subscription service described in the XM Petition and requesting interested parties to submit their Petitions to Participate. 70 FR 72471. Petitions to participate were received from Sirius Satellite Radio, Inc. (“Sirius”), XM, MTV Networks (“MTV”), and SoundExchange, Inc.

The Judges set the schedule for the proceeding for both the direct and rebuttal phases of the proceeding, including the dates for the filing of the written statements and the dates for oral testimony for each phase. Subsequent to the presentation of the direct phase of their case and the filing of their written rebuttal statements, but prior to the oral presentation of their rebuttal witnesses, the parties informed the Judges that they had “reached full agreement on all

issues in this litigation” and that “there are no more issues to try.” Transcript of September 10, 2007, at p. 5. They also stated that the settlement agreement would be submitted to the Judges for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A). *Id.* at 6. The proposed rates and terms codifying the settlement agreement were filed on October 30, 2007.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

(i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on November 9, 2007, the Judges published a Notice of Proposed Rulemaking (“NPRM”) requesting comment on the proposed rates and terms submitted to the Judges. 72 FR 63532. Comments were due by December 10, 2007. In response to the NPRM, the Judges received only one comment, which was submitted by SoundExchange, supporting the adoption of the proposed regulations.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing from the inception of the new subscription service through December 31, 2010.¹

¹ Section 383.4(a) states that the terms governing the activities of a new subscription service under

List of Subjects in 37 CFR Part 383

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding part 383 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY NEW SUBSCRIPTION SERVICES

Sec.

383.1 General.

383.2 Definitions.

383.3 Royalty fees for public performance of sound recordings and the making of ephemeral recordings.

383.4 Terms for making payment of royalty fees.

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 383.1 General.

(a) *Scope.* This part 383 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of certain ephemeral recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period commencing from the inception of the Licensees’ Services and continuing through December 31, 2010.

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections and the rates and terms of this part.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this part to transmissions with the scope of such agreements.

§ 383.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Applicable Period* is the period for which a particular payment to the

sections 114 and 112 are the same as those, unless otherwise specified, adopted to govern the activities of the preexisting satellite digital audio radio services in Docket No. 2006–1 CRB DSTR. Those terms will appear in Subpart B of 37 CFR part 382, which will be published in a separate document.

designated collection and distribution organization is due.

(b) *Bundled Contracts* means contracts between the Licensee and a Provider in which the Service is not the only content licensed by the Licensee to the Provider.

(c) *Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g).

(d) *License Period* means the period commencing from the inception of the Licensees' Services and continuing through December 31, 2010.

(e) *Licensee* is a person that has obtained statutory licenses under 17 U.S.C. 112 and 114, and the implementing regulations, to make digital audio transmissions as part of a Service (as defined in paragraph (h) of this section), and ephemeral recordings for use in facilitating such transmissions.

(f) *Provider* means a "multichannel video programming distributor" as that term is defined in 47 CFR 76.1000(e); notwithstanding such definition, for purposes of this part, a Provider shall include only a distributor of programming to televisions, such as a cable or satellite television provider.

(g) *Revenue*. (1) "Revenue" means all monies and other considerations, paid or payable, recognizable during the Applicable Period as revenue by the Licensee consistent with Generally Accepted Accounting Principles ("GAAP") and the Licensee's past practices, which is derived by the Licensee from the operation of the Service and shall be comprised of the following:

(i) Revenues recognizable by Licensee from Licensee's Providers and directly from residential U.S. subscribers for Licensee's Service;

(ii) Licensee's advertising revenues recognizable from the Service (as billed), or other monies received from sponsors of the Service if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Revenues recognizable for the provision of time on the Service to any third party;

(iv) Revenues recognizable from the sale of time to Providers of paid programming, such as infomercials, on the Service;

(v) Where merchandise, service, or anything of value is receivable by Licensee in lieu of cash consideration for the use of Licensee's Service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration recognizable as revenue by Licensee from Licensee's Providers, but not including revenues recognizable by Licensee's Providers from others and not accounted for by Licensee's Providers to Licensee, for the provision of hardware for the Service by anyone and used in connection with the Service;

(vii) Monies or other consideration recognizable as revenue for any references to or inclusion of any product or service on the Service; and

(viii) Bad debts recovered regarding paragraphs (g)(1)(i) through (vii) of this section.

(2) "Revenue" shall include such payments as set forth in paragraphs (g)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid or payable to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's Providers for the Service. Licensee shall be allowed a deduction from "Revenue" as defined in paragraph (g)(1) of this section for bad debts actually written off during the reporting period.

(h) A *Service* is a non-interactive (consistent with the definition of "interactive service" in 17 U.S.C. 114(j)(7)) audio-only subscription service (including accompanying information and graphics related to the audio) that is transmitted to residential subscribers of a television service through a Provider which is marketed as and is in fact primarily a video service where

(1) Subscribers do not pay a separate fee for audio channels.

(2) The audio channels are delivered by digital audio transmissions through a technology that is incapable of tracking the individual sound recordings received by any particular consumer.

(3) However, paragraph (h)(2) of this section shall not apply to the Licensee's current contracts with Providers that are in effect as of the effective date of this part if such Providers become capable in the future of tracking the individual sound recordings received by any particular consumer, provided that the audio channels continued to be delivered to Subscribers by digital audio transmissions and the Licensee remains incapable of tracking the individual sound recordings received by any particular consumer.

(i) *Subscriber* means every residential subscriber to the underlying service of the Provider who receives Licensee's Service in the United States for all or any part of a month; provided, however, that for any Licensee that is not able to track the number of subscribers on a

per-day basis, "Subscribers" shall be calculated based on the average of the number of subscribers on the last day of the preceding month and the last day of the applicable month, unless the Service is paid by the Provider based on end-of-month numbers, in which event "Subscribers" shall be counted based on end-of-month data.

(j) *Stand-Alone Contracts* means contracts between the Licensee and a Provider in which the only content licensed to the Provider is the Service.

§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) *Royalty rates*. Royalty rates for the public performance of sound recordings by eligible digital transmissions made over a Service pursuant to 17 U.S.C. 114, and for ephemeral recordings of sound recordings made pursuant to 17 U.S.C. 112 to facilitate such transmissions, are as follows. Each Licensee will pay, with respect to content covered by the License that is provided via the Service of each such Licensee:

(1) For Stand-Alone Contracts, the greater of:

- (i) 15% of Revenue, or
- (ii) The following monthly minimum payment per Subscriber to the Service of such Licensee—
 - (A) From inception through 2006: \$0.0075
 - (B) 2007: \$0.0075
 - (C) 2008: \$0.0075
 - (D) 2009: \$0.0125
 - (E) 2010: \$0.0150 and

(2) For Bundled Contracts, the greater of:

- (i) 15% of Revenue allocated to reflect the objective value of the Licensee's Service, or
- (ii) The following monthly minimum payment per Subscriber to the Service of such Licensee:
 - (A) From inception through 2006: \$0.0220
 - (B) 2007: \$0.0220
 - (C) 2008: \$0.0220
 - (D) 2009: \$0.0220
 - (E) 2010: \$0.0250

(b) *Minimum fee*. Each Licensee will pay an annual, non-refundable minimum fee of one hundred thousand dollars (\$100,000), payable on January 31 of each calendar year in which the Service is provided pursuant to the section 112 and 114 statutory licenses, but payable pursuant to the applicable regulations for all years 2007 and earlier. Such fee shall be recoupable and credited against royalties due in the calendar year in which it is paid.

§ 383.4 Terms for making payment of royalty fees.

(a) Subject to the provisions of this section, terms governing timing and due dates of royalty payments, late fees, statements of account, audit and verification of royalty payments and distributions, cost of audit and verification, record retention requirements, treatment of Licensees' confidential information, distribution of royalties, unclaimed funds, designation and definition of the collection and distribution organization, and any definitions for applicable terms not defined herein and not otherwise inapplicable shall be those adopted by the Copyright Royalty Judges for subscription transmissions and the reproduction of ephemeral recordings by preexisting satellite digital audio radio services in Docket No. 2006-1 CRB DSTR ("the SDARS Proceeding").

(b) Without prejudice to any applicable notice and recordkeeping provisions, statements of account shall not require reports of performances.

(c) If the Copyright Royalty Judges adopt reports of use regulations in the SDARS Proceeding, those regulations, if any, shall govern Licensees' obligations to report sound recordings used pursuant to this part, except that Licensees also shall report to SoundExchange which channels are transmitted by their respective Providers for all past, current and future periods. In the event that the Copyright Royalty Judges do not adopt reports of use regulations in the SDARS Proceeding, then reports of use provided by XM Satellite Radio, Inc. ("XM") and Sirius Satellite Radio, Inc. ("Sirius") for their use of sound recordings on their preexisting satellite digital audio radio services (as defined in 17 U.S.C. 114(j)(10)) shall be deemed to satisfy XM's and Sirius' obligations to report sound recordings used pursuant to this part, and MTV Networks shall provide census reporting, retroactive to the inception of its Service.

Dated: December 14, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7-24734 Filed 12-19-07; 8:45 am]

BILLING CODE 1410-72-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 97**

[EPA-R05-OAR-2007-0519; FRL-8508-1]

Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a revision to the Michigan State Implementation Plan (SIP) submitted on July 16, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning sulfur dioxide (SO₂), nitrogen oxides (NO_x) annual, and NO_x ozone season emissions for the state of Michigan, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Michigan's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The SIP revision that EPA is conditionally approving is an abbreviated SIP revision that addresses: The applicability provisions for the NO_x ozone season trading program under the CAIR FIP and supporting definitions of terms; the methodology to be used to allocate NO_x annual and ozone season NO_x allowances under the CAIR FIP and supporting definitions of terms; and provisions for opt-in units under the CAIR FIP. Michigan will be submitting additional SO₂ rules in the future.

DATES: This rule is effective *December 20, 2007*.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-0519. 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 at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77

West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, aburano.douglas@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. What Action Is EPA Taking?
- II. Did Anyone Comment on the Proposed Conditional Approval?
- III. What Are the General Requirements of CAIR and the CAIR FIP?
- IV. Analysis of Michigan's CAIR SIP Submittal
 - A. Nature of Michigan's Submittal
 - B. Summary of Michigan's Rule
 - C. State Budgets for Allowance Allocations
 - D. CAIR Cap-and-Trade Programs
 - E. Applicability Provisions for Non-EGU NO_x SIP Call Sources
 - F. NO_x Allowance Allocations
 - G. Allocation of NO_x Allowances from the Compliance Supplement Pool
 - H. Individual Opt-in Units
 - I. Conditions for Approval
- V. Final Action
- VI. When Is This Action Effective?
- VII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?*CAIR SIP Approval*

EPA is conditionally approving a revision to Michigan's SIP, submitted on July 16, 2007, that would modify the application of certain provisions of the CAIR FIP concerning NO_x annual and NO_x ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) EPA proposed to conditionally approve Michigan's submittal on September 12, 2007 (72 FR 52038). The CAIR SO₂ FIP will remain in place unaffected. Michigan is subject to the CAIR FIP that implements the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered federal CAIR SO₂, NO_x annual, and NO_x ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_x allowances for the NO_x annual and NO_x ozone season trading programs. The CAIR FIP provides that this methodology will be used to allocate NO_x allowances to sources in Michigan, instead of the federal allocation

methodology otherwise provided in the FIP. The SIP revision also provides a methodology for allocating the compliance supplement pool (CSP) in the CAIR NO_x annual trading program, expands the applicability provisions of the CAIR NO_x ozone season trading program, and allows for individual units not otherwise subject to the CAIR trading programs to opt into such trading programs. Consistent with the flexibility provided in the FIP, these provisions will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Michigan. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Michigan's SIP revision, amending the appropriate appendices in the CAIR FIP trading rules to note that approval.

EPA is conditionally approving this SIP revision, as opposed to fully or completely approving it, because of several minor deficiencies that Michigan must address. If Michigan has not met the conditions for full approval within one year of the effective date of EPA's conditional approval, this conditional approval will revert to a disapproval, as of the deadline for meeting the conditions, without further action required by EPA. In the event the conditional approval reverts to a disapproval, EPA will publish a notice in the **Federal Register** to inform the public. If Michigan does meet the conditions necessary for a full approval, EPA will publish a **Federal Register** notice finalizing the full approval.

II. Did Anyone Comment on the Proposed Conditional Approval?

A 30-day comment period ended on October 12, 2007. EPA received only one comment, which supported approving Michigan's submittal. EPA did not receive any adverse comments during the comment period.

III. What Are the General Requirements of CAIR and the CAIR FIP?

CAIR establishes state-wide emission budgets for SO₂ and NO_x, and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires states to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or, (2) adopting other control measures of the state's choosing, and demonstrating that such control measures will result in compliance with

the applicable state SO₂ and NO_x budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that states must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only states that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for states that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for states that include all non-EGUs from their NO_x SIP Call trading programs to include those sources in their CAIR NO_x ozone season trading programs.

IV. Analysis of Michigan's CAIR SIP Submittal

A. Nature of Michigan's Submittal

On July 16, 2007, Michigan submitted rules and supporting material for addressing CAIR requirements. The Michigan Department of Environmental Quality (MDEQ) held a public hearing on these proposed rules on April 2, 2007. MDEQ also provided a 30-day comment period that ended on April 2, 2007.

B. Summary of Michigan's Rules

Part 8 of Michigan Air Pollution Control Rules, entitled "Emission Limitations and Prohibitions—Oxides of Nitrogen," includes provisions limiting the emissions of NO_x from stationary sources in Michigan. While Part 8 contains many sections, Michigan submitted only a portion of them to address the CAIR requirements. Specifically, Michigan submitted rules 802a, 803, 821 through 826, and 830 through 834 for federal approval.

- Rule 802a, entitled "Adoption by reference," contains adoption by reference language. Michigan has adopted necessary portions of federal regulations including parts of: EPA's Acid Rain Program (specifically 40 CFR 72.2 and 72.8), Continuous Emission Monitoring Program (the entire 40 CFR part 75), NO_x Model Rule Compliance (40 CFR 96.54), and the CAIR SO₂ and NO_x FIP rules (specifically 40 CFR 97.2, 97.102, 97.103, 97.104, 97.302, 97.303, 97.304, 97.180 to 97.188, 97.380 to 97.388).

- Rule 803, entitled "Definitions," modifies the existing Michigan definitions section to address the CAIR requirements. In order to incorporate

sources affected by the NO_x SIP Call into the CAIR NO_x trading program, and also to accommodate Michigan's NO_x allocation methodology, the state has adopted definitions that did not already exist in the CAIR FIP.

- Rule 821, entitled "CAIR NO_x ozone season and annual trading programs; applicability determinations," contains applicability criteria. Michigan has incorporated the CAIR applicability from the CAIR FIP, has included the non-EGU sources from the NO_x SIP Call, and also allows sources of renewable energy and renewable energy projects to receive NO_x allowances under the state's allocation methodology. Michigan has also included in this section allocation adjustments based on EGU fuel type.

- Rule 822, entitled "CAIR NO_x ozone season trading program; allowance allocation," establishes the NO_x budgets for the ozone season control period and establishes the allocation methodology procedures for the ozone season. These provisions describe how Michigan sources under the CAIR FIP, non-EGUs formerly affected by the NO_x SIP Call, and renewable energy sources will be allocated NO_x ozone season allowances.

- Rule 823, entitled "New EGUs, new non-EGUs, and newly affected EGUs under CAIR NO_x ozone season trading program; allowance allocations," establishes the provisions for a set-aside ozone season control period allocation pool for new EGUs, new non-EGUs, and newly affected EGUs (which were not included in the original NO_x SIP Call program due to geographic location).

- Rule 824, entitled "CAIR NO_x ozone season trading program; hardship set-aside," establishes the provisions for a hardship set-aside ozone season control period allocation pool to address issues for small (*i.e.*, employing fewer than 250 people) businesses that can demonstrate that the controls required for this source result in excessive or prohibitive costs for compliance.

- Rule 825, entitled "CAIR NO_x ozone season trading program; renewable set-aside," establishes the provisions for an ozone season control period allocation pool to be allocated to renewable energy sources or renewable energy projects.

- Rule 826, entitled "CAIR NO_x ozone season trading program; opt-in provisions," adopts by reference the ozone season control period opt-in provisions under the federal CAIR FIP rules, specifically 40 CFR 97.380 to 97.388.

- Rule 830, entitled "CAIR NO_x annual trading program; allowance allocations," establishes the NO_x

budgets for the annual control period, and establishes the allocation methodology procedures for the annual control period.

- Rule 831, entitled “New EGUs under CAIR NO_x annual trading program; allowance allocations,” establishes the provisions for a set-aside annual control period allocation pool for new EGUs and the pool allocation methodology.

- Rule 832, entitled “CAIR NO_x annual trading program; hardship set-aside,” establishes the provisions for a set-aside annual control period allocation pool to address issues for small (i.e., employing fewer than 250 people) businesses that can demonstrate that the required controls will result in excessive or prohibitive compliance costs.

- Rule 833, entitled “CAIR NO_x annual trading program; compliance supplement pool,” establishes the provisions for an annual control period compliance supplement pool that provides for allocation for early reduction credit generation for existing sources, and for the newly affected EGUs that were not in the original NO_x Budget Program that can demonstrate that compliance during the 2009 control period would create an undue risk to the reliability of the electrical supply.

- Rule 834, entitled “Opt-in provisions under the CAIR NO_x annual trading program,” adopts by reference the opt-in provisions for the annual control period under the federal CAIR rules. While Michigan has developed an abbreviated SIP, it differs from most other states because of artifacts from the NO_x SIP Call. While many states are affected by the NO_x SIP Call, Michigan is one of only a few states that is not entirely covered under the NO_x SIP Call, due to a modeling boundary that EPA used in atmospheric modeling of pollution sources and downwind effects. Only those Michigan counties that fall, in their entirety, south of 44° latitude are affected by the NO_x SIP Call. This is the result of a decision in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. March 3, 2000) that established 44° (a modeling boundary) as the appropriate northern boundary for the NO_x SIP Call. EPA describes both the court decision and how it applies to Michigan in a **Federal Register** notice dated April 21, 2004 (69 FR 21604, 21622–21627). Although only a portion of Michigan is affected by the NO_x SIP Call, the entire state is affected by CAIR. In order to transition from the NO_x SIP Call trading program to the CAIR ozone season trading program, the Michigan rules include additional definitions and

provisions to account for this geographic discrepancy.

An additional complication that Michigan has addressed in its rules is that the CAIR requirements for sources of NO_x begin in 2009. Under the NO_x SIP Call, Michigan has already issued NO_x allowances through 2009. Because the 2009 NO_x SIP Call allowances have already been allocated to the Michigan sources, Michigan included provisions acknowledging the 2009 NO_x SIP Call allowances and provided that they will be treated as CAIR NO_x ozone season allowances issued for that year. 2010 will be the first year in which Michigan sources (other than CAIR opt-in units) will be allocated CAIR NO_x ozone season allowances that were not previously issued as NO_x SIP Call allowances.

C. State Budgets for Allowance Allocations

The CAIR NO_x annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu for phase 1, and 0.125 lb/mmBtu for phase 2, to obtain regional NO_x budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the state NO_x annual and ozone season budgets from the regional budgets using state heat input data adjusted by fuel factors.

The CAIR FIP established the NO_x budgets for Michigan as 65,304 tons for NO_x annual emissions for 2009–2014; 54,420 tons for NO_x annual emissions for 2015 and thereafter; 28,971 tons for NO_x ozone season emissions for 2009–2014; and 24,142 tons for NO_x ozone season emissions for 2015 and thereafter. Michigan’s SIP revision, which we are conditionally approving in today’s action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIP. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

D. CAIR Cap-and-Trade Programs

The CAIR NO_x annual and ozone-season FIP largely mirrors the structure of the NO_x SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_x annual and ozone-season FIP are similar, there are some differences. For example, the NO_x annual FIP (but not the NO_x ozone season FIP) provides for a compliance supplement pool (CSP),

which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions. As a further example, the NO_x ozone season FIP reflects the fact that the CAIR NO_x ozone season trading program replaces the NO_x SIP Call trading program after the 2008 ozone season and is coordinated with the NO_x SIP Call program. The NO_x ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 NO_x SIP Call allowances to be used for compliance in the CAIR NO_x ozone-season trading program. In addition, states have the option of continuing to meet their NO_x SIP Call requirement by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIP. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO₂, NO_x annual, and NO_x ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO₂, NO_x annual, and NO_x ozone season trading programs.

Michigan is subject to the CAIR FIP for ozone and PM_{2.5}, and the CAIR FIP trading programs for SO₂, NO_x annual, and NO_x ozone season apply to sources in Michigan. Consistent with the flexibility it gives to states, the CAIR FIP provides that states may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. Michigan’s July 16, 2007, submission is an abbreviated SIP revision.

E. Applicability Provisions for Non-EGU NO_x SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit’s combustion chamber, a generator with nameplate capacity of more than 25 megawatts of electricity (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the state’s NO_x SIP Call trading program that are not EGUs as defined under CAIR. EPA advises states exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the

applicability provisions in the state's NO_x SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_x ozone season trading program all units required to be in the state's NO_x SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_x ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e., units serving a generator with a nameplate capacity of 25 MWe or less), that the state currently requires to be in the NO_x SIP Call trading program.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs in the state's NO_x SIP Call trading program. This increases the overall NO_x ozone season CAIR budget assigned to Michigan by 2,209 allowances.

F. NO_x Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_x annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides states the flexibility to establish a different NO_x allowance allocation methodology that will be used to allocate allowances to sources in the states if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, states have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and,
4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to replace the provisions of the

CAIR NO_x annual FIP concerning the allocation of NO_x annual allowances with its own methodology. Michigan has chosen to distribute NO_x annual allowances based upon a heat-input based methodology for existing units, with set-asides for new sources and for existing sources that submit acceptable demonstrations of hardship to MDEQ.

Michigan's Rule 830 allocates three years of NO_x annual allowances at a time to existing sources on a heat input basis. This begins in 2007 for the annual control periods of 2009, 2010 and 2011. By October 31, 2008, Michigan will submit to EPA allocations for the annual control periods of 2012, 2013 and 2014. By October 31, 2011, and, thereafter, each October 31 of every third year, Michigan will submit to EPA allocations for the subsequent three year period.

Under Michigan Rule 831, the new source set-aside for new EGUs is 1,000 tons per year for years 2009–2011, and 1,400 tons per year for years 2012 and thereafter. Allowances for the first annual control period under the new source set-aside are allocated based on 70 percent of a unit's projected emissions. After the first annual control period, new EGUs can request allowances equal to (the number of megawatt hours operated during the previous control period divided by 2,000 lb/ton), multiplied by (1.0 lb NO_x/megawatt hours). Once a unit has five years of operating data, it is no longer considered a "new" unit and will be allocated allowances as an existing source under Rule 830.

Michigan Rule 832 establishes a hardship set-aside of 1,200 allowances per year for existing sources. Existing sources with fewer than 250 employees that are able to submit a demonstration to Michigan that the control level required by CAIR will result in excessive or prohibitive compliance costs can request allowances from this set-aside pool.

Michigan Rule 833 establishes a compliance supplement pool of 6,491 allowances for existing EGUs and a pool for newly-affected EGUs of 1,856 allowances. For existing EGUs, allowances can be requested if units have made early reductions during calendar year 2007 and 2008. A newly affected EGU can request hardship allowances if it can demonstrate that compliance with CAIR will result in hardship.

Consistent with the flexibility given to states in the CAIR FIP, Michigan has chosen to replace the provisions of the CAIR NO_x ozone season FIP concerning allowance allocations with its own methodology. Michigan has chosen to distribute NO_x ozone season allowances

using a heat input-based methodology for existing units, with set-asides for new sources, renewable energy sources, and existing sources that submit acceptable demonstrations of hardship to MDEQ.

Michigan's Rule 822 establishes trading budgets for existing EGUs, new EGUs, newly affected EGUs, existing non-EGUs, renewable sources and hardship set-asides. Rule 822 also provides for allocation of three years of NO_x ozone season control period allowances at a time to existing EGUs and existing non-EGUs on a heat input basis. This begins in 2007 for the ozone season control periods of 2010 and 2011. By October 31, 2008, Michigan will submit to EPA allocations for the ozone control periods of 2012, 2013 and 2014. By October 31, 2011, and, thereafter, by each October 31 of the year that is three years after the last year of allocation submittal, Michigan will submit the next three years of ozone control period allocations to EPA. Allowances for the 2009 ozone control period are the same as were allocated under the NO_x SIP Call Budget Trading Program.

Rule 823 establishes a set-aside pool for new EGUs, new non-EGUs and newly affected EGUs. Rule 823 also includes the directions for how sources can apply for the allowances in this set-aside. Most EGUs were allocated NO_x allowances for the 2009 ozone control period under the NO_x SIP Call. These allowances are now being designated as CAIR NO_x ozone season allowances issued for the 2009 ozone control period. Newly affected EGUs that were not subject to the NO_x SIP Call never were allocated 2009 ozone control period allowances under the NO_x SIP Call, but will need allowances to comply with CAIR in 2009. Therefore, they are being allowed to request allowances from this set-aside. Newly affected sources can request allowances based on their historic heat input. For the first ozone season control period of operation, new EGUs and new non-EGUs can request allowances from this set-aside based on predicted hours of operation. For the four ozone control periods after the first ozone control period of operation, new EGUs may request allowances based on the actual number of megawatt hours of electricity generated during the ozone control period immediately preceding the request. After a new EGU has five ozone control periods of operating data, it is no longer considered a "new" EGU and is allocated ozone control period allowances per the requirements found in Rule 822.

Rule 824 creates an annual hardship set-aside pool of 650 allowances beginning in 2010. Both existing EGUs and non-EGUs can request allowances from this pool if the company making the request employs fewer than 250 people and can make a demonstration of financial hardship. The number of allowances a source can request will be based on historical heat input.

Rule 825 establishes a set-aside of 200 allowances per year for renewable units. Initially, renewable units can request allowances from this set-aside based on the nameplate capacity of the unit and the predicted hours of operation during the ozone control period. After a renewable unit has been in operation for one ozone control period, the unit can request allowances based on the previous ozone season control period's actual megawatt hours. Renewable units may only request allowances for three consecutive ozone seasons.

G. Allocation of NO_x Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a state's share of the CSP is based upon the state's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_x reductions during 2007 or 2008 beyond what is required by any applicable state or federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_x annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those states.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to modify the provisions of the CAIR NO_x annual FIP concerning the allocation of allowances from the CSP. Michigan Rule 833 establishes an annual compliance supplement pool of 6,491 allowances for existing EGUs and an annual pool for newly-affected EGUs of 1,856 allowances. Existing EGUs can request allowances if the units have made early reductions during calendar years 2007 and 2008. Newly affected EGUs can request hardship allowances if a demonstration of hardship can be made.

H. Individual Opt-in Units

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a state only if the state's abbreviated SIP revision adopts the opt-in provisions. The state may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The state also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the state without the ability for units to opt into the program.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_x annual trading program. Michigan has adopted by reference the FIP language regarding opt-ins. Rule 802a incorporates 40 CFR 97.180 to 97.188 by reference, and Rule 834 makes them applicable to units in the State.

Consistent with the flexibility given to states in the FIP, Michigan has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR

NO_x ozone season trading program. Michigan has adopted by reference the FIP language regarding opt-ins. Rule 802a incorporates 40 CFR 97.380 to 97.388 by reference, and Rule 826 makes them applicable to units in the State.

I. Conditions for Approval

EPA notes that it has identified several minor deficiencies that are necessary to correct in Michigan's rules. These minor deficiencies are as follows:

1. In rule 803(3), Michigan needs to add a definition for "commence operation." This definition, and the revised definition of "commence commercial operation," identified below, are necessary to take account of NO_x SIP Call units brought into the CAIR NO_x ozone season trading program that do not generate electricity for sale and to ensure that they have appropriate deadlines for certification of monitoring systems under 40 CFR part 97.

2. In rule 803(3)(c), Michigan needs to revise the definition for "commence commercial operation," as described in Condition 1, above.

3. In rule 803(3)(d)(ii), Michigan needs to revise the definition of "electric generating unit" or "EGU." EPA interprets Michigan's current rule 803 as properly including in the CAIR NO_x ozone season trading program all EGUs in Michigan that were subject to the NO_x SIP Call trading program. Michigan must revise the rule to clarify that all EGUs in Michigan that were subject to the NO_x SIP Call trading program are included in the CAIR NO_x ozone season trading program.

4. In rule 823(5)(c), Michigan needs to reference "subrule (1)(a), (b), (c), and (d)" of the rule. While EPA interprets Michigan's current rule as limiting the new unit set-aside allocations to the amount of allowances in the set-aside, Michigan must revise this provision to clarify the mechanism for implementing this limitation on such allocations.

These minor deficiencies are described in detail in a July 25, 2007 technical support document in the docket for this rulemaking. By a letter dated August 15, 2007, Michigan committed to making final and effective revisions to its rules by correcting these deficiencies as discussed above by July 20, 2008.

Under section 110(k)(4) of the Clean Air Act, EPA may conditionally approve a SIP revision based on a commitment from the state to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. In this action, we are approving the SIP

revision that Michigan has submitted on the condition that the minor deficiencies in the SIP revision are corrected, as discussed above, by the date referenced in Michigan's letter, i.e., by July 20, 2008. If this condition is not met within one year of the effective date of final rulemaking, the conditional approval will automatically revert to a disapproval—as of the deadline for meeting the conditions—without further action from the EPA. EPA will publish a notice in the **Federal Register** informing the public of the disapproval. In the event the conditional approval automatically reverts to a disapproval, the validity of allocations made under the SIP revision (including the treatment of previously allocated 2009 NO_x SIP Call allowances as 2009 CAIR ozone season allowances) before the date of such reversion to disapproval will not be affected. If Michigan submits final and effective rule revisions correcting the deficiencies, discussed above, within one year from this conditional approval being final and effective, EPA will publish in the **Federal Register** a notice to acknowledge this and to convert the conditional approval to a full approval.

V. Final Action

EPA is conditionally approving Michigan's abbreviated CAIR SIP revision submitted on July 16, 2007. Michigan is covered by the CAIR FIP, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO₂, NO_x annual, and NO_x ozone season emissions. Under this abbreviated SIP revision, and consistent with the flexibility given to states in the FIP, Michigan adopts provisions for allocating allowances under the CAIR FIP NO_x annual and ozone season trading programs. In addition, Michigan adopts in the abbreviated SIP revision provisions that establish a methodology for allocating allowances in the CSP, expand the applicability provisions for the CAIR FIP NO_x ozone season trading program, and allow for individual non-EGUs to opt into the CAIR FIP NO_x annual and NO_x ozone season cap-and-trade programs. As provided for in the CAIR FIP, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIP in Michigan. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_x annual and NO_x ozone season emissions. EPA is not making any changes to the CAIR FIP, but is, to the extent EPA approves Michigan's SIP revision, amending the appropriate

appendices in the CAIR FIP trading rules simply to note that approval.

VI. When Is This Action Effective?

EPA finds that there is good cause for this approval to become effective on December 20, 2007, because a delayed effective date is unnecessary due to the nature of the approval, which allows the State to make allocations under its CAIR rules. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”

CAIR SIP approvals relieve states and CAIR sources within states from being subject to allowance allocation provisions in the CAIR FIPs that otherwise would apply to them, allowing states to make their own allowance allocations based on their SIP-approved state rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Michigan's relief from these obligations provides good cause to make this rule effective December 20, 2007, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Michigan and CAIR sources within the State, do not need time to adjust and prepare before the rule takes effect.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule would 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 action approves pre-existing requirements under state law and would 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it would 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 to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it would approve 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. This rule would 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, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen

oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 7, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR parts 52 and 97 are 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 X—Michigan

■ 2. In § 52.1170, the table in paragraph (c) entitled “EPA—Approved Michigan Regulations” is amended by revising an entry in Part 8 “R 336.1803” and adding entries in Part 8 “R 336.1802a”, “R 336.1821 through R 336.1826”, and “R 336.1830 through 336.1834” to read as follows:

§ 52.1170 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *				
Part 8. Emission Limitations and Prohibitions—Oxides of Nitrogen				
* * * * *				
R 336.1802a	Adoption by reference	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1803	Definitions	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1821	CAIR NO _x ozone and annual trading programs; applicability determinations.	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1822	CAIR NO _x ozone season trading program; allowance allocations.	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1823	New EGUs, new non-EGUs, and newly affected EGUs under CAIR NO _x ozone season trading program; allowance allocations.	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1824	CAIR NO _x ozone season trading program; hardship set-aside	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1825	CAIR NO _x ozone season trading program; renewable set-aside	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1826	CAIR NO _x ozone season trading program; opt-in provisions	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1830	CAIR NO _x annual trading program; allowance allocations	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1831	New EGUs under CAIR NO _x annual trading program; allowance allocations.	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1832	CAIR NO _x annual trading program; hardship set-aside	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1833	CAIR NO _x annual trading program; compliance supplement pool.	6/25/07	12/20/07, [Insert page number where the document begins].	
R 336.1834	Opt-in provisions under the CAIR NO _x annual trading program	6/25/07	12/20/07, [Insert page number where the document begins].	
* * * * *				

* * * * *
PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to Subpart EE is amended by adding the entry for “Michigan” in alphabetical order under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

* * * * *

1. * * *

Michigan

2. * * *

Michigan

* * * * *

■ 5. Appendix A to Subpart II is amended by adding the entry for “Michigan” in alphabetical order under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_x Opt-In Units

* * * * *

1. * * *

Michigan

2. * * *

Michigan

* * * * *

■ 6. Appendix A to Subpart AAAA is amended by adding the entry for “Michigan” in alphabetical order to read as follows:

Appendix A to Subpart AAAA of Part 97—States With Approved State Implementation Plan Revisions Concerning Applicability

* * * * *

Michigan

* * * * *

■ 7. Appendix A to Subpart EEEE is amended by adding the entry for “Michigan” in alphabetical order to read as follows:

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

* * * * *

Michigan

* * * * *

■ 8. Appendix A to Subpart IIII is amended by adding the entry for “Michigan” in alphabetical order under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_x Ozone Season Opt-In Units

* * * * *

1. * * *

Michigan

2. * * *

Michigan

* * * * *

[FR Doc. E7-24513 Filed 12-19-07; 8:45 am]

BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 72, No. 244

Thursday, December 20, 2007

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

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 544 and 552

[Docket ID OTS–2007–0025]

RIN 1550–ACOO

Federal Savings Association Bylaws; Integrity of Directors; Withdrawal of Proposed Rule

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Office of Thrift Supervision (OTS) is withdrawing the proposed rule. The proposed rule would have amended OTS's regulations concerning corporate governance to permit federally chartered savings associations and mutual holding companies (collectively, federal savings associations) to adopt a preapproved bylaw that would have precluded certain persons from serving on the adopting federal savings association's board of directors, and from nominating others to so serve. In addition, the proposed preapproved bylaw would have precluded any entity owned or controlled by a prohibited person from nominating anyone to serve on the adopting federal savings association's board of directors.¹

DATES: The amendments to 12 CFR 544.5 and 552.5 proposed in the **Federal Register** on February 14, 2006, at 71 FR 7695, are withdrawn as of December 20, 2007.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, Assistant Chief Counsel, Business Transactions Division, (202) 906–6263; or Donald W. Dwyer, Director, Applications, Examinations and Supervision-Operations, (202) 906–

6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

In 2001 OTS adopted a regulation that provided for preapproved optional bylaws for federally chartered savings associations. OTS simultaneously promulgated an optional preapproved bylaw providing integrity standards for directors of such associations. On February 14, 2006, OTS published a proposed rule, which, if adopted, would have amended the rules governing the permissible bylaws for federal savings associations to permit a federal savings association to adopt an optional bylaw precluding persons who, among other things, have ever been subject to certain cease and desist orders entered by any of the banking agencies from serving on the adopting federal savings association's board of directors. In addition, under the optional bylaw provision, persons precluded from serving as a director could have been prohibited from nominating others to serve as a director, and entities controlled by a ineligible person could have similarly been precluded from nominating directors.²

OTS received ten comments on the proposed rule. Eight comments favored the proposal and/or sought to extend the restrictions included in the proposed optional bylaw. Two comments objected to the proposal.

After reviewing the public comments, as well as other relevant considerations, OTS has concluded that the proposed rule should be withdrawn.

Withdrawal of the Proposed Rule

In light of the foregoing, OTS withdraws its proposal published in the **Federal Register** on February 14, 2006 at 71 FR 7695.

Dated: December 14, 2007.

By the Office of Thrift Supervision.

John M. Reich,
Director.

[FR Doc. E7–24743 Filed 12–19–07; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE14

SBA Lender Oversight Program

AGENCY: U.S. Small Business Administration.

ACTION: Extension of comment period.

SUMMARY: On October 31, 2007, SBA published a proposed rule seeking comments on its proposal which would incorporate SBA's risk-based lender oversight program into SBA regulations. SBA is extending the comment period an additional 60 days from December 31, 2007 to February 29, 2008. The proposed rule is generating a significant level of interest. Given the scope of the proposal and the nature of the issues raised by the comments received to date, SBA believes the affected parties would find it beneficial to have more time to review the proposal and prepare their comments.

DATES: The comment period for the SBA Lender Oversight Program Notice and Request for Comments published October 31, 2007 (72 FR 61752) is extended through February 29, 2008.

ADDRESSES: You may submit comments, identified by RIN number 3245–AE14 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th floor, Washington, DC 20416.

- Hand Delivery/Courier: Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

All comments will be posted on www.Regulations.gov. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at www.Regulations.gov and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Linda Rusche, Supervisory Financial Analyst, Office of Credit Risk Management. In the submission, you

¹ OTS proposed amending regulations governing bylaws of federal stock and federal mutual savings associations. However, OTS's regulations governing mutual holding companies incorporate the bylaw provisions of federal stock and federal mutual savings associations.

² 71 FR 7695 (Feb. 14, 2006).

must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will not be published.

FOR FURTHER INFORMATION CONTACT:

Linda Rusche, Supervisory Financial Analyst, at (816) 426-4860, or Bryan Hooper, Director, Office of Credit Risk Management, (202) 205-3049.

Authority: 15 U.S.C. 634.

Dated: December 11, 2007.

Eric R. Zarnikow,

Associate Administrator for the Office of Capital Access.

[FR Doc. E7-24381 Filed 12-19-07; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE275; Notice No. 23-07-04-SC]

Special Conditions: Aviation Technology Group, Inc., Javelin Model 100; High Altitude Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Aviation Technology Group, Inc., Javelin Model 100 airplane. This airplane will have a novel or unusual design feature(s) associated with high altitude operations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed 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: We must receive your comments by January 22, 2008.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE-7, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Small Airplane Directorate at the above address. Mark your comments: Docket No. CE275. 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:

Leslie B. Taylor, Regulations & Policy

Branch, ACE-111, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, MO 64106; telephone (816) 329-4134; facsimile (816) 329-4090, e-mail at *leslie.b.taylor@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested parties to take part in this rulemaking by sending written comments, data, or views. 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 us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning 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 this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments 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 February 15, 2005, Aviation Technology Group (ATG), 8001 S. InterPort Blvd., Englewood, CO 80112 applied for a type certificate for their new Javelin Model 100 airplane. The Javelin Model 100 is a two-seat, pressurized, retractable-gear, composite airplane with two turbofan engines mounted in the aft fuselage.

The Aviation Technology Group, Inc. (ATG) Javelin Model 100 will be certificated for operations at a maximum altitude of 45,000 feet. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, it is necessary to develop special conditions that provide the level of safety equivalent to that established by the regulations.

ATG indicated they will fully comply with Special Conditions for a., Pressure Vessel Integrity; b., Ventilation; and c., Air Conditioning.

However, ATG is unable to fully comply with Special Conditions d. Pressurization and e. Oxygen equipment and supply. As a result from these discussions, the Special Conditions d. and e. were revised to include an alternate means or compensating features that require the use of an oxygen system and emergency descent procedures that addresses a rapid decompression event.

Discussion

The 14 CFR part 23 certification basis for the ATG Javelin Model 100 is part 23, Amendment 23-55. The FAA issues high altitude special conditions for airplanes when the certificated altitude exceeds human physiological limits.

Crack growth could result in rapid depressurization to cabin altitudes that exceed human physiological limits. Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes. Crack growth data is used to prescribe an inspection program, which will detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 23.571, Amendment 23-55. The cabin altitude after permissible crack growth may not exceed specified limits.

To ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Air conditioning special conditions are required because such a measure can lead to cabin temperatures that exceed human tolerance limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of

passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs.

Decompression above 37,000 feet can result in cabin altitudes that approach the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The proposed special condition, therefore, requires pressure demand masks with mask-mounted regulators for the flight crew. This combination of equipment will provide the best practical protection for the failures covered by the proposed special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

Under 14 CFR part 21, § 21.17, Aviation Technology Group, Inc. must show that the Javelin Model 100 meets the applicable provisions of part 23, as amended by Amendments 23-1 through 23-55 thereto.

If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the Javelin Model 100 because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Javelin Model 100 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to

include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Javelin Model 100 will incorporate the following novel or unusual design features:

Part 23 did not envision operation at the service ceiling requested for this airplane. The methods used to ensure pressure vessel integrity and to provide ventilation, air conditioning, pressurization, and supplemental oxygen will be unique due to that operating altitude.

Applicability

As discussed above, these special conditions are applicable to the Javelin Model 100. Should Aviation Technology Group, Inc., apply at a later date for a change to the type certificate to include another model incorporating 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 it affects only the applicant who applied to the FAA for approval of these features on the airplane.

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 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Aviation Technology Group, Inc., Javelin Model 100 airplanes.

a. Pressure Vessel Integrity.

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph d (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 23.831(b), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 23.831, paragraphs (b), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1. (Please see Advisory Circular (AC) 23.1309-1C, pages 10 and 16.)

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2. (Please see AC 23.1309-1C, pages 9 and 16.)

d. *Pressurization:* In addition to the requirements of § 23.841, the following revised Special Condition was designed to limit high altitude exposure by slowing down the depressurization event and to mitigate or eliminate acute effects of dangerously low atmospheric pressure on flight crew and passengers.

1. For the purposes of this special condition, the pressurization system includes bleed air, air conditioning, and pressure control systems. The pressurization system must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(a) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(b) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening

having an effective area 2.0 times the effective area, which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

Note: The ATG Javelin Model 100 proposes to use a mechanical canopy seal that is not subject to complete loss of the door seal element. ATG must still show compliance by analysis and/or test a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(a) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(b) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

3. Complete loss of thrust from all engines. In showing compliance with paragraphs d.1 and d.2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 5-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

The additional Special Conditions below show full compliance to paragraphs d.1. and d.2. and are applicable to both aircraft models. Special Conditions that are aircraft model specific will be noted as Mk-10 or Mk-20.

4. A decompression event is considered to be a rapid decompression event; therefore, the following requirements must be met: The airplane design must include an auto descent feature. The AFM must contain specific instructions for its use, including considerations for air traffic conditions, terrain awareness, annunciation, and accessibility to the control(s) for automatic initiation of the descent sequence by each occupant.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin

volume representative of what is expected to be normal, such that ATG must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. ATG must provide flight crew and crewmember training requirements, including physiological training that covers—

(a) Pressure or reverse cycle breathing,

(b) Rapid decompression training,

(c) Physical condition with respect to the hazards of high altitude rapid decompression, and

(d) Recognition of decompression sickness symptoms and the need for medical treatment.

6. The oxygen system must be compatible with paragraph e, Oxygen Equipment and Supply Special Conditions.

(a) Mk-10: The flight crew and passenger(s) are required to use oxygen masks for all operating altitudes above 25,000 feet.

(b) Mk-20: The flight crew and crewmember are required to use oxygen masks for all operating altitudes above 10,000 feet.

7. ATG will show a means of guarding or de-activating the automatic "auto emergency descent" mode control in the forward or aft cockpit to prevent inadvertent descent mode activation. Appropriate placards will be required for each control device.

8. ATG will show a means of guarding or de-activating the in-flight jettison canopy control, canopy fracturing system, or any other safety critical control device in the forward or aft cockpit to prevent inadvertent activation. Appropriate placards will be required for each control device.

9. Cabin pressure loss must be annunciated as a warning. (See Equivalent Level of Safety Findings for Cabin Pressurization.)

10. The AFM will include:

(a) Mk-10: Require a passenger briefing concerning items 4 through 9 above and the following:

(i) Seat belts.

(ii) Emergency exit.

(iii) Use of quick-donning oxygen mask system with a pressure-demand as described in paragraph e2, Oxygen Equipment and Supply.

(b) Mk-20: Required flight crew and crewmember briefing concerning items 4 through 10(a) above.

(i) The flight crew is the pilot and crewmember, which means a person assigned to perform duty in an aircraft during flight time. The Mk-20 poses safety concerns for a typical passenger since additional training beyond the

pre-flight briefing may be required to use the emergency egress system (i.e., ejection seat). Each occupant of the Mk-20 will be considered as a flight crew or crewmember and be required to complete the minimum requisite training in paragraph d5 before flying on the airplane.

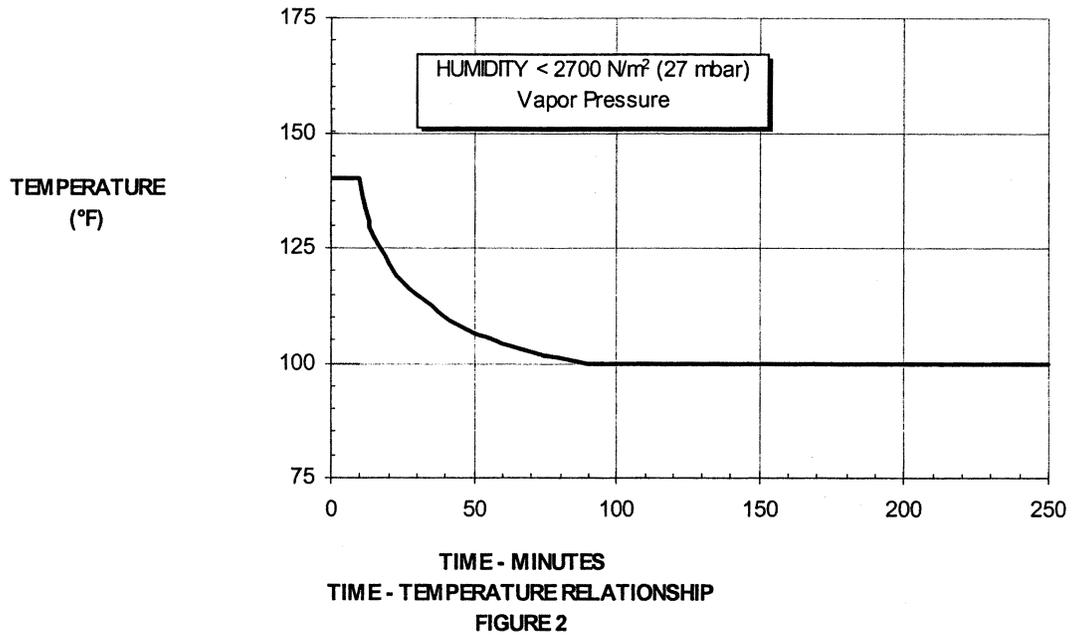
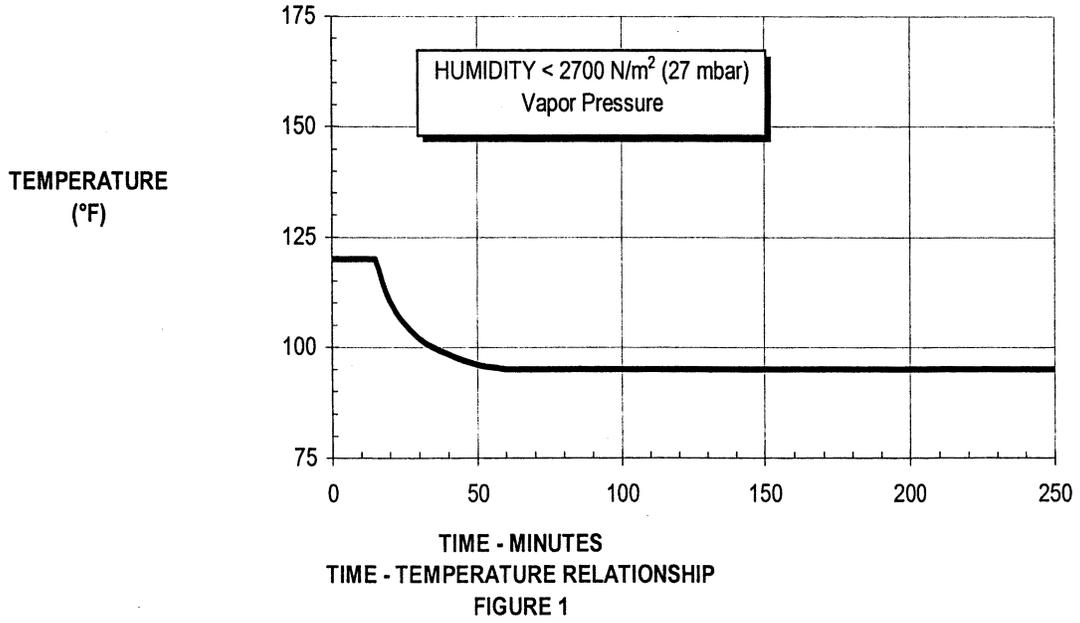
e. *Oxygen equipment and supply.* After several follow-on FAA/ATG discussions, the FAA Position Stage 3 for the Mk-10/Mk-20 Special Conditions e.1 and e.2 were revised to include quick-donning pressure-demand oxygen mask or an alternate helmet mounted oxygen mask for both occupants that complies with TSO-C89 requirements up to 45,000 feet. Furthermore, Special Condition e.3 was revised to allow a common oxygen source with a larger capacity as an alternate means or compensating feature.

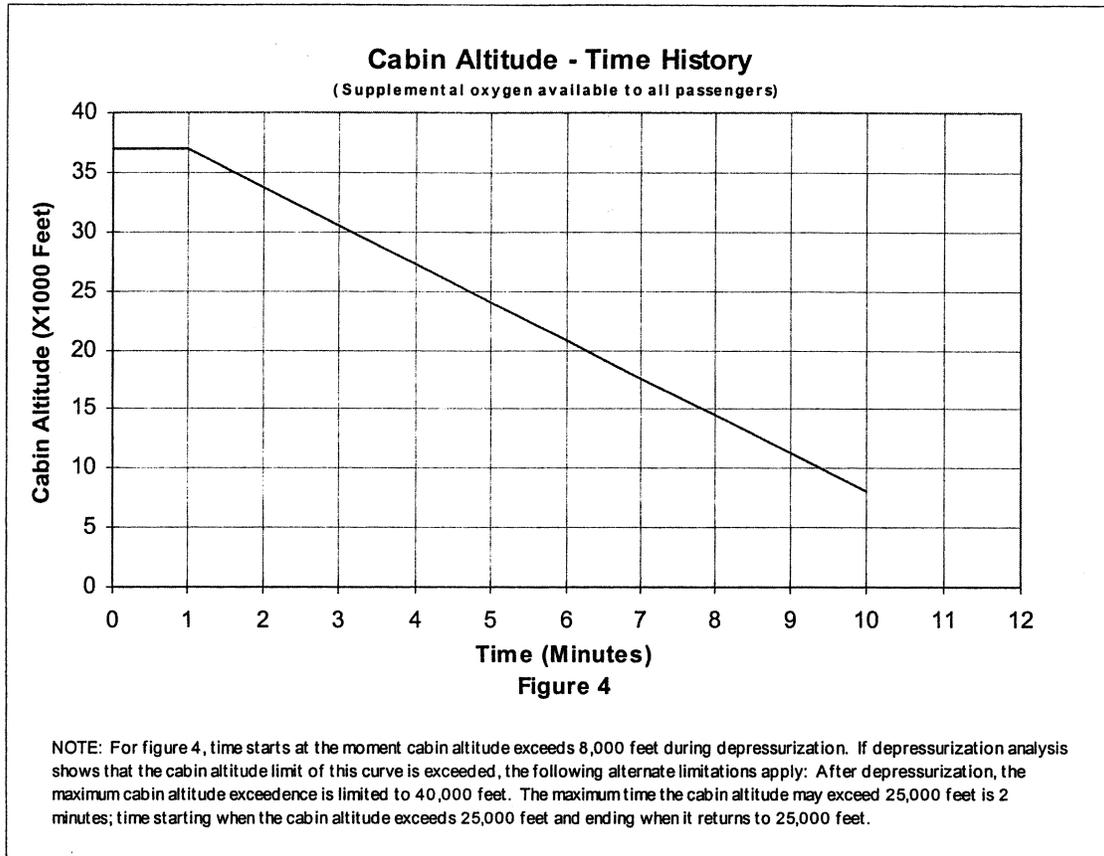
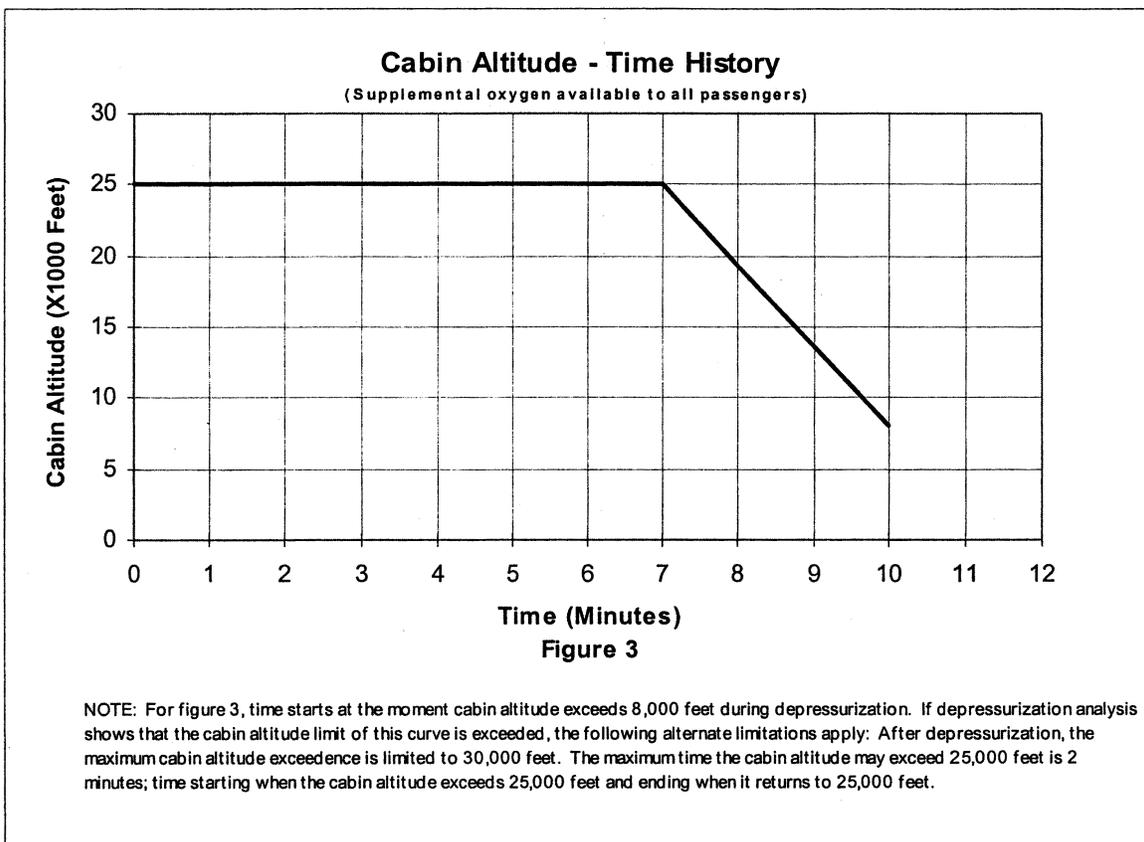
1. In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator that complies with TSO-C89 requirements up to 45,000 feet must be provided for the flight crew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand. Alternately, a helmet mounted oxygen mask, panel mounted regulator that complies with TSO-C89 requirements up to 45,000 feet may be provided to the flight crew.

2. In addition to the requirements of § 23.1443, the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator that complies with TSO-C89 requirements up to 45,000 feet must be provided for the passenger or crewmember. Alternately, a helmet mounted oxygen mask, panel mounted regulator that complies with TSO-C89 requirements up to 45,000 feet may be provided to the passenger.

3. In addition to the requirements of § 23.1445, the following applies: If the flight crew and passenger/crewmember share a common source of oxygen, a means to separately reserve the minimum supply required by the flight crew must be provided. Alternately, if the oxygen system can provide the minimum required for the flight crew as well as all other occupants, the system can have a common source.

BILLING CODE 4910-13-P





Issued in Kansas City, Missouri on December 12, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07-6129 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0368; Directorate Identifier 2007-NM-050-AD]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracking has been found on the centre fuselage top aft longeron at Rib '0,' on an in-service aircraft. * * *

This condition could result in reduced structural integrity of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 22, 2008.

ADDRESSES:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>;

or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0368; Directorate Identifier 2007-NM-050-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006-0215, dated July 14, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Cracking has been found on the centre fuselage top aft longeron at Rib '0' on an in-service aircraft. Subsequent investigation has indicated that the currently defined threshold and repeat inspection period must be reduced, and the area of inspection expanded for the BAe 146 series 100 and 200. For the BAe146 series 300, only the repeat inspection period must be reduced, and the area of inspection expanded.

Cracking on the center fuselage top aft longeron at Rib '0,' could result in reduced structural integrity of the airplane. Corrective actions include repetitive inspections of the center

fuselage top aft longeron for cracking and repair/replacement if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$640, or \$640 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional

Aircraft): Docket No. FAA-2007-0368;
Directorate Identifier 2007-NM-050-AD.

Comments Due Date

(a) We must receive comments by January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAE 146-100A, -200A, and -300A series airplanes; certificated in any category.

Subject

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

Reason

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

Cracking has been found on the centre fuselage top aft longeron at Rib '0' on an in-service aircraft. Subsequent investigation has indicated that the currently defined threshold and repeat inspection period must be reduced, and the area of inspection expanded for the BAe146 series 100 and 200. For the BAe146 series 300, only the repeat inspection period must be reduced, and the area of inspection expanded.

Cracking on the center fuselage top aft longeron at Rib '0' could result in reduced structural integrity of the airplane. Corrective actions include repetitive inspections of the center fuselage top aft longeron for cracking and repair/replacement if necessary.

Actions and Compliance

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

(1) For all BAE 146-100A and BAE 146-200A series airplanes pre-mod HCM01709B or HCM01709C that have not been inspected in accordance with Maintenance Review Board Report (MRBR) SSI/SII Task No. 53-20-140A (Maintenance Planning Document (MPD) task 532040-SDI-10000-3) or BAE Systems (Operations) Limited Service Bulletin ISB.53-173 Revision 1, dated May 19, 2004, as of the effective date of this AD: Do the actions in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD at the applicable compliance time, and do all applicable repairs and replacements before further flight.

(i) Inspect and repair cracking of the forward six bolt bores between the subframe and frame 30 in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, before the accumulation of 17,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later. If the damage exceeds limits specified in the structural repair manual (SRM), before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles, except as provided by paragraph (f)(3) of this AD.

(ii) Inspect and repair cracking of the remaining fastener bores between the sub-

frame and frame 30 in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, before the accumulation of 17,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 11,900 flight cycles, except as provided by paragraph (f)(3) of this AD.

(2) For all BAe 146-100A and BAe 146-200A series airplanes pre-mod HCM01709B or HCM01709C that have been inspected in accordance with MRBR SSI/SII Task No. 53-20-140A (MPD task 532040-SDI-10000-3) or BAE Systems (Operations) Limited Service Bulletin ISB.53-173 Revision 1, May 19, 2004, as of the effective date of this AD: Do the actions in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this AD at the applicable compliance time, and do all applicable repairs and replacements before further flight.

(i) Do an ultrasonic inspection and repair cracking of the forward six bolt bores between the subframe and frame 30 in accordance with paragraph 2.B and Appendix 2 of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, before the accumulation of 5,400 flight cycles since last inspection, or within 500 flight cycles after the effective date of this AD, whichever occurs later. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles, except as provided by paragraph (f)(3) of this AD.

(ii) Do a high frequency eddy current inspection and repair cracking of the forward six bolt bores between the subframe and frame 30 in accordance with paragraph 2.B and Appendix 3 of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, within 4,000 flight cycles after the effective date of this AD. If the damage exceeds limits specified in the SRM, before further flight, contact BAE systems and repair. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles, except as provided by paragraph (f)(3) of this AD.

(iii) Do a rotating eddy current inspection and repair cracking of the remaining fastener bores between the sub-frame and frame 30 in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, and Nondestructive Test Manual (NTM) Part 6 20-00-03, within 4,000 flight cycles after the effective date of this AD. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 11,900 flight cycles, except as provided by paragraph (f)(3) of this AD.

(3) For all BAe 146-100A and BAe 146-200A series airplanes pre-mod HCM01709B or HCM01709C that have had a replacement aft longeron installed: Prior to the accumulation of 17,000 flight cycles after the

aft longeron replacement, or within 500 flight cycles after the effective date of this AD, whichever occurs later, inspect for cracking of the forward six bolt bores and the fastener bores between the sub-frame and frame 30, and repair any crack before further flight in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles for the forward six bolt bores, and 11,900 flight cycles for the remaining fastener bores between the sub-frame and frame 30. Replacing the longeron terminates the repetitive inspection requirements of paragraph (f)(1) and (f)(2) of this AD; post-replacement inspections must be done in accordance with this paragraph.

Note 1: The threshold for an aircraft is reset if a replacement longeron is fitted.

(4) For all BAe 146-300A series airplanes pre-mod HCM01709A that have not been inspected in accordance with MRBR SSI/SII Task No. 53-20-140A (MPD (Maintenance Planning Document) task 532040-SDI-10000-3) or BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 1, dated May 19, 2004, as of the effective date of this AD: Do the actions in paragraphs (f)(4)(i) and (f)(4)(ii) of this AD at the applicable compliance time, and do all applicable repairs and replacements before further flight.

(i) Inspect and repair cracking of the forward six bolt bores between the subframe and frame 30 in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, prior to the accumulation of 24,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles, except as provided by paragraph (f)(6) of this AD.

(ii) Inspect and repair cracking of the remaining fastener bores between the sub-frame and frame 30 in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, at the later of 24,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 11,900 flight cycles, except as provided by paragraph (f)(6) of this AD.

(5) For all BAe 146-300A series airplanes pre-mod HCM01709A that have been inspected in accordance with MRBR SSI/SII Task No. 53-20-140A (MPD task 532040-SDI-10000-3) or BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 1, May 19, 2004, as of the effective date of this AD: Do the actions in paragraphs (f)(5)(i), (f)(5)(ii), and (f)(5)(iii) of this AD at the applicable compliance time, and do all

applicable repairs and replacements before further flight.

(i) Do an ultrasonic inspection and repair cracking of the forward six bores between the subframe and frame 30 in accordance with paragraph 2.B and Appendix 2 of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, within 4,000 flight cycles since last inspection, or within 500 flight cycles after the effective date of this AD, whichever occurs later. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles except as provided by paragraph (f)(6) of this AD.

(ii) Do a high frequency eddy current inspection and repair cracking of the forward six bolt bores between the subframe and frame 30 in accordance with paragraph 2.B and Appendix 3 of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, within 4,000 flight cycles after the effective date of this AD. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles, except as provided by paragraph (f)(6) of this AD.

(iii) Do a rotating eddy current inspection and repair cracking of the remaining fastener bores between the sub-frame and frame 30 in accordance with paragraph 2.B of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, and NTM Part 6 20-00-03 within 4,000 flight cycles after the effective date of this AD. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 11,900 flight cycles, except as provided by paragraph (f)(6) of this AD.

(6) For all BAe 146-300A series airplanes pre-mod HCM01709A that have had a replacement aft longeron installed: Prior to the accumulation of 24,000 flight cycles after the aft longeron replacement, or within 500 flight cycles after the effective date of this AD, whichever occurs later, inspect for cracking of the fastener bores between the sub-frame and frame 30, and repair any crack before further flight in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, March 28, 2006. If the damage exceeds limits specified in the SRM, before further flight, contact BAE Systems and repair. Repeat the inspection thereafter at intervals not to exceed 4,000 flight cycles for the forward six bolt bores, and 11,900 flight cycles for the remaining fastener bores between the sub-frame and frame 30. Replacing the longeron terminates the repetitive inspection requirements of paragraph (f)(4) and (f)(5) of this AD; new inspections must be done in accordance with this paragraph.

NOTE 2: The threshold for an aircraft is reset if a replacement longeron is fitted.

FAA AD Differences

Note 3: This AD differs from the MCAI and/ or service information as follows: The

MCAI specifies doing repetitive inspections until the airplane enters the life extension program (LEP). This program is not defined by the FAA. Operators of airplanes that enter the LEP may request an alternative method of compliance (AMOC) for the repetitive inspections in accordance with the procedures specified in paragraph (g) of this AD.

Other FAA AD Provisions

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

(1) *AMOCs:* The Manager, ANM-116, Transport Airplane Directorate, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006-0215, dated July 14, 2006, and BAe Systems (Operations) Limited Service Bulletin ISB.53-173, Revision 2, dated March 28, 2006, for related information.

Issued in Renton, Washington, on December 12, 2007.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-24699 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-0369; Directorate Identifier 2007-NM-258-AD]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

- Life raft was incorrectly stowed, with deployment straps inboard;
- Life raft had not been repacked to specified dimensions.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 22, 2008.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the

regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0369; Directorate Identifier 2007-NM-258-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006-0366, dated December 11, 2006 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

- Life raft was incorrectly stowed, with deployment straps inboard;
- Life raft had not been repacked to specified dimensions

The purpose of this Airworthiness Directive (AD) is to verify that all life rafts are stowed correctly with deployment straps outboard, and are repacked to specified dimensions.

Corrective actions include correctly reinstalling an incorrectly stowed life raft, installing a properly repacked life raft, and installing placards. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletin F50-480, dated December 5, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 25 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$68 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$3,700, or \$148 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA-2007-0369; Directorate Identifier 2007-NM-258-AD.

Comments Due Date

(a) We must receive comments by January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere-Falcon 50 airplanes, certificated in any category, serial numbers 294, 299, 301 through 304, 306, 307, 310, 313, 314, 316 through 320, 322 through 331, 334 through 337 and 339.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

- Life raft was incorrectly stowed, with deployment straps inboard;
- Life raft had not been repacked to specified dimensions

The purpose of this Airworthiness Directive (AD) is to verify that all life rafts are stowed correctly with deployment straps outboard, and are repacked to specified dimensions.

Corrective actions include correctly reinstalling an incorrectly stowed life raft, installing a properly repacked life raft, and installing placards.

Actions and Compliance

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

(1) Within 10 flight cycles after the effective date of this AD: Verify that the life rafts are stowed correctly, with deployment straps outboard, in accordance with the instructions specified in Dassault Service Bulletin F50-480, dated December 5, 2006, and verify that the overall dimensions of the life raft hard pack do not exceed nominal values, as indicated in Part F50-480-1 of the service bulletin.

(i) If a life raft is found incorrectly stowed, before next flight, reinstall it in accordance with the instructions specified in Part F50-480-1 of the service bulletin.

(ii) If nominal values of the overall dimensions of the life raft hard pack are exceeded, within 3 months after the effective date of this AD, install a properly repacked life raft as instructed in Part F50-480-2 of the service bulletin.

Note 1: Notice that with no life raft aboard, local national operating regulations may not allow some extended overwater flights.

(2) Within 3 months after the effective date of this AD: Install placards on the sofa in

accordance with the instructions specified in Part F50-480-2 of Dassault Service Bulletin F50-480, dated December 5, 2006.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:
No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006-0366, dated December 11, 2006, and Dassault Service Bulletin F50-480, dated December 5, 2006, for related information.

Issued in Renton, Washington, on December 12, 2007.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-24698 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 239

[Release No. 33-8871; File No. S7-30-07]

RIN 3235-AK02

Revisions to Form S-11 To Permit Historical Incorporation by Reference

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend Form S-11, a registration statement used by real estate entities to register offerings under the Securities Act of 1933. The amendments would permit an entity that has filed at least one annual report and that is current in its reporting obligations under the Securities Exchange Act of 1934 to incorporate by reference into Form S-11 information from its previously filed Exchange Act reports and documents. The proposed amendments are identical to amendments to Forms S-1 and F-1 previously adopted by the Commission and effective as of December 1, 2005.

DATES: Comments should be received on or before January 22, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form <http://www.sec.gov/rules/proposed.shtml>;
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-30-07 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

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 S7-30-07. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael McTiernan at (202) 551-3852 or Daniel Greenspan at (202) 551-3430, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3010.

SUPPLEMENTARY INFORMATION: On June 29, 2005, we adopted rules¹ that modified the registration, communications and offering processes under the Securities Act of 1933.² In order to integrate further the Securities Act and the Securities Exchange Act of 1934,³ the Commission adopted amendments to Form S-1⁴ and Form F-1⁵ to permit a reporting issuer that has filed at least one annual report and that is current in its reporting obligation under the Exchange Act to incorporate by reference into its Form S-1 or Form F-1 information from its previously filed Exchange Act reports and documents. At that time, we did not adopt similar amendments to Form S-11.⁶ We believe it is appropriate to extend to issuers using Form S-11 the same ability to take advantage of incorporation by reference. The proposed amendments therefore would make the requirements of Form S-11 consistent with Forms S-1 and F-1 with respect to incorporation by reference.

I. Discussion

A. Background

Form S-11 is the form that real estate entities must use to register offerings under the Securities Act.⁷ The form is mandatory for the registration of securities issued by real estate investment trusts and securities issued by other issuers whose business is primarily that of acquiring and holding for investment real estate, interests in real estate, or interests in other issuers whose business is primarily that of acquiring and holding real estate or interests in real estate for investment.⁸ Form S-11 currently does not permit an issuer to satisfy the disclosure requirements of the form through incorporation by reference to the reports and other documents that the issuer previously has filed under the Exchange Act.

B. Reasons For Proposal

On June 29, 2005 we adopted amendments to Forms S-1 and F-1 to permit companies filing those forms to incorporate by reference information from their previously filed Exchange

Act reports and documents.⁹ The purpose of the amendments was to integrate further the Exchange Act and the Securities Act.¹⁰ The ability to incorporate by reference is conditioned on the company having filed its annual report for the most recent fiscal year, being current in its reporting obligations under the Exchange Act, and making the incorporated Exchange Act reports and documents available and accessible on a Web site maintained by or for the registrant.¹¹ Blank check companies, shell companies and penny stock registrants are not permitted to use incorporation by reference. Successor registrants may incorporate by reference if their predecessors are eligible.¹²

At that time, we did not adopt a similar amendment to Form S-11. However, we believe that Form S-11 should be consistent with Form S-1 with respect to incorporation by reference. Both Form S-11 and Form S-1 are long-form registration statements intended for new and unseasoned issuers. The only substantive difference between the two forms is that Form S-11 contains certain additional disclosure requirements specific to real estate entities. Since the Commission's interest in integrating disclosure under the Exchange Act and Securities Act extends equally to the disclosure obligations of real estate entities, we propose to amend Form S-11 to permit incorporation by reference on the same terms as we permit it in Forms S-1 and F-1.

C. Proposed Amendments to Form S-11

1. Eligibility

We are proposing to permit a reporting issuer that has filed at least one annual report and that is current in its reporting obligations under the Exchange Act to incorporate by reference into its Form S-11 information from previously filed Exchange Act reports and documents. Under the proposal, a successor registrant would be able to incorporate information by reference on the same terms if its predecessor were eligible to do so.¹³ Consistent with Form S-1, the

¹ See *Securities Offering Reform*, Release No. 33-8591 (Jul. 19, 2005) [70 FR 44722].

² 15 U.S.C. 77a *et seq.*

³ 15 U.S.C. 78a *et seq.*

⁴ 17 CFR 239.13.

⁵ 17 CFR 239.33.

⁶ 17 CFR 239.18.

⁷ Real estate entities may also use Forms S-3 and S-4 if they meet the applicable eligibility requirements of those forms. When no other form is available, these entities are required to file on Form S-11 rather than Form S-1.

⁸ See General Instruction A of Form S-11.

⁹ See Release No. 33-8591.

¹⁰ *Id.* at 237.

¹¹ See General Instruction VII of Form S-1 and General Instruction VI of Form F-1.

¹² *Id.*

¹³ The succession would have to be either primarily for the purpose of changing the state or jurisdiction of incorporation of the issuer or forming a holding company and the assets and liabilities of the successor would have to be substantially the same as the predecessor at the time of the succession, or all of the predecessor issuers would have to be eligible at the time of the

following issuers would not be able to incorporate by reference into a Form S-11:

- Reporting issuers who are not current in their Exchange Act reports;¹⁴
- Issuers who are or were, or any of whose predecessors were during the past three years:
 - Blank check issuers;
 - Shell companies (other than business combination related shell companies); or
 - Issuers for offerings of penny stock.¹⁵

In addition, to enhance the availability to investors of incorporated information, the ability to incorporate by reference would be conditioned on the issuer making its incorporated Exchange Act reports and other materials readily accessible on a Web site maintained by or for the issuer. By conditioning the ability to incorporate by reference on the ready accessibility of an issuer's incorporated Exchange Act reports and other materials on its Web site, we are proposing to provide investors the ability to obtain the information from those reports and materials at the same time that they would have been able to obtain the information if it was set forth directly in the registration statement. Issuers would be able to satisfy this condition by including hyperlinks directly to the reports or other materials filed on EDGAR or on another third-party Web site where the reports or other materials are made available in the appropriate time frame and access to the reports or other materials is free of charge to the user.

2. Procedural Requirements

As proposed, the prospectus in the registration statement at effectiveness would identify all previously filed Exchange Act reports and materials, such as proxy and information statements, that are incorporated by reference. There would be no permitted incorporation by reference of Exchange Act reports and materials filed after the registration statement is effective—known as “forward incorporation by

succession and the issuer must continue to be eligible.

¹⁴ As with Forms S-1, F-1 and S-3, under the proposal, to be current, at the time of filing the registration statement, the issuer must have filed all materials required to be filed pursuant to Exchange Act Sections 13, 14 or 15(d) [15 U.S.C. 78m, 78n, or 78o(d)] during the preceding 12 calendar months (or for such shorter period that the issuer was required to file such materials).

¹⁵ See Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)], Exchange Act Rule 3a51-1 [17 CFR 240.3a51-1] and Securities Act Rule 405 [17 CFR 230.405] for definitions of “blank check company,” “penny stock” and “shell company,” respectively.

reference.” Under the proposal, an issuer eligible to incorporate by reference its Exchange Act reports and other materials into its Form S-11 would include the following in the prospectus that is part of the registration statement:

- A list of the incorporated reports and materials;
- A statement that it will provide copies of any incorporated reports or materials on request;
- An indication that the reports and materials are available from us through our EDGAR system or our public reference room;
- Identification of the issuer's Web site address where such incorporated reports and other materials can be accessed; and
- Required disclosures regarding material changes in, or updates to, the information that is incorporated by reference from an Exchange Act report or other material required to be filed.

D. Request for Comment

We request and encourage any interested person to submit comments on the proposal and any other matters that might have an impact on the proposal. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

II. Paperwork Reduction Act

A. Background

The proposed amendments to Form S-11 contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.¹⁶ We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.¹⁷ The title for this information is “Form S-11” (OMB Control No. 3235-0067).

We adopted existing Form S-11 pursuant to the Securities Act. This form sets forth the disclosure requirements for registration statements prepared by real estate entities to provide investors with the information they need to make informed investment decisions in registered offerings.

Our proposed amendments to Form S-11 are intended to allow issuers that are required to use Form S-11 to incorporate by reference previously filed Exchange Act reports and documents. The proposed amendments would conform Form S-11 to Forms S-

1 and F-1 with respect to incorporation by reference.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. The information collection requirements related to registration statements on Form S-11 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

The proposals would decrease existing disclosure requirements for eligible issuers by eliminating the need to repeat information in a Form S-11 when that information was previously disclosed in Exchange Act filings. Any reporting issuer that has filed at least one annual report and that is current in its reporting obligation would be permitted to incorporate information by reference into its registration statement on Form S-11.

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we expect the annual decrease in the paperwork burden for companies to comply with Form S-11 to be approximately 36,811.5 hours of in-house company personnel time and approximately \$44,173,800 for the services of outside professionals.¹⁸ These estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. These estimates were based on the following assumptions:

- Each year, 82 registration statements on Form S-11, including post-effective amendments, would incorporate information by reference;¹⁹

¹⁸ Consistent with recent rulemakings and based on discussions with several private law firms, we estimate that the cost of outside professionals retained by the issuer is an average of \$400 per hour.

¹⁹ We estimate that issuers that would have been eligible to incorporate by reference under the proposals filed 14 new registration statements on Form S-11 and 68 post-effective amendments to registration statements on Form S-11 (excluding post-effective amendments filed for the purpose of deregistering shares) from September 1, 2006 to August 31, 2007. With the elimination of small business registration forms, we estimate that the number of registration statements filed on Form S-11 will increase by 15 for a total of 29 new registration statements. See SEC Press Release No. 2007-233 (Nov. 15, 2007), available at <http://www.sec.gov/news/press/2007/2007-233.htm>.

¹⁶ 44 U.S.C. 3501 *et seq.*

¹⁷ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

- The estimated paperwork burden for a Form S-11 that does not incorporate information by reference is 1,977 hours, which consists of 494.25 internal hours and 1,482.75 professional hours.²⁰

- The estimated paperwork burden for a Form S-11 that incorporates information by reference would be the same as the burden currently imposed by Form S-3, which is 459 hours, which consists of 114.75 internal hours and 344.25 professional hours.

- The amount of time eliminated for each Form S-11 that incorporates information by reference would be 1,518 hours per form (1,977 hours for a Form S-11 that does not incorporate information by reference minus 459 hours for a Form S-11 that incorporates information by reference).

- We estimate that the annual decrease in compliance burden resulting from the proposal would be 147,246 hours (97 registration statements multiplied by 1,518 hours per form). This would include 36,811.5 hours of issuer personnel time (97 registration statements times 379.5²¹ hours of issuer personnel time per registration statement) and 110,434.5 hours of professional time (97 registration statements times 1,138.5²² hours of professional time per registration statement).

- The annual cost savings would be approximately \$44,173,800 for the services of outside professionals.

D. Request for Comment

We request comment in order to evaluate the accuracy of our estimate of the burden of the collection of information. Any member of the public may direct to us any comments concerning the accuracy of these burden estimates. Persons submitting comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090, with reference to File No. S7-30-07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-30-07, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC, 20549-0609. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

III. Cost-Benefit Analysis

A. Summary of Proposal

We are proposing revisions to Form S-11 that would allow real estate entities to take advantage of incorporation by reference for their previously filed Exchange Act reports and documents. Forms S-1 and F-1, which are similar long-form registration statements, currently permit this type of incorporation by reference. The proposed amendment, if adopted, would amend Form S-11 to permit incorporation by reference on the same terms as currently provided in Forms S-1 and F-1. The purpose of the amendments is to integrate further the disclosure obligations of the Exchange Act and the Securities Act for real estate entities.

B. Benefits

We anticipate that our proposal would enable real estate entities to access the capital markets at a lower cost. It would enable eligible issuers to use their Exchange Act filings to satisfy a portion of their Form S-11 disclosure requirements without having to incur costs to replicate information that they already have disclosed in previously filed Exchange Act reports and other documents. For purposes of our Paperwork Reduction Act analysis, we estimate that our proposed amendments to Form S-11 would reduce the annual paperwork burden by approximately 36,811.5 hours for issuer personnel time at a cost of approximately \$6,442,013²³ and by a cost of approximately \$44,173,800 for the services of outside professionals. In addition, we believe that the reduction in the size of the

prospectus as a result of incorporation by reference would also result in some cost savings and efficiencies in printing and delivering prospectuses.

The proposed amendments are intended to result in regulatory simplification and efficiency by permitting incorporation by reference on Form S-11 and conforming the requirements of Form S-11 to the requirements of Forms S-1 and F-1 in that respect. Incorporation by reference would allow eligible issuers to avoid duplicating disclosure in Form S-11 when the information has already been disclosed in Exchange Act reports. In addition, the revisions would simplify the disclosure regime for long-form registration statements by permitting incorporation by reference equally, regardless of industry.

C. Costs

We expect that, if adopted, the proposed amendments would result in some ongoing costs to issuers that elect to use incorporation by reference. These potential costs relate to the issuer's obligation to make the incorporated Exchange Act reports and documents available on its Web site and include creating and/or maintaining a Web site as well as actually posting the required filings on the Web site. However, we believe that a substantial majority of issuers eligible to use incorporation by reference already maintain Web sites and thus would not have to incur any additional costs to establish a new Web site for this purpose. In addition, we believe that many issuers eligible to use incorporation by reference already post their Exchange Act reports on their Web sites. Those that do not would incur incremental costs to post the required filings. Given that the proposed amendments would not mandate use of incorporation by reference, issuers that are unwilling to bear the cost of complying with the Web site requirement could simply elect not to incorporate information by reference.

We also recognize that permitting incorporation by reference may impose an analytical burden on investors. For example, for offerings on Form S-11 today, much of the relevant information regarding an offering and the issuer is required to be contained in the registration statement. Under our proposal, offerings pursuant to Form S-11 could require an investor to assemble and assimilate information from various Exchange Act reports and the registration statement in order to compile all of the relevant information regarding an offering. Investors would have to compile the information integrated into the registration statement

²⁰ Assumes that 25% of total burden is borne by internal staff and 75% by professionals.

²¹ Reflects the difference between the amount of internal time required to prepare a Form S-11 without incorporation by reference (494.25 hours) and the amount of internal time required to prepare a Form S-11 with incorporation by reference (114.75 hours).

²² Reflects the difference between the amount of professional time required to prepare a Form S-11 without incorporation by reference (1,483 hours) and the amount of professional time required to prepare a Form S-11 with incorporation by reference (344.25 hours).

²³ Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of \$175 per hour.

or delivered by means outside of the prospectus. We note, however, that Securities Act Forms S-3 and F-3 have long permitted incorporation by reference from the issuer's Exchange Act reports, as have Forms S-1 and F-1 since December 2005, and we know of no indications that investors are unduly burdened when investing in offerings registered on these forms.

D. Requests for Comments

We request comment on all aspects of the cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. We also request that those submitting comments provide empirical data and other factual support for their views to the extent possible.

IV. Consideration of Promotion on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act,²⁴ requires us, when engaged in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposed amendment, if adopted, would amend Form S-11 to permit incorporation by reference on terms equivalent to that currently provided in Forms S-1 and F-1. We believe the amendments would provide benefits, as discussed in further detail above, by reducing the costs of complying with the Form S-11 disclosure requirements by enabling eligible issuers to incorporate their Exchange Act filings. Eased filing burdens resulting from the proposed amendments would promote efficiency in capital formation for real estate entities and may provide a competitive benefit to entities filing on Form S-11 by allowing them to incorporate their periodic reports by reference to the same extent as registrants filing on Forms S-1 and F-1.

We request comment on whether the proposed amendment, if adopted, would promote efficiency, competition and capital formation. We request that commenters provide empirical data and other factual support for their views if possible.

V. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in

accordance with 5 U.S.C. 603. It relates to proposed amendments to Form S-11.

A. Reasons for the Proposed Action

In 2005, the Commission adopted revisions to Forms S-1 and F-1 to permit incorporation by reference from previously filed Exchange Act reports and other documents. Currently, real estate entities are not permitted to use Form S-1 to register offerings under the Securities Act. Consequently, these entities are unable to take advantage of the important benefit of incorporation by reference that is enjoyed by companies in all other industries that file registration statements on Form S-1. The ability to use a prospectus that does not need to include information provided in previous Exchange Act filings permits companies to streamline the preparation of registration statements and raise capital more efficiently. Companies that are not permitted to incorporate by reference have a greater burden in preparing registration statements in connection with their public offerings. We believe there is no reason to distinguish between real estate entities and other industries for purposes of incorporation by reference.

B. Objectives

The purpose of the proposed amendments is to further integrate the Exchange Act and Securities Act by amending Form S-11 to permit incorporation by reference of Exchange Act filings on terms equivalent to that currently provided in Forms S-1 and F-1. The amendments would extend an important benefit to real estate entities.

C. Legal Basis

We are proposing the amendments under the authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

D. Small Entities Subject to the Proposed Amendments

The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."²⁵ The Commission's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.²⁶ Roughly speaking, a "small business" and "small organization," when used with

²⁵ 5 U.S.C. 601(6).

²⁶ Rules 157 under the Securities Act [17 CFR 230.157], 0-10 under the Exchange Act [17 CFR 240.0-10] and 0-10 under the Investment Company Act [17 CFR 270.0-10] contain the applicable definitions.

reference to an issuer other than an investment company, means an issuer with total assets of \$5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.²⁷ The proposed amendments would apply to all issuers required to file registration statements on Form S-11.

As previously noted, in the 12 months ended August 31, 2007, 82 registration statements on Form S-11 were filed, including new registration statements and post-effective amendments. We estimate that four of those were filed by small entities. We also estimate that approximately 15 registration statements were filed on Form SB-2 in the last fiscal year covering transactions by real estate entities that in the future will be required to register on Form S-11.²⁸ Thus, we estimate that 19 registration statements by small entities would be subject to the proposed amendments.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments are expected to impact all capital raising and selling security holder transactions that are registered under the Securities Act on Form S-11. Small entities required to register on Form S-11 would be able to take advantage of the ability to incorporate by reference previously filed Exchange Act reports and documents. We expect that permitting the incorporation by reference of previously filed Exchange Act reports and documents would reduce the costs incurred by small entities of preparing a registration statement on Form S-11 by \$9,914,438.²⁹

These estimates were based on the following assumptions:

- Each year, 19 registration statements filed by small entities on Form S-11, including post-effective amendments, could incorporate information by reference.
- The paperwork burden for a Form S-11 that does not incorporate information by reference is 1,977 hours,

²⁷ The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database.

²⁸ See SEC Press Release No. 2007-233 (Nov. 15, 2007), available at <http://www.sec.gov/news/press/2007/2007-233.htm>.

²⁹ See n. 18 and n. 23.

²⁴ 15 U.S.C. 77b(b).

which consists of 494.25 internal hours and 1,482.75 professional hours.³⁰

- The paperwork burden for a Form S-11 that incorporates information by reference would be the same as the burden currently imposed by Form S-3, which is 459 hours, which consists of 114.75 internal hours and 344.25 professional hours.

- The amount of time eliminated for each Form S-11 that incorporates information by reference would be 1,518 hours per form (1,977 hours for a Form S-11 that does not incorporate information by reference minus 459 hours for a Form S-11 that incorporates information by reference).

- We estimate that the annual decrease in compliance burden to small entities resulting from the proposal would be 28,842 hours (19 registration statements multiplied by 1,518 hours per form). This would include 7,210.5 hours of issuer personnel time (19 registration statements times 379.5³¹ hours of issuer personnel time per registration statement) and 21,631.5 hours of professional time (19 registration statements times 1,138.5³² hours of professional time per registration statement).

- The annual cost savings to small entities would be approximately \$8,652,600 for the services of outside professionals.

We expect that small entities eligible to register on Form S-11 may need to incur some insignificant additional costs related to complying with the Web site requirements related to incorporation by reference, although issuers could avoid such costs by electing not to incorporate information by reference.

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

³⁰ Assumes that 25% of total burden borne by internal staff and 75% by professionals.

³¹ Reflects the difference between the amount of internal time required to prepare a Form S-11 without incorporation by reference (494.25 hours) and the amount of internal time required to prepare a Form S-11 with incorporation by reference (114.75 hours).

³² Reflects the difference between the amount of professional time required to prepare a Form S-11 without incorporation by reference (1,483 hours) and the amount of professional time required to prepare a Form S-11 with incorporation by reference (344.25 hours).

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, or overlap or conflict with other federal rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposal, the Regulatory Flexibility Act requires us to consider the following alternatives:

1. Establishing different compliance or reporting requirements that take into account the resources of small entities;
2. The clarification, consolidation, or simplification of disclosure for small entities;
3. Use of performance standards rather than design standards; and
4. Exempting smaller entities from coverage of the disclosure requirements or any part thereof.

Our proposal would extend the benefit of incorporation by reference to small entities that are required to file registration statements on Form S-11. Establishing a different standard for small business entities would impose a greater compliance burden on small entities and would be inconsistent with the benefits provided for small entities that register on Form S-1 and Form F-1.

H. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis; and
- How to quantify the impact of the proposed amendments.

We ask those submitting comments to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of

1996,³³ a rule is “major” if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposal would be a “major rule” for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

VII. Statutory Authority and Text of the Proposed Amendments

The amendments described in this release are being proposed under the authority set forth in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

List of Subjects in 17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 77mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Amend Form S-11 (referenced in § 239.18) as follows:

- a. Add General Instruction H;
 - b. In Part I, add Item 28A;
 - c. Redesignate Item 29 as Item 29A;
- and
- d. Add new Item 29.

The additions read as follows:

Note: The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.

³³ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

FORM S-11

FOR REGISTRATION UNDER THE
SECURITIES ACT OF 1933 OF
SECURITIES OF CERTAIN REAL
ESTATE COMPANIES

GENERAL INSTRUCTIONS

* * * * *

H. Eligibility To Use Incorporation by Reference

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 28 of this Form in accordance with Item 28A and Item 29 of this Form:

1. The registrant is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

2. The registrant has filed all reports and other materials required to be filed by Sections 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials).

3. The registrant has filed an annual report required under Section 13(a) or Section 15(d) of the Exchange Act for its most recently completed fiscal year.

4. The registrant is not:

(a) And during the past three years neither the registrant nor any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2) of this chapter);

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405 of this chapter); or

(iii) A registrant for an offering of penny stock as defined in Rule 3a51-1 of the Exchange Act (§ 240.3a51-1 of this chapter).

(b) Registering an offering that effectuates a business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter).

5. If a registrant is a successor registrant it shall be deemed to have satisfied conditions 1, 2, 3, and 4(b) above if:

(a) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(b) All predecessors met the conditions at the time of succession and

the registrant has continued to do so since the succession.

6. The registrant makes its periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference pursuant to Item 28A or Item 29 of this Form readily available and accessible on a Web site maintained by or for the registrant and containing information about the registrant.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 28A. Material Changes

If the registrant elects to incorporate information by reference pursuant to General Instruction H, describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K or Form 10-KSB and which have not been described in a Form 10-Q, Form 10-QSB, or Form 8-K filed under the Exchange Act.

Item 29. Incorporation of Certain Information by Reference

If the registrant elects to incorporate information by reference pursuant to General Instruction H:

(a) It must specifically incorporate by reference into the prospectus contained in the registration statement the following documents by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10-K or Form 10-KSB filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K or Form 10-KSB was required to have been filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act or proxy or information statements filed pursuant to Section 14 of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Note to Item 29(a). Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

(b)(1) The registrant must state:

(i) That it will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by

reference in the prospectus contained in the registration statement but not delivered with the prospectus;

(ii) That it will provide these reports or documents upon written or oral request;

(iii) That it will provide these reports or documents at no cost to the requester;

(iv) The name, address, telephone number, and e-mail address, if any, to which the request for these reports or documents must be made; and

(v) The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 29(b)(1). If the registrant sends any of the information that is incorporated by reference in the prospectus contained in the registration statement to security holders, it also must send any exhibits that are specifically incorporated by reference in that information.

(2) The registrant must:

(i) Identify the reports and other information that it files with the SEC; and

(ii) State that the public may read and copy any materials it files with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

If the registrant is an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

* * * * *

By the Commission.

Dated: December 14, 2007.

Nancy M. Morris,
Secretary.

[FR Doc. E7-24617 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

**INTERNATIONAL TRADE
COMMISSION****19 CFR Parts 201 and 210****Rules of General Application and
Adjudication and Enforcement**

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission ("Commission") proposes to amend its

Rules of Practice and Procedure concerning rules of general application, adjudication, and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. within 60 days after publication of this notice of proposed rulemaking.

ADDRESSES: You may submit comments, identified by docket number MISC-022, by any of the following methods:

- Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site:* <http://www.usitc.gov>. Follow the instructions for submitting comments on the Web site at <http://www.usitc.gov/secretary/edis.htm>.
- E-mail:* eric.frahm@usitc.gov. Include docket number MISC-022 in the subject line of the message.
- Mail:* For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.
- Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC-022) or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to <http://www.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel,

United States International Trade Commission, telephone 202-205-3107. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, an explanation of the proposed amendments to part 201, a section-by-section explanation of the proposed amendments to part 210, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment, in addition to any other comments they wish to make on the proposed amendments, on whether the proposed amendments are in language that is sufficiently clear for users to understand.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revisions will be promulgated in accordance with the Administrative Procedure Act ("APA") (5 U.S.C. 553), and will be codified in 19 CFR parts 201 and 210.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to update certain outdated provisions and improve other provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules covering investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) ("section 337") in order to increase the efficiency of its section 337 investigations. This rulemaking effort began in 2003 when the ITC Trial Lawyers Association ("ITCTLA") submitted a report to the Commission which suggested several rule changes that it believed would make the Commission rules more effective. In the course of considering the ITCTLA proposals, the Office of the General Counsel and the Office of Unfair Import Investigations ("OUII") also suggested various rule changes. The Commission invites the public to comment on all of

these proposed rules amendments. In any comments, please consider addressing whether the proposed amendments are in language that is clear and easy to understand. In addition, in any comments, please consider addressing how the proposed rules amendments could be improved, and/or offering specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the rulemaking procedure in section 553 of the APA. This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

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

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

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

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

The final rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because

they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they do not contain any new information collection requirements.

Explanation of the Proposed Amendments to 19 CFR Part 201

The Commission proposes to amend part 201, Rules of General Application, in the manner described below.

Subpart B—Initiation and Conduct of Investigations

Section 201.16

Section 201.16 provides generally for service of process and other documents, and includes paragraph (d) which provides for additional time after service by mail. Recently amended sections 210.6 and 210.7 allow one additional day for the parties to respond to Commission documents that are served by overnight delivery. *See* 72 FR 13689, March 23, 2007. The Commission proposes adding new paragraph (e) of section 201.16 to also provide one additional day for parties to respond to documents served on them by overnight delivery by other parties, and to conform section 201.16 to sections 210.6 and 210.7. The Commission also proposes redesignating existing paragraph (e) as new paragraph (f) to allow for this change.

Section-by-Section Explanation of the Proposed Amendments to 19 CFR Part 210

The Commission proposes to amend part 210, Adjudication and Enforcement, in the manner described below.

Subpart A—Rules of General Applicability

Section 210.3

This section provides definitions of words and phrases used in part 210. The phrase “U.S. Customs Service” is used throughout part 210. Pursuant to the Homeland Security Act of 2002, the U.S. Customs Service merged into the Department of Homeland Security. The official name of this entity is now “U.S. Customs and Border Protection.” 72 FR 20131, April 23, 2007. Thus, the Commission proposes to amend section 210.3 to reflect the official name.

Section 210.4

Paragraph (f)(1)(i) of section 210.4 sets forth the physical specifications for the filing of documents addressed to the

Commission and was adopted when filings were frequently typeset by commercial printers. The Commission proposes revising section 210.4 to remove reference to any physical specifications related to typographic printing processes.

Section 210.7

Paragraph (a), Manner of Service

Recently, sections 210.6 and 210.7 were amended to include provisions relating to the service of certain Commission documents by overnight delivery. *See* 72 FR 13689–90, March 23, 2007. Although these amendments were intended, *inter alia*, to streamline the service process and promote uniformity of service, the amendments regarding service by overnight delivery have created the prospect of differing response dates for the private parties and OUII. Thus, an unintended consequence of these amendments is that tracking of multiple service dates by the Commission will be necessary for various documents and/or numerous additional requests for extensions of time will be made to conform response dates for all parties.

Under existing practice, the Commission normally grants requests for extensions of time which are made to ensure that the due date for responses is uniform as to all parties. Therefore, the Commission proposes to add a new paragraph (a)(3) to section 210.7 so that when the Commission effects service upon the private parties by overnight delivery, service upon OUII shall also be deemed to have been effected by overnight delivery. This amendment to paragraph (a) of section 210.7 should eliminate multiple response dates for the same document by providing a uniform response date for all parties, thereby obviating the need for recurrent requests to conform response dates and minimizing administrative burdens on Commission personnel. Thus, the amendment is consistent with the aims of the recent overnight service provisions relating to Commission documents. *See* 72 FR 13689, March 23, 2007.

New Paragraph (b), Designations for Service of Process

Paragraph (a)(1) of section 210.7 generally provides service rules and requires that documents shall be served on all other parties. At present, any entity that files an entry of appearance on behalf of a named party is placed on the service list and is served with all documents. Service of documents containing confidential business information also requires signing onto

the protective order for that investigation. This leads to the situation where multiple offices of the same law firm and multiple law firms are being served with documents on behalf of a single party. Redundancy in service is a substantial financial burden on both the private parties and the Commission in terms of copying and delivery costs.

The Commission proposes that a lead attorney be designated to accept process for all other attorneys representing the same party in a section 337 investigation. Under this proposal, no limit would be placed on the number of attorneys of record for a party, but each named party would have to designate one attorney-for-service who agrees to accept all service on behalf of that party. The Commission proposes adding new paragraph (b) to provide designation of a single attorney, selected lead attorney, or representative for service of process. The Commission also proposes redesignating existing paragraph (b) of section 210.7 (which concerns the publication of notices) as paragraph (c) to accommodate the addition of new paragraph (b).

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Sections 210.8 and 210.11

Sections 210.8 and 210.11 generally concern commencement of preinstitution proceedings and service of a complaint and notice of investigation. To make sections 210.8 and 210.11 easier to read and understand, the Commission proposes completely revising each of these sections by distinctly setting out their respective requirements for: (1) Complaints not seeking temporary relief, and (2) complaints seeking temporary relief. Specifically, paragraphs (a)(1) of proposed sections 210.8 and 210.11 relate to complaints not seeking temporary relief, and paragraphs (a)(2) of proposed sections 210.8 and 210.11 relate to complaints seeking temporary relief. Further detailed explanation of these revisions follows.

Section 210.8 requires that the complainant provide the Secretary with sufficient copies of the complaint, any supplement to the complaint, any motion for temporary relief, and all exhibits to any of these papers so that it may serve them on the proposed respondents should the Commission institute an investigation. Thereafter, section 210.11 requires the Secretary to serve a copy of the complaint, and notice of investigation (and any accompanying motion for temporary

relief) upon each respondent and their respective embassies in Washington, DC. Sections 210.8 and 210.11 acknowledge that, for investigations involving temporary relief, section 210.54 requires the complainant to serve nonconfidential copies of the complaint and motion for relief and nonconfidential copies of all attached materials on all proposed respondents and the embassy in Washington, DC. Furthermore, section 210.54 requires that the complainant submit to the Commission actual proof of service on each respondent and embassy within ten days after the filing of the complaint.

Thus, sections 210.8 and 210.11 mandate duplicate service of the complaint and temporary relief motion together with all exhibits by the complainant and the Secretary in investigations involving temporary relief and needlessly increase the number of copies that must be supplied to the Secretary and served by the Secretary following the institution of an investigation. Duplicate service, especially of voluminous exhibits, imposes a serious financial burden on both the complainant and the Commission in terms of copying and mailing costs. During the 1988 rules revision, the Commission acknowledged that the rules required double service, but reasoned that service of the complaint by the Commission was necessary because the date of service by the Commission is the date used for computing the date for a response. See 53 FR 33046, August 29, 1988.

The proposed amendment to this rule provides that in investigations involving temporary relief, the complainant be required to submit only the required number of service copies of any unserved confidential material provided in connection with the complaint or motion for temporary relief and the requisite number of copies of the public complaint (without exhibits) for service by the Secretary. The proposed amendment provides that the Secretary is required, upon institution of an investigation involving temporary relief, to serve only the Notice of Investigation and a copy of the complaint (without exhibits) on each respondent and embassy. The amendment further provides that the service of these documents by the Secretary serves as the operative service for calculating a response date. In the rare event that complainant does not serve a proposed respondent with the exhibits, the respondents may take up the matter with the presiding ALJ under section 210.4, or obtain the public exhibits from the Secretary's office or through the

Commission's Electronic Document Information System ("EDIS").

Accordingly, the Commission proposes language to revise sections 210.8 and 210.11 to provide that upon the institution of an investigation involving temporary relief, the Secretary will serve the Notice of Investigation and a copy of the complaint (without exhibits) on each respondent and embassy. In view of the proposed changes to § 210.11(a)(1), the Commission also proposes to revise section 210.54 and section 210.56 to eliminate references to subsequent service of the motion for temporary relief by the Commission.

In reviewing the language of section 210.8 with a view toward proposing alternate language to eliminate double-service in temporary relief cases, it was noted that existing section 210.8 is itself rather confusing. Indeed, the Commission frequently receives inquiries from law firms representing prospective complainants that are confused about how many copies of the complaint and associated materials they are required to file to commence a section 337 proceeding. Thus, the Commission proposes revising section 210.8 to make it easier to determine how many copies are required when filing a permanent relief or a temporary relief complaint, and to make it possible for the Commission to eliminate unnecessary effort and expenses associated with the initial storage and subsequent re-service of materials required for complaints involving temporary relief requests. To achieve these ends, the Commission proposes breaking out the filing requirements in section 210.8 into separate paragraphs (paragraph (a)(1) for permanent relief and paragraph (a)(2) for temporary relief proceedings), and setting out numbered lists (§§ 210.8(a)(1)(i)-(iv) for permanent relief and §§ 210.8(a)(2)(i)-(vi) for temporary relief proceedings) specifying the required number of copies of each item to be filed with the Secretary for each type of proceeding. Supplements to such filings are also specifically referenced in the proposed section 210.8.

The Commission proposes similarly structured revisions to § 210.11(a)(1), which concerns Commission service of complaints and notices of investigation. The Commission also proposes revising section 210.54 and § 210.56(a) to reflect the aforementioned revisions to sections 210.8 and 210.11.

Section 210.10

Paragraph (a)(5)(i) of section 210.10 allows a complainant to withdraw the complaint "as a matter of right" prior to

the Commission's vote on institution of the investigation simply by filing a written notice with the Commission. If the complaint is being withdrawn pursuant to a settlement agreement, however, the rule requires that a copy of the settlement agreement be filed with the written notice. The requirement to submit a settlement agreement is consistent with § 210.21(b) regarding termination of an on-going investigation based on a settlement agreement. However, prior to the institution of an investigation, the Commission may not have the knowledge necessary to assess the significance of the terms of any settlement agreement. Also, any review of a settlement agreement before institution contradicts the statement that a complainant may withdraw the complaint "as a matter of right" before institution. Thus, the Commission proposes revising paragraph (a)(5)(i) of section 210.10 to delete the requirement that any copies of the settlement agreement and/or other documents be submitted when a complaint is withdrawn prior to institution.

Section 210.11

Section 210.11 requires the Secretary to serve a copy of the complaint, and notice of investigation (and any accompanying motion for temporary relief) upon each respondent and their respective embassies in Washington, DC. The Commission proposes amending section 210.11 by substantially revising paragraphs (a) and (b) to make them easier to read and understand as discussed above in relation to section 210.8 and 210.11.

Paragraph (a) of section 210.11 generally provides for service of the complaint and notice of investigation as discussed above with regard to the proposed changes to sections 210.8 and 210.11. The Commission proposes revising paragraph (a) to eliminate double-service in temporary relief cases and to reduce the number of copies required when serving the complaint and temporary relief motion as previously discussed in relation to sections 210.8 and 210.11. The Commission also proposes adding paragraphs (a)(1)(ii) and (a)(2)(ii) to specifically provide for service of documents on "upon the embassy in Washington, DC, of the country in which each proposed respondent is located as indicated in the Complaint."

Paragraph (b) of section 210.11 allows a complainant, with leave of the ALJ, to attempt personal service of a complaint after the Secretary's efforts to serve the respondent by certified mail have failed. The Commission proposes that the rule

be amended to remove the reference to certified mail because the Commission now serves foreign addressees by overnight delivery.

Subpart C—Pleadings

Section 210.12 and 210.13

Section 210.12 generally provides the requirements for a complaint, and section 210.13 generally provides for a response. The Commission proposes substituting the phrase “U.S. patent” where appropriate for the phrase “U.S. letters patent” throughout the 210 rules to reflect current usage. This change affects revised §§ 210.12(a)(9), (a)(9)(i), (a)(9)(ii), (a)(9)(iii), (a)(9)(iv), (a)(9)(v), (a)(9)(vi), (a)(9)(vii) (two occurrences), and (a)(9)(viii); revised §§ 210.12(c), (c)(1), and (c)(2); and §§ 210.13(b), (b)(1) (three occurrences), and (b)(3).

Section 210.12

Paragraph (a)(1), Verification of Complaint

Paragraph (a)(1) of section 210.12 requires a complaint to be under oath and signed by the complainant or his authorized agent (verification of the complaint). To further clarify the meaning of this section, the Commission also proposes that this section be revised to include language that a complaint is to include a verification attesting to the matters in §§ 210.4(c)(1)–(3).

Paragraphs (a)(6)(i) and (h), Domestic Industry

Paragraphs (a)(6)(i) and (h) of section 210.12 relate to the requirement that complainants include a showing of domestic industry for certain intellectual property rights. Since the last rules revision, section 337 was amended to add 19 U.S.C. 1337(a)(1)(E), which concerns vessel hull designs, to the statute. The Commission proposes revising § 210.12(a)(6)(i) and § 210.12(a)(6)(i)(C) to include the appropriate references to 19 U.S.C. 1337(a)(1)(E). The Commission also proposes adding new § 210.12(h) concerning vessel hull designs to bring section 210.12 into compliance with the statutory change. The current final paragraph (h) of section 210.12 would then be redesignated as paragraph (i).

Paragraph (a)(9), Content of Complaint

Paragraph (a)(9) of section 210.12 relates to the content of a complaint based on infringement of a valid and enforceable U.S. patent. The Commission proposes substituting the phrase “U.S. patent” where appropriate for the phrase “U.S. letters patent” to reflect current usage. This change was discussed previously with respect to sections 210.12 and 210.13.

Paragraphs (a)(9)(iv), (a)(10), (c)(1), (d), (f), and (g); Copies of License Agreements

The Commission proposes adding new § 210.12(a)(9)(iv) and §§ 210.12(a)(10)(i) and (a)(10)(ii) to reduce the number of copies of license agreements that complainants must file, and proposes revising §§ 210.12(c)(1), (d), (f), and (g) to eliminate the language of these paragraphs regarding submission of license agreements.

Section 210.12(c)(1) currently requires that a complainant submit the following “additional material” regarding licenses with a patent-based section 337 complaint: Three copies of each license agreement related to each patent, or three copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. Sections 210.12(d), (f), and (g) set forth the same requirement for complaints based upon federally registered trademarks, copyrights, and mask works, respectively. Newly proposed § 210.12(h) concerning vessel hull designs does not call for three copies of license agreements.

Because licenses are currently identified in the rules as “additional material to accompany” the complaint, and only three copies of the licenses are required to be filed, licenses (which can be voluminous) are not normally filed as exhibits to the complaint. Rather, they are generally submitted as appendices to the complaint. Licenses are, therefore, not included in the service copies of the complaint that the Commission transmits to the respondents upon institution of an investigation. Also, since licenses are usually deemed to contain confidential business information (“CBI”), they are generally not available to the public via EDIS. Complainants have increasingly expressed concern during the pre-institution process about submitting copies of all or some of their license agreements with the complaint because of non-disclosure provisions in these agreements.

While the submission of all license agreements regarding asserted patents and federally registered trademarks, copyrights and mask works is required under the current Rules, such agreements do not normally bear upon the decision to institute an investigation. Indeed, the present requirement burdens the complainant and Office of the Secretary with the reproduction and storage of documents that are not needed by Commission staff at the outset of an investigation and that can later be obtained by the parties through routine discovery requests. Accordingly, the Commission proposes that paragraphs (c)(1), (d), (f), and (g) of section 210.12 be amended so that the

submission of license agreements would be required only in those instances where (i) the complainant relies upon its status as a licensee for purposes of standing or (ii) the complainant relies upon the domestic activities of a licensee in support of its domestic industry contentions. Moreover, the Commission proposes that in these instances, the license be submitted as an exhibit to the complaint (which would ultimately be served upon the respondents), rather than as an appendix item (which would remain in the Commission files and would not be served on respondents). In addition, under this proposal, all licensees of the asserted rights would also have to be identified in the complaint. Such identification is currently required for patent licensees under § 210.12(a)(9)(iii), but not for licensees of registered trademarks, copyrights, or mask works. The Commission proposes adding new paragraph (10) in § 210.12(a) to clearly set forth the requirements regarding licenses for non-patent-based complaints (*i.e.*, complaints based on the infringement of a federally registered copyright, trademark, mask work, or vessel hull design). Thus, the Commission also proposes that existing paragraph (10) of § 210.12(a) be redesignated as paragraph (11). Finally, as noted above, the Commission proposes that paragraphs (d), (f), and (g) of section 210.12 be revised to eliminate the language at the end of each subsection regarding the submission of licenses.

Paragraph (a)(9)(iv), Foreign Patent Applications

Existing paragraph (a)(9)(iv) of section 210.12 relates to the requirement that a complainant provide a list of each pending foreign patent application and each foreign patent application that has been denied. As currently written, the rule does not require the identification of any foreign patent application that has been abandoned or withdrawn. In current practice, however, OUII has consistently requested that complainants provide this information during OUII’s pre-institution investigatory review. The proposed change to current § 210.12(a)(9)(iv) contains language which conforms this section of the rules to current practice. The Commission also proposes redesignating paragraph (a)(9)(iv) as paragraph (a)(9)(v) of this section to allow for the addition of new paragraph (a)(9)(iv) relating to the submission of copies of license agreements in certain circumstances, as discussed above.

Paragraphs (a)(9)(vii) and (a)(9)(viii), Infringement/Domestic Industry Charts

Paragraphs (a)(9)(vii) and (a)(9)(viii) of section 210.12 require a complainant to supply infringement charts and domestic industry charts along with the complaint, respectively. As currently written, section 210.12 is ambiguous because it begins by requiring a showing

of infringement by each respondent and then states that a complainant makes such a showing by providing a claim chart applying an exemplary patent claim to both a representative domestic product and an infringing product of each respondent so named. For clarity, the Commission proposes that there be a requirement for infringement claim charts and a separate requirement for a domestic industry claim chart. This proposal revises section 210.12 to require claim charts for both infringement and the domestic industry, and affects the following paragraphs of section 210.12: Paragraph (a)(9)(vii) is revised to delete the reference to a “domestic article or process,” new paragraph (a)(9)(ix) is added to specifically require domestic industry claim charts, and paragraphs (a)(9)(iv)–(a)(9)(viii) are redesignated as paragraphs (a)(9)(v)–(viii) and (a)(9)(x), respectively, to accommodate new paragraphs (a)(9)(iv) and (a)(9)(ix).

Paragraph (c), Material to Accompany Each Patent-based Complaint

Paragraph (c) of section 210.12 relates to additional materials that must accompany each patent-based complaint. The Commission proposes revising paragraphs (c), (c)(1), and (c)(2) of section 210.12 by substituting the phrase “U.S. patent” for the phrase “U.S. letters patent” to reflect current usage as discussed above with regard to sections 210.12 and 210.13.

Paragraph (d), Material to Accompany Registered Trademark-based Complaints

Paragraph (d) of section 210.12 relates to additional materials that must accompany each registered trademark-based complaint. This paragraph currently requires a complaint to include one certified copy of the trademark’s federal registration along with three additional copies. The Commission proposes revising this paragraph to add a requirement for one certified copy of the prosecution history for each involved U.S. registered trademark, plus three additional copies. Such information is currently required for patent-based complaints. See § 210.12(c)(2). The Commission believes such information will often be useful in crafting an exclusion order of appropriate scope, particularly in cases where all the respondents have defaulted.

Section 210.12(d) also currently requires that a complainant submit the following “additional material” regarding licenses with a registered trademark-based section 337 complaint: Three copies of each license agreement related to each trademark, or three

copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. The Commission proposes revising § 210.12(d) to eliminate the language of this paragraph regarding submission of license agreements as discussed above with regard to paragraphs (a)(9)(iv), (a)(10), and (c)(1).

Paragraph (f), Material To Accompany Copyright-Based Complaints

Section 210.12(f) currently requires that a complainant submit the following “additional material” regarding licenses with a copyright-based section 337 complaint: Three copies of each license agreement related to each copyright, or three copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. The Commission proposes revising § 210.12(f) to eliminate the language of this paragraph regarding submission of license agreements as discussed above with regard to paragraphs (a)(9)(iv), (a)(10), (c)(1), and (d).

Paragraph (g), Material To Accompany Mask Work-Based Complaints

Section 210.12(g) currently requires that a complainant submit the following “additional material” regarding licenses with a mask work-based section 337 complaint: Three copies of each license agreement related to each mask work, or three copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. The Commission proposes revising § 210.12(g) to eliminate the language of this paragraph regarding submission of license agreements as discussed above with regard to paragraphs (a)(9)(iv), (a)(10), (c)(1), (d), and (f).

Paragraph (h), Material To Accompany Vessel Hull Design-Based Complaints

The Commission proposes adding a new provision, paragraph (h), under section 210.12 relating to additional material to accompany a registered vessel hull design-based complaint. The Commission proposes that a complainant that bases its complaint on a vessel hull design registered under 17 U.S.C. 1301 *et seq.* should be required to provide the same materials as does a complainant bringing an action under other copyright provisions (§ 210.12(f)) or under a federally registered mask work (§ 210.12(g)). Specifically, the proposal requires that a complainant provide one certified copy and three additional copies of the certificate of registration, issued by the Registrar of Copyrights under 17 U.S.C. 1314, and

identify any licensees under the registered vessel hull design. To accommodate the insertion of proposed new paragraph (h), and the insertion of proposed new paragraph (i) discussed below, the Commission also proposes redesignating existing § 210.12(h), which concerns the duty to supplement the complaint, as § 210.12(j).

Paragraph (i), Initial Disclosures

The Commission proposes adding a new provision, paragraph (i) under section 210.12 which provides for the service upon counsel for respondent of each document submitted with the complaint within five (5) business days of service of a notice of appearance and agreement to be bound by the terms of the protective order. Under the current rule, much of the information required to accompany a complaint, such as prosecution histories and license agreements, is submitted as part of an appendix rather than as an exhibit. Consequently, respondents often need to seek copies of these documents through discovery. The addition of new paragraph (i) was proposed by the ITCTLA to expedite the production of these documents and to provide the respondents with a fuller understanding of the allegations in the complaint. Such early document production may be particularly beneficial in investigations in which the domestic industry is based on an allegation of domestic licensing activity. The proposed new rule protects the complainant’s confidential information by requiring service only on counsel for respondents who have agreed to be bound by the terms of the protective order.

Subpart D—Motions

Section 210.15

The Commission proposes to amend paragraph (a) of section 210.15 to eliminate reference to the Chief Administrative Law Judge. In current practice, the institution of an investigation and assignment of an administrative law judge occur simultaneously, and there is no Chief Administrative Law Judge. Similarly, the Commission also proposes revising paragraph (a) of section 210.20, section 210.58, and paragraph (b)(3) of section 210.75 to eliminate references to the Chief Administrative Law Judge. These revisions merely conform the rules to current practice.

Section 210.18

The Commission proposes that paragraph (a) of section 210.18 be revised to require that motions for summary determination be filed 60 days

prior to the start of any hearing provided for in § 210.36(a)(1), instead of 30 days before the hearing as the rule currently provides. In its report to the Commission, the ITCTLA proposed such an amendment and noted that the filing of summary determination motions only 30 days before the hearing is burdensome on the administrative law judge and the parties who are attempting to prepare for trial at that time. The ITCTLA commented that such motions often appear to be used as a tactic at that late stage, because, in practice, it is difficult for the administrative law judges to resolve summary determination motions in 30 days, and, in any event, initial determinations granting such motions are subject to review by the Commission for another 30–45 days. However, the ITCTLA also proposed that the administrative law judge be permitted to allow the filing of a summary determination motion out of time under “exceptional circumstances.” The Commission believes the ITCTLA’s proposal to amend section 210.18 in these respects is well founded, and proposes to amend section 210.18 accordingly.

The Commission also proposes that paragraph (a) of section 210.18 be revised to provide that the 60 day period begin on the day prior to the scheduled hearing whether or not it is a weekend or holiday, and that if the 60th day is a weekend or holiday, the motion must be filed on the next business day. This proposal also includes that, upon a showing of exceptional circumstances, a motion for summary determination may be filed out of time.

Section 210.20

The Commission proposes to amend paragraph (a) of section 210.20 to eliminate reference to the Chief Administrative Law Judge. This change is the same change previously discussed with respect to paragraph (a) of section 210.15. The Commission also proposes to amend paragraph (a) of section 210.20 to specify that if the administrative law judge is no longer employed by the Commission, the motion to declassify confidential documents under § 210.20(a) shall be addressed to the Commission.

Section 210.21

Section 210.21 relates to the termination of an investigation in whole or in part by withdrawal of the complaint. The Commission proposes that the rule be amended in two ways.

First, as currently written, the rule states that a party may move before the

administrative law judge “for an order to terminate” an investigation. However, under § 210.42(c), the administrative law judge is required to grant such a motion by initial determination and deny such a motion by order. Therefore, the Commission proposes to delete the language “for an order” in paragraphs (a)(1) and (a)(2) of section 210.21. The Commission also proposes removing the language “An order of”, which appears throughout section 210.21 in paragraphs (b)(2), (c), (c)(2)(ii), (d), and (e), for the same reason.

Second, current § 210.21(a)(1) allows the parties to keep a settlement agreement secret by having the complainant move to terminate the investigation based on withdrawal of the complaint under § 210.21(a)(1), in direct conflict with § 210.21(b), which requires that motions to terminate investigations based on settlement agreements must include the settlement agreement. The current rule, § 210.21(a)(1), states that “any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of withdrawal of the complaint. * * *”

Thus the current rule allows for the parties to reach a settlement agreement and then keep the agreement secret by having the complainant move to terminate the investigation based on withdrawal of the complaint. As currently written, § 210.21(a)(1) does not require the complainant to acknowledge or provide the settlement agreement to the Commission. The Commission has a public policy interest in reviewing settlement agreements that form the basis for termination of an investigation. The Commission’s consideration of the public interest should not be dependent upon a party’s choice to designate the termination as one based on withdrawal of the complaint or as one based on a settlement agreement. Thus, the Commission proposes amending paragraph (a)(1) of section 210.21 to make clear that once an investigation has been instituted, any settlement agreement with respect to an investigation must be provided to the Commission even if the complainant is willing to terminate the investigation based on withdrawal of the complaint. In other words, the Commission proposes to amend § 210.21(a) to provide that a complainant requesting withdrawal of all or part of the complaint must affirmatively state that there are no agreements between the

parties concerning the subject matter of the investigation, or if there are any such agreements, they must be identified and provided to the Commission. This requirement would alleviate the potential problem discussed above, and would also be consistent with § 210.21(b)(1) requiring such language to terminate an investigation based on a settlement agreement, and proposed § 210.21(c) requiring such language to terminate an investigation based on a consent order.

Section 210.22

Section 210.22 provides a mechanism for designating an investigation “more complicated.” This rule was necessary when section 337 provided that Commission investigations were to be completed in no more than one year (18 months in “more complicated” cases). In 1994, the Uruguay Round Agreement Amendments removed statutory deadlines for Commission investigations under section 337, and accordingly there is no longer a need for this provision. While the temporary relief phase is still subject to statutory deadlines, sections 210.51 and 210.60 set forth the procedure for designating the temporary relief phase “more complicated.” Current section 210.22 has no relevance to current practice, and the Commission proposes that this section be removed in its entirety. Deletion of this section does not affect any other sections.

Section 210.25

Paragraph (f) of section 210.25 generally relates to sanctions motions before an administrative law judge and allows an administrative law judge to defer adjudication of a sanctions motion until “no later than 90 days after issuance of the [final] initial determination of violation of section 337 or termination of the investigation.” However, depending upon whether the Commission undertakes review or requires additional time to consider the final initial determination, the 90-day deadline for the administrative law judge’s recommended determination may expire on or before the Commission’s final initial determination is issued. Issuance of the recommended determination before the Commission issues its decision on the merits may be problematic because the Commission’s violation decision may vitiate, or at least call into question, the underpinnings of the sanctions motion. The Commission proposes revising § 210.25(f) to permit an administrative law judge to defer issuing an recommended determination on a sanctions motion until 30 days

after the issuance of the Commission's final determination.

Subpart E—Discovery and Compulsory Process

Section 210.28

Paragraph (d), Service of Deposition Transcripts on the Commission Staff

Paragraph (d) of section 210.28 relates to the taking of depositions and states that the person transcribing the depositions "shall forward one copy of a deposition transcript to each party present or represented at the taking of the deposition." The mandatory language of this rule does not comport with current practice at the Commission or in the U.S. district courts, where stenographers transcribe the deposition and make copies available (for purchase) to all parties to the investigation regardless of whether that party appeared at the deposition. See Federal Rule of Civil Procedure 30(f)(2). Also, under § 210.28(f) of the current rules, the Commission investigative attorney is the only attorney that "must" be served with a copy of the deposition, and the burden of such service is placed on the party taking the deposition, not directly on the stenographer. Moreover, Federal Rule of Civil Procedure 30(f)(2) states that "[u]pon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent."

Therefore, the Commission proposes that § 210.28(d) be amended to conform with the Federal Rules of Civil Procedure.

Paragraph (g), Admissibility of Depositions

Paragraph (g) of section 210.28 relates to the admissibility of depositions into the record of the investigation. Section 210.28(g) refers to the "filing" of depositions with the Commission investigative attorney. Since "filing" generally refers to providing documents to the Office of the Secretary for inclusion in the official record of the investigation, the word appears to be inappropriate. Therefore the Commission proposes revising § 210.28(g) to replace the phrase "filed with the Commission investigative attorney" with "served upon the Commission investigative attorney."

Paragraph (i)(4), Completion and Return of Depositions

Paragraph (i)(4) of section 210.28 relates to completion and return of depositions, and also refers to the "filing" of depositions. For the same reasons discussed above in connection

with § 210.28(g), the Commission proposes revising paragraph (i)(4) to refer to "service" rather than "filing" of depositions.

Sections 210.29, 210.30, and 210.31

Currently, the parties rely on administrative law judge ground rules for deadlines. The ITCTLA noted that waiting for the administrative law judge's ground rules to issue has resulted in delays in discovery in some investigations. Specifically, there have been delays concerning responses to interrogatories (paragraph (b)(2) of section 210.29), requests for documents and entry upon land (paragraph (b)(2) of section 210.30), and requests for admissions (paragraph (b) of section 210.31). Therefore, the Commission proposes to revise §§ 210.29(b)(2), 210.30(b)(2), and 210.31(b), in accordance with the ITCTLA's suggestion, to add a default provision that would impose a ten day deadline for responding to, respectively, interrogatories (paragraph (b)(2) of section 210.29), requests for documents and entry upon land (paragraph (b)(2) of section 210.30), and requests for admissions (paragraph (b) of section 210.31). The Commission also proposes to revise these rules to provide that the ten day deadline may be modified by the administrative law judge's ground rules.

Section 210.31

Paragraph (d) of section 210.31 states that admissions will be used only for the pending investigation and will not be used against the party "in any other proceeding," and section 210.3 defines an investigation as the original investigation into a violation of 19 U.S.C. 1337. In *Certain Lens-Fitted Film Packages*, Inv. 337-TA-406, an issue arose regarding the use of a stipulation in an underlying proceeding and whether that stipulation would be binding upon the party in the related enforcement and advisory opinion proceeding. In that case, the administrative law judge determined in an initial determination that a stipulation from the underlying investigation was binding on the parties in the related proceeding. The administrative law judge reasoned:

* * * complainant agreed to the stipulation in the underlying proceeding, which stipulation was binding in the underlying proceeding and was relied upon to resolve certain issues with the resultant issuance of the general exclusion order at issue in the current proceedings. Hence, since the current proceedings are ancillary proceedings to the underlying investigation and have been instituted to enforce the general exclusion

order from the underlying proceeding, the stipulation should be binding on the parties. *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406 (*Consolidated Enforcement and Advisory Opinion Proceedings*), *Enforcement Initial Determination* at 40 (Public Version, August 14, 2002).

Because the initial determination was not reviewed, this reasoning became part of the Commission's final determination. See *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, *Notice of Review-in-Part, Non-Review-in-Part, and Remand of Enforcement Initial Determination and Initial Advisory Opinion to the Presiding Administrative Law Judge* at 1 (August 7, 2002). The Commission believes that the same rationale should apply in all investigations and proposes that the rule be amended to allow the use of an admission against a party in related Commission proceedings, as defined in section 210.3, e.g., enforcement and advisory opinion proceedings.

Section 210.32

Paragraph (g) of section 210.32 establishes the procedure for obtaining judicial enforcement of a subpoena issued by the presiding administrative law judge. The Commission proposes revising this rule to require the presiding administrative law judge to certify nonconfidential copies of the subpoena for which judicial enforcement is sought, together with nonconfidential copies of any attachment to the subpoena. Nonconfidential copies of these documents are needed for submission to the court in support of the Commission's request for enforcement of the subpoena.

Section 210.34

Paragraph (c), Violation of Protective Order

Paragraph (c) of section 210.34 addresses violations of protective orders. For the following reasons, the Commission proposes to revise the undesignated text at the end of § 210.34(c) to provide that the identity of a person who has or is alleged to have violated an administrative protective order ("APO") is to be given the same treatment accorded to confidential business information ("CBI").

The Privacy Act, 5 U.S.C. 552a, requires that Federal agencies protect certain information in their possession concerning individuals. In particular, § 552a(b) of the statute imposes specific limits on the disclosure of such information. In addition to any statutory requirements, the Commission's interest in keeping an APO breacher's identity confidential is also animated by an

acknowledgment that many infractions involve inadvertent and minor disclosures of information by attorneys who practice before the Commission. The Commission has sought to balance the need to sanction transgressions with the concern that the severity of the punishment should not exceed the magnitude of the offense. Disclosing to the public a finding, or even an allegation, of an APO breach can have an adverse effect on the attorney in question, over and above the effect of the sanction itself. Treating the identity of APO breachers as CBI conforms to Commission practice in cases under Title VII of the Tariff Act of 1930. See 19 CFR 207.7 (provision governing disclosure of CBI subject to an APO under Title VII).

Investigations of alleged APO violations in section 337 cases currently involve participation by all parties in the underlying section 337 proceeding under § 210.34(d)(5). To further this participation, the Commission proposes to permit the parties to an investigation to learn the identity of an alleged breacher. However, the Commission proposes to revise the undesignated text at the end of § 210.34(c) to treat the identity of alleged APO breachers as confidential so that non-parties do not have access to such information.

In addition, the undesignated text at the end of paragraph (c) of section 210.34 provides for the issuance of sanctions when a signatory to an APO violates the APO. It is unclear from the current rule whether ALJs may issue sanctions, and if so, whether they are to do so by order, initial determination, or recommended determination. Accordingly, the Commission also proposes to revise this rule to require ALJs to rule on certain sanctions in the form of a recommended determination. This revision also clarifies that certain sanctions may be imposed only by the Commission and that the Commission must make an affirmative determination that such sanctions are warranted before they take effect.

The Commission also proposes to revise paragraph (c) of section 210.34 by adding the designation "Note to paragraph (c):" at the beginning of the undesignated text at the end of paragraph (c). This change is made for formal purposes, and to provide for clarity in any future reference to the text at the end of the paragraph.

Paragraph (d), Reporting Requests for Confidential Business Information

Paragraph (d) of section 210.34 imposes a reporting requirement for APO signatories concerning requests or orders requiring the signatory to

disclose information (CBI) covered by the APO to a person not entitled to receive it under the APO or under § 210.5(b) (which mirrors the provisions of 19 U.S.C. 1337(n) concerning persons who are authorized recipients of CBI submitted to the Commission or exchanged among the parties in investigations or related proceedings under section 337). Administrative protective order breach investigations in the section 337 area have made clear that many attorneys are unaware of the existence of this reporting requirement. To highlight the existence of the reporting requirement, the Commission proposes including the reporting requirement and sanctions in the title of the rule, and revising the text of section 210.34 to place the reporting requirement and applicable sanction in separate paragraphs (paragraph (d) and new paragraph (e), respectively). The Commission proposes redesignating § 210.34(d)(1) as § 210.34(d), redesignating § 210.34(d)(2) as § 210.34(e), and revising the heading of section 210.34 to reflect the importance of the reporting requirement and the applicable sanction. The Commission also proposes separating the text of revised § 210.34(d) into new paragraphs §§ 210.34(d)(1)–(5) for clarity, and adding a sentence at the end of section 210.34 to make it clear that the reporting requirement applies only to non-Commission requests for CBI.

The Commission also proposes to revise paragraph (d) of section 210.34 by adding the designation "Note to paragraph (d):" at the beginning of the undesignated text at the end of paragraph (d). This change is made for formal purposes, and to provide for clarity in any future reference to the text at the end of the paragraph.

Subpart F—Prehearing Conferences and Hearings

Section 210.35

Existing section 210.35 provides generally for prehearing conferences. The Commission proposes revising section 210.35 to include new § 210.35(a)(2) to expressly provide for prehearing settlement conferences. Accordingly, it is also proposed that existing §§ 210.35(a)(2)–(6) be renumbered as §§ 210.35(a)(3)–(7).

Section 210.38

Paragraph (a) of section 210.38 lists the items that constitute the record of section 337 investigations. Paragraph (d) of section 210.38 governs an administrative law judge's certification of the record to the Commission. Missing physical exhibits that the ALJ

presumably had returned to the submitting parties were a problem in connection with the transmittal of the record of *Certain Ammonium Octamolybdate Isomers*, Inv. No. 337–TA–477, Comm'n Op. (Jan. 2004) to a U.S. District Court in Colorado pursuant to 28 U.S.C. 1659(b). The Commission proposes amending §§ 210.38(a) and (d) to require the administrative law judge to certify all physical exhibits entered into evidence and amending § 210.38(d) to indicate that the administrative law judge may use his/her discretion as to whether substitution of a photographic reproduction of a large demonstrative exhibit would be appropriate.

Section 210.39

When civil litigation involving the parties to a section 337 investigation is pending concurrently with the investigation, a section 337 respondent who is a party to a civil action may move the court to stay the district court action, pursuant to 28 U.S.C. 1659(a), until the Commission's section 337 determination becomes final. After the stay is lifted, the Commission's section 337 record must be transmitted to the court and will be admissible in the civil action, pursuant to 28 U.S.C. 1659(b).

Section 210.39(b) provides for the transmission of a section 337 record to a U.S. District Court in accordance with 28 U.S.C. 1659(b). To make § 210.39(b) consistent with 28 U.S.C. 1659(b), the Commission proposes to revise the current wording of the rule to indicate that the Commission's record is to be transmitted to the court after the court dissolves the stay of the civil proceeding. To facilitate timely Commission compliance with a court order dissolving a stay of the civil action and requiring the Commission to transmit all or part of its section 337 record to the court pursuant to 28 U.S.C. 1659(b), the Commission proposes to amend § 210.39(b) to require the filing of written notice with the Secretary whenever (1) a section 337 party/civil action litigant asks the court to issue an order staying the civil action, and (2) whenever the district court issues an order dissolving the stay and directing the Commission to transmit all or part of the record to the court.

Subpart G—Determinations and Actions Taken

Section 210.42

Paragraph (a)(1) of section 210.42 generally relates to initial determinations on issues concerning violation of section 337. The Commission proposes changing paragraph (a)(1) for reasons explained

below with regard to sections 210.42 and 210.43.

Paragraph (a)(2) of section 210.42 generally relates to declassification of information. Section 210.42(a)(2) currently does not conform to section 210.20 because it does not make clear that initial determinations on declassification may issue after any decision on termination, not just after the final initial determination issues. The Commission proposes to change § 210.42(a)(2), which concerns initial determinations on declassification, to conform to section 210.20, which also concerns motions for declassification.

Sections 210.42 and 210.43

Review of Final Initial Determinations

Paragraphs (a) and (h) of section 210.42 and paragraph (d) of section 210.43 provide Commission deadlines for review of final initial determinations. The current rules concerning Commission review were promulgated in the 1970's when there were strict statutory deadlines for completion of Commission investigations, and final initial determinations, petitions, and responses were relatively short. Section 337 investigations during that time period also generally concerned less complicated technologies.

Final initial determinations, petitions, and responses to petitions have grown much lengthier over the last 30 years. At the same time, the number of section 337 complaints filed has grown tremendously, and the technology involved in the investigations has become steadily more complex. Recent experience indicates that these factors have combined to render insufficient the number of days allotted to the Commission to complete its investigations. Accordingly, the Commission proposes to amend §§ 210.42(h)(2) and 210.43(d)(1) such that the Commission will have two months to determine whether to review a final initial determination and two additional months for final disposition of the investigation. In this connection,

the Commission also proposes to amend § 210.42(a)(1)(i) such that the administrative law judge would issue his final initial determination no later than four (4) months before the target date for completion of the investigation, regardless of whether the target date has been set at over 15 months. In order to accomplish these changes in Commission practice, the Commission proposes revisions to §§ 210.42(a) and (h) and § 210.43(d)(1). In order to comport with the change to § 210.42(a)(1)(i) just discussed, the Commission also proposes to revise § 210.50(a) by providing that if the target date does not exceed 16 months from the date of institution the order of the administrative law judge shall be final.

The proposed amendment to § 210.43(d)(1), noted above, also includes a reference to the disposition of an initial determination under § 210.42(a)(2) regarding the declassification of CBI. The rules currently do not expressly provide for filing a petition for review of initial determinations concerning declassification. Because such initial determinations are frequently the subject of petitions and responses, the Commission proposes to revise § 210.42(h) to allow the Commission 45 days to determine whether to review initial determinations concerning declassification.

Review of Summary Initial Determinations

Under the current deadlines in paragraph (h) of section 210.42 and paragraph (d) of section 210.43, the Commission often has insufficient time to act on initial determinations granting summary determination that could terminate the investigation on the merits if it becomes the final determination of the Commission. The Commission proposes to add new paragraph (h)(6), and amend § 210.42(h)(3) to refer to new paragraph (h)(6), such that the Commission's time for determining whether to review these summary initial determinations would increase by 15

days, *i.e.*, from 30 days to 45 days. As a result of the addition of § 210.42(h)(6) and the change to § 210.42(h)(3), the Commission also proposes to amend § 210.43(d)(1), which concerns the grant or denial of a petition for review.

Section 210.42(i), Notice of Determination

Paragraph (i) of section 210.42 discusses the issuance, service, and **Federal Register** publication of notices announcing the Commission's decision on whether it will review an initial determination. The last sentence of § 210.42(i) indicates that the Commission will publish a notice in the **Federal Register** announcing whether the Commission has decided to review the initial determination only if that decision results in termination of the investigation in its entirety. Section 201.10, however, states that notices will be published in the **Federal Register**, as appropriate. In fact, the Commission routinely publishes notices concerning its decision on whether to review a final initial determination because the notice usually requests submissions from the public on the issues of remedy, the public interest, and bonding. In addition, § 210.49(b) (concerning publication of final determinations that result in the issuance of an order) and § 210.66(f) (concerning final disposition of an initial determination concerning temporary relief) require publication in the **Federal Register**. Accordingly, the Commission proposes to amend § 210.42(i) to clarify which notices related to initial determinations will be published in the **Federal Register**.

Section 210.43, Deadlines for Filing Petitions for Review of IDs

Section 210.43 provides deadlines for filing petitions for review of initial determinations and responses to petitions. Currently, §§ 210.43(a), 210.43(c), and 210.43(d) provide the following schedule for filing petitions for review of various types of initial determinations:

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Violation §210.42(a)(1)	10 days from service of the initial determination on private parties.	5 business days from service of any petition.	45 days from service of the initial determination on private parties.
Forfeiture of respondent's bond §210.50(d)(3).	10 days from issuance of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination on private parties.
Forfeiture of complainant's temporary relief bond §210.70(c).	10 days from issuance of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination on private parties.

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Other matters § 210.42(c)	5 business days from issuance of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.
Formal enforcement proceedings § 210.75(b).	By order of the Commission	By order of the Commission	90 days from service of the initial determination on private parties.

As this chart shows, the methods for calculating filing dates for petitions for review are not uniform. This lack of uniformity has led to both confusion and gamesmanship by the private parties. Under the recent amendments to sections 210.6 and 210.7, all parties receive initial determinations by overnight delivery, and initial determinations may not be picked up from the Commission. While the amendments to sections 210.6 and 210.7 may have obviated concerns about gamesmanship, they do nothing to eliminate the confusion that sometimes exists concerning when a petition must be filed.

Because large initial determinations that are filed near the end of the business day are rarely ready for service on the day of issuance, and are almost always served on the following business day, the Commission proposes that all due dates be calculated from date of service. Thus, the Commission proposes amendments to all rules pertaining to due dates for petitions for review and responses such that all due dates will be counted from the date of service of the initial determination or response.

In view of the Commission's proposal to expand certain times for Commission review, it also proposes that petitions for review of

final initial determinations be due 12 days after service of a final initial determination and that replies to any such petitions be due eight days from the date of service of the petition. Further, the Commission proposes that the due date for filing a petition for review of a summary determination that would terminate the investigation if it became the final determination of the Commission be 10 days after service of the initial determination, and the date for filing a response to such a petition be five (5) business days after service of the petition. The due dates as so amended follow:

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Violation § 210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination.
Forfeiture of respondent's bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Forfeiture of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Other matters § 210.42(c)	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.

Finally, the Commission proposes adding a chart to be designated as Appendix A at the end of Part 210 to summarize the proposed changes to the petition and response due dates discussed above, as well as the existing deadlines and due dates for formal enforcement proceedings as set forth in § 210.75(b).

Sections 210.43(b)(1) and (c), Petitions and Responses

Paragraph (b)(1) of section 210.43 describes the required content of a petition for review of an initial determination on a matter other than temporary relief. In view of the length of time required to consider lengthy petitions and responses, the Commission proposes amending § 210.43(b)(1) to require that any petition for review exceeding 50 pages in length be accompanied by a summary not to exceed ten pages, that responses to petitions should similarly require such summaries, and that there be a 100 page limit exclusive of the summaries for the length of petitions for review of final initial determinations on a matter other than temporary relief.

The Commission also proposes to revise paragraph (b)(1) of section 210.34 by adding

the designation "Note to paragraph (b)(1):" at the beginning of the undesignated text at the end of paragraph (b)(1). This change is made for formal purposes, and to provide for clarity in any future reference to the text at the end of the paragraph.

Paragraph (b)(3), Contingent Petition

Paragraph (b)(3) of section 210.43 currently provides that any petition for review of an initial determination on a matter other than temporary relief which the petitioner designates as a "contingent" petition for review shall be deemed to be a non-contingent petition and shall be processed accordingly. The Commission proposes to revise § 210.43(b)(3) to clarify issues which must be raised in petitions as well as to explain why it is sometimes necessary to file such petitions.

New Paragraph (b)(5), Service of Petition

Within the context of temporary relief, section 210.54, paragraph (b) of

section 210.56, and paragraph (c) of section 210.66 currently require the parties to serve certain documents on each other by "messenger, courier, express mail or equivalent means." The Commission has previously reasoned that such mandated cooperation between the parties is necessary to facilitate the filing of timely and useful responses by serving their initial comments on each other by the fastest means available. See 53 FR 33051, August 29, 1988. Because the same rationale applies in the case of petitions for review of initial determinations, the Commission proposes that new paragraph (b)(5) be added to the rules requiring that any petitions for review be served on the parties by hand or by overnight delivery service.

In view of the recent amendments to sections 210.6 and 210.7 previously discussed, the Commission proposes that the word "messenger" be used in proposed new § 210.43(b)(5), and that

the word “courier” be replaced with the words “overnight delivery” in current section 210.54, paragraph (b) of section 210.56, and paragraph (c) of section 210.66. Further, the Commission proposes that “express mail” be eliminated from these rules, as the term is generally the equivalent of “overnight delivery.” The Commission therefore proposes to add new paragraph (b)(5) to section 210.43 to provide that petitions for review of an initial determination be served “by messenger, overnight delivery, or equivalent means.”

Paragraph (d), Grant or Denial of Review

Paragraph (d)(1) of section 210.43 currently provides deadlines for Commission decisions, whether in whole or in part, on petitions for review of initial determinations. For the reasons discussed above with regard to section 210.43, the Commission proposes to revise paragraph (d)(1) to provide for Commission decisions to grant, whether in whole or in part, petitions for review of initial determinations under § 210.42(a)(1) within 60 days of service of the initial determination on the parties.

Section 210.45

Paragraph (c) of section 210.45 describes the action that the Commission may take upon review of an initial determination on a matter other than temporary relief. As noted by the ITCTLA, the Commission’s right to take no position on some issues that are decided in an initial determination has been upheld by the U.S. Court of Appeals for the Federal Circuit in *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984), where the Court declined to consider issues that were not decided by the Commission. The Commission frequently exercises its right to take no position on a particular issue, and thus proposes revising § 210.45(c) to reflect this practice, as suggested by the ITCTLA.

Section 210.49

Paragraph (b) of section 210.49 provides for publication and transmittal to the President of Commission section 337 determinations, along with actions taken relative to such determinations, to the President. The Commission proposes to amend § 210.49(b) to remove a confusing reference to subpart I, recognize the delegation of Presidential authority under 19 U.S.C. 1337(j)(1) to “an officer assigned the functions of the President” (*i.e.*, the United States Trade Representative as set forth in Presidential Memorandum, 70 FR 43251, July 26, 2005), and to add

language regarding Commission action taken pursuant to section 210.50.

Section 210.50

Paragraph (d) of section 210.50 governs the forfeiture or return of respondents’ bonds posted pursuant to 19 U.S.C. 1337(e)(1) during the pendency of a temporary remedial order or pursuant to 19 U.S.C. 1337(j)(1) during the period of Presidential review for a temporary or permanent remedial order. Bond forfeiture proceedings may not be appropriate in cases where the Federal Circuit reverses a Commission finding of violation. Accordingly, the Commission proposes that the time for filing a motion for bond forfeiture be extended to 90 days after expiration of the Presidential period of review. Such an extension would encompass the 60 day period for filing an appeal. If no appeal is filed, the Commission could commence bond forfeiture proceedings immediately. The Commission also proposes to amend § 210.50(d) to clarify the procedure for filing a motion for return or forfeiture of a respondent’s bond.

Section 210.51

Paragraph (a) of section 210.51 provides for the period for concluding investigations seeking permanent relief. Specifically, this paragraph currently provides that if the target date does not exceed 15 months from the date of institution the order of the administrative law judge shall be final. In light of the proposed changes to § 210.42(a)(1)(i) concerning issuance of final initial determinations no later than four (4) months before the target date for completion of the investigation by the administrative law judge discussed above, the Commission proposes to revise § 210.51(a) by providing that if the target date does not exceed 16 months from the date of institution, the order of the administrative law judge shall be final. The Commission also proposes to revise § 210.51(a) by providing that any extensions of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

Subpart H—Temporary Relief

Section 210.54

Section 210.54 requires a complainant requesting temporary relief to expeditiously serve nonconfidential copies of the complaint, motion for temporary relief, and any materials attached thereto on all proposed respondents and on the embassies in Washington, DC “of each country from

which the allegedly unfair imports come.” The Commission proposes four changes to this rule.

First, the Commission proposes to amend the rule to explicitly state that any supplemental information supplied to the Commission prior to institution of the investigation must also be served on the proposed respondents in the same manner as the original complaint, motion for temporary relief, and attachments thereto.

Second, the Commission proposes to change the rule’s requirement for service on the embassies in Washington, DC “of each country from which the allegedly unfair imports come” because it is inconsistent with current practice. Currently, the address of the proposed respondent, rather than a determination of the exporting country, determines which embassies will be served. The language is also inconsistent with paragraph (a)(1) of section 210.11 and section 210.57 which require that the embassy of each foreign government representing the respondents be served with the complaint, motion for temporary relief, and any materials attached thereto. If no proposed respondent is listed as having a foreign address because it is unclear where the accused goods are being imported from, no embassy is served even though goods are being imported. Accordingly, the Commission proposes to revise section 210.54 to reflect that service will be made on the appropriate embassy.

Third, the Commission proposes to revise section 210.54 to reflect the changes previously discussed with respect to the revisions of sections 210.8 and 210.11 with regard to eliminating references to subsequent service of the motion for temporary relief by the Commission, and with regard to the changes concerning overnight delivery.

Fourth, the Commission proposes to revise 210.54 in the same manner as the changes previously discussed with respect to new paragraph (b)(5) of section 210.43 to require that parties be served “by messenger, overnight delivery, or equivalent means.”

Section 210.55

Paragraph (b) of section 210.55 requires a complainant requesting temporary relief to file and serve new nonconfidential versions of the complaint, motion for temporary relief, or exhibits thereto if any of the original submissions contain excessive designations of confidentiality. The rule as currently written, however, does not specify that such service must be made in the same manner as the original submissions.

Section 210.54 requires service by hand or by overnight delivery of the complaint and motion for temporary relief to ensure that proposed temporary relief respondents have adequate notice of the allegations against them. *See* 53 FR 33049, August 29, 1988. The manner of service of a complaint and motion for temporary relief is specified in section 210.54 in order to give the respondent the benefit of at least 30 days to make necessary preliminary arrangements. 53 FR 33049, August 29, 1988. Overly redacted submissions do not serve this notice function, and so § 210.55(b) currently provides that a complainant must re-serve non-confidential copies of the original submissions if they do not give adequate notice. Because an overly redacted complaint and motion for temporary relief will not provide the respondents with the benefit of early notice, the Commission proposes to amend § 210.55(b) to require that the corrected versions of these filings should also be served in the same expeditious manner as the original documents.

Section 210.56

Paragraph (a), Sample Notice

Paragraph (a) of section 210.56 sets forth the notice that must accompany any motion for temporary relief, and is designed to notify proposed temporary relief respondents of the nature of Commission temporary relief proceedings. The Commission proposes to amend the sample notice in paragraph (a) of section 210.56 to change the year listed for the date in the notice so it no longer indicates a date in the 1900s, and instead indicates a date in the 2000s. The Commission also proposes amending § 210.56(a) to reflect the changes previously discussed with respect to the revisions of sections 210.8 and 210.11 with regard to eliminating references to subsequent service of the motion for temporary relief by the Commission.

Paragraph (b), Service of Supplementary Notice

Paragraph (b) of section 210.56 provides for the manner of service of supplementary notice on the parties. The Commission proposes to revise paragraph (b) of section 210.56 in the same manner as the changes previously discussed with respect to new paragraph (b)(5) of section 210.43, and section 210.54 discussed above, to require that parties be served “by messenger, overnight delivery, or equivalent means.”

Section 210.58

The Commission proposes to revise section 210.58 to eliminate reference to the Chief Administrative Law Judge. In current practice, the institution of an investigation and assignment of an administrative law judge occur simultaneously, and there is no Chief Administrative Law Judge. This change is the same as the changes previously discussed with respect to paragraph (a) of section 210.15 and paragraph (a) of section 210.20 to eliminate references to the Chief Administrative Law Judge, and merely conforms the rules to current practice.

Section 210.66

The last sentence of paragraph (c) of section 210.66 provides for the manner of service of comments pertaining to initial determinations concerning temporary relief. The Commission proposes to revise paragraph (c) of section 210.66 in the same manner as the changes previously discussed with respect to new paragraph (b)(5) of section 210.43, section 210.54, and paragraph (b) of section 210.56 to require that parties be served “by messenger, overnight delivery, or equivalent means.”

Section 210.67

Section 210.67 relates to the ability of the administrative law judge to compel discovery by respondents during the temporary relief phase of an investigation. Under the current rule, the administrative law judge “may compel discovery regarding bonding by respondents (as provided in § 210.61),” but the rule is silent with regard to compelling discovery regarding bonding by complainants. This differential treatment suggests that respondents’ and complainants’ bonds are to be treated differently, at least with respect to an administrative law judge’s ability to compel discovery. Such an interpretation is inconsistent with sections 210.61 and 210.66(a) and contradicts prior Commission commentary on the breadth of an administrative law judge’s ability to compel discovery in temporary relief proceedings. Therefore, the Commission proposes to amend the text of section 210.67 to permit an administrative law judge to compel discovery regarding bonding, regardless of whether by respondents or complainants. The Commission also proposes to revise the heading of section 210.67 to reflect this change.

Subpart I—Enforcement Procedures and Advisory Opinions

Section 210.70

Section 210.70, which governs forfeiture or return of complainant’s temporary relief bond, is currently in Subpart I, which concerns enforcement proceedings and advisory opinions. The Commission proposes to move this rule to Subpart H, which concerns temporary relief. This is a ministerial change made for organizational purposes.

Section 210.71

Paragraph (a)(1) of section 210.71 provides for information gathering and relates to the Commission’s power to require any person to report facts which will aid U.S. Customs and the Commission in enforcing Commission remedial orders. As currently written, the rule incorrectly suggests that U.S. Customs makes a determination as to whether the conditions that led to the order are changed, whereas the Commission actually determines whether the conditions that led to the order are changed in accordance with § 210.74(a). The Commission proposes to clarify this rule by deleting the reference to U.S. Customs’ determination of changed conditions.

Section 210.75

Section 210.75 provides generally for enforcement proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders. Paragraph (b) of section 210.75 provides specifically for formal, as opposed to informal (*see* paragraph (a) of section 210.75), enforcement proceedings. In addition to the changes discussed below, the Commission proposes adding a table including a summary of the existing deadlines and due dates for formal enforcement proceedings as set forth in § 210.75(b) as Appendix A at the end of Part 210.

Paragraph (b)(3), Public Hearings for Enforcement Proceedings

The Commission proposes to revise paragraph (b)(3) of section 210.75 to eliminate reference to the Chief Administrative Law Judge. In current practice, the institution of an investigation and assignment of an administrative law judge occur simultaneously, and there is no Chief Administrative Law Judge. This change is the same as the changes previously discussed with respect to paragraph (a) of section 210.15, paragraph (a) of section 210.20, and section 210.58 to eliminate references to the Chief

Administrative Law Judge, and merely conforms the rules to current practice.

Paragraph (b)(4), Enforcement Proceedings

Section 210.75 governs proceedings to enforce various Commission orders. Paragraph (b)(4) of section 210.75 lists the actions that the Commission may take at the conclusion of a formal enforcement proceeding. Paragraph (c) of section 210.75 addresses the initiation of civil actions by the Commission to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders. Among other things, §§ 210.75(b)(4) and (c) currently indicate that upon the conclusion of a formal enforcement proceeding, the Commission may bring civil actions in a U.S. District Court "requesting the imposition of a civil penalty or the issuance of injunctions incorporating the relief sought by the Commission." Those rule provisions are based on 19 U.S.C. 1337(f)(2) of the Tariff Act, but they do not track the statutory language of 19 U.S.C. 1337(f)(2) which states, that "[s]uch penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs." Among other things, 19 U.S.C. 1337(f)(2) does not require the Commission to file a civil action requesting the imposition of a civil penalty. In fact, Commission practice, which has been upheld by the Federal Circuit, is to impose its own civil penalties. See *San Huan New Materials High Tech, Inc. v. U.S. Int'l Trade Comm'n*, 161 F.3d 1347 (Fed. Cir. 1998).

The Commission also proposes to revise §§ 210.75(b)(4) and (c) to include a reference to consent orders, since the Federal Circuit has upheld the Commission's long-standing interpretation of 19 U.S.C. 1337(f)(2) that consent orders, like cease and desist orders, are enforceable by civil penalty, imposed by the Commission, and recoverable in the district court in the event of nonpayment. The Commission therefore proposes to revise §§ 210.75(b)(4) and (c) to make these sections consistent with the language of the statute and Federal Circuit precedent.

Section 210.79

Paragraph (a) of section 210.79 describes the manner in which persons may request and the Commission will render advisory opinions. As used in the Commission rules, the term "person" means an individual,

partnership, corporation, association, or public or private organization. 19 CFR 201.2(j). The current language of the rule seems to allow only importers or would-be importers to request advisory opinions. In fact, advisory opinions issued by the Commission during the period January 1981 to May 2004 were all initiated in response to a request or a petition filed by an importer or a would-be importer.

In June 2004, however, the complainant in *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Comm'n Op. (June 1999) requested an advisory opinion concerning disposable cameras that the U.S. Customs Service had allowed to enter for consumption, but that the complainant maintained were in violation of a Commission general exclusion order. The Commission granted Fuji's request and conducted advisory opinion proceedings. On appeal, the Commission argued that its advisory opinion authority is discretionary and not curtailed by the language of the rule. The Court did not comment on the position the Commission took on advisory opinions. See *Fuji Photo Film Co., Ltd. v. U.S. Int'l Trade Comm'n et al.*, 386 F.3d 1095 (Fed. Cir. 2004).

Accordingly, the Commission proposes to amend § 210.79(a) to make clear that, in accordance with current Commission practice, complainants, as well as importers, may request an advisory opinion from the Commission.

List of Subjects

19 CFR Part 201

Administration practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 210

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

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201 and 210 as follows:

PART 201—RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Amend § 201.16 by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(e) *Additional time after service by overnight delivery.* Whenever a party or Federal Agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by overnight delivery, one (1) day shall be added to the prescribed period. "Overnight delivery" is defined as delivery by the next business day.

* * * * *

PART 210—ADJUDICATION AND ENFORCEMENT

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

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

Subpart A—Rules of General Applicability

2. Amend § 210.3 by adding a definition of "U.S. Customs Service" in alphabetical order to read as follows:

§ 210.3 Definitions.

* * * * *

U.S. Customs Service means U.S. Customs and Border Protection.

3. Amend § 210.4 by revising paragraph (f)(1)(i) to read as follows:

§ 210.4 Written submission; representations; sanctions.

* * * * *

(f) *Specifications; filing of documents.* (1)(i) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with § 201.8 of this chapter, except for the provisions regarding the number of copies to be submitted. The required number of copies shall be governed by paragraph (f)(2) of this section. Written submissions may be produced by any process which produces a clear black image on white paper. Typed matter shall not exceed 6½ by 9½ inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

* * * * *

4. Amend § 210.7 by:

a. Redesignating paragraph (b) as paragraph (c); and

b. Adding paragraphs (a)(3) and (b).

The additions and revisions read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) * * *

(3) Whenever the Commission effects service of documents issued by or on behalf of the Commission or the administrative law judge upon the private parties by overnight delivery, service upon the Office of Unfair Import Investigations shall also be deemed to have occurred by overnight delivery.

(b) *Designation of a single attorney or representative for service of process.*

The service list prepared by the Secretary for each investigation will contain the name and address of no more than one attorney or other representative for each party to the investigation. In the event that two or more attorneys or other persons represent one party to the investigation, the party must select one of their number to be the lead attorney or representative for service of process. The lead attorney or representative for service of process shall state, at the time of the filing of its entry of appearance with the Secretary, that it has been so designated by the party it represents. (Only those persons authorized to receive confidential business information under a protective order issued pursuant to § 210.34(a) are eligible to be included on the service list for documents containing confidential business information.)

* * * * *

Subpart B—Initiation and Conduct of Investigations

5. Amend § 210.8 by adding introductory text and revising paragraph (a) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

Upon receipt of complaint. A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies.

(a)(1) *Unless complainant requests temporary relief, the complainant shall file with the Secretary:*

(i) 12 copies of the nonconfidential version of the complaint along with 6 copies of the nonconfidential exhibits, and 6 copies of the confidential exhibits;

(ii) 12 copies of the confidential version of the complaint, if any;

(iii) For each proposed respondent, one copy of the nonconfidential version of the complaint and one copy of the confidential version of the complaint, if any, along with one copy of the nonconfidential exhibits and one copy of the confidential exhibits, and

(iv) For the government of the foreign country in which each proposed respondent is located as indicated in the Complaint, one copy of the nonconfidential version of the complaint.

Note to paragraph (a)(1): The same requirements apply for the filing of a supplement to the complaint.

(2) *If the complainant is seeking temporary relief, the complainant shall file with the Secretary:*

(i) 12 copies of the nonconfidential version of the complaint along with 6 copies of the nonconfidential exhibits, and 6 copies of the confidential exhibits;

(ii) 12 copies of the confidential version of the complaint, if any;

(iii) For each proposed respondent, one copy of the nonconfidential version of the complaint and one copy of the confidential version of the complaint, if any, along with one copy of the confidential exhibits;

(iv) 12 copies of the nonconfidential version of the motion for temporary relief along with 6 copies of any nonconfidential exhibits filed with the motion and 6 copies of the confidential exhibits, if any, filed with the motion;

(v) 12 copies of the confidential version of the motion for temporary relief, if any; and

(vi) For each proposed respondent, one copy of the confidential version of the motion along with one copy of the confidential exhibits filed with the motion.

Note to paragraph (a)(2): The same requirements apply for the filing of a supplement to the complaint or a supplement to the motion for temporary relief.

* * * * *

§ 210.10 [Amended]

6. Amend § 210.10 by removing the last two sentences of paragraph (a)(5)(i).

7. Revise § 210.11 to read as follows:

§ 210.11 Service of complaint and notice of investigation.

(a)(1) Unless the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint, the nonconfidential exhibits, and the notice of investigation upon each respondent; and

(ii) Copies of the nonconfidential version of the complaint and the notice of investigation upon the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.

(2) If the Commission institutes temporary relief proceedings, upon

institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint and the notice of investigation upon each respondent; and

(ii) A copy of the notice of investigation upon the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.

(3) All respondents named after an investigation has been instituted and the governments of the foreign countries in which they are located as indicated in the complaint shall be served as soon as possible after the respondents are named.

(4) The Commission shall serve copies of the notice of investigation upon the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other agencies and departments as the Commission considers appropriate.

(b) With leave from the presiding administrative law judge, a party may attempt to effect personal service of the complaint and notice of investigation upon a respondent, if the Secretary's efforts to serve the respondent have been unsuccessful. If the party succeeds in serving the respondent by personal service, the party must notify the administrative law judge and file proof of such service with the Secretary.

Subpart C—Pleadings

8. Amend § 210.12 by:

a. Republishing the introductory text of paragraph (a);

b. Revising paragraphs (a)(1), (a)(6)(i) introductory text, (a)(6)(i)(C), and (a)(9);

c. Redesignating paragraph (a)(10) as paragraph (a)(11);

d. Adding new paragraph (a)(10);

e. Revising paragraph (c);

f. Revising the first sentence of paragraph (d);

g. Revising paragraphs (f), and (g);

h. Redesignating existing paragraph (h) as paragraph (j); and

i. Adding new paragraphs (h) and (i).

The additions and revisions read as follows:

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of § 201.8 of this chapter and §§ 210.4 and 210.5 of this part, the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the complainant and any such officer,

attorney, or agent given on the first page of the complaint, and include a statement attesting to the representations in §§ 210.4(c)(1)–(3);

* * * * *

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1) (B), (C), (D), or (E) of the Tariff Act of 1930, include a description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established, including the relevant operations of any licensees. Relevant information includes but is not limited to:

* * * * *

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, mask work, or vessel hull design, including engineering, research and development, or licensing; or

* * * * *

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. patent;

(iv) A copy of each license agreement (if any) for each involved U.S. patent that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees;

(v) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to each involved U.S. patent, with an indication of the prosecution status of each such patent application;

(vi) A nontechnical description of the invention of each involved U.S. patent;

(vii) A reference to the specific claims in each involved U.S. patent that allegedly cover the article imported or

sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(viii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. patent to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced;

(ix) A showing that an industry in the United States, relating to the articles protected by the patent exists or is in the process of being established. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. patent to a representative involved domestic article or to the process under which such article was produced; and

(x) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraphs (a)(9)(viii) and (a)(9)(ix) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Include, when a complaint is based upon the infringement of a federally registered copyright, trademark, mask work, or vessel hull design—

(i) The identification of each licensee under each involved copyright, trademark, mask work, and vessel hull design;

(ii) A copy of each license agreement (if any) that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees; and

* * * * *

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or

sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. patent the following:

(1) One certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. patent, plus three additional copies thereof; and

(2) Four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark, one certified copy of the Federal registration and three additional copies, and one certified copy of the prosecution history for each federally registered trademark. * * *

* * * * *

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one certified copy of the Federal registration and three additional copies;

(g) *Additional material to accompany each registered mask work-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a Federally registered mask work, one certified copy of the Federal registration and three additional copies;

(h) *Additional material to accompany each vessel hull design-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a vessel hull design, one certified copy of the Federal registration (including all deposited drawings, photographs, or other pictorial representations of the design), and three additional copies;

(i) *Initial disclosures.* Complainant shall serve on each respondent represented by counsel who has agreed to be bound by the terms of the protective order one copy of each document submitted with the complaint pursuant to §§ 210.12(c)–(h) within five days of service of a notice of appearance and agreement to be bound by the terms of the protective order; and

* * * * *

§ 210.13 [Amended]

9. Amend § 210.13 by removing the words "U.S. letters patent" and adding in their place the words "U.S. patent" in the following locations:

- a. § 210.13(b) introductory text,
- b. § 210.13(b)(1) (three occurrences), and
- c. § 210.13(b)(3).

Subpart D—Motions

§ 210.15 [Amended]

10. Amend § 210.15 by removing the first sentence of paragraph (a)(1).

11. Amend § 210.18 by revising paragraph (a) to read as follows:

§ 210.18 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after 20 days following the date of service of the complaint and notice instituting the investigation. Any other party or a respondent may so move at any time after the date of publication of the notice of investigation in the **Federal Register**. Any such motion by any party in connection with the issue of permanent relief, however, must be filed at least 60 days before the date fixed for any hearing provided for in § 210.36(a)(1). Notwithstanding any other rule, the deadline for filing summary determinations shall be computed by counting backward at least 60 days including the first calendar day prior to the date the hearing is schedule to commence. If the end of the 60 day period falls on a weekend or holiday, the period extends until the end of the next business day. Under exceptional circumstances and upon motion, the presiding administrative law judge may determine that good cause exists to permit a summary determination motion to be filed out of time.

* * * * *

12. Amend § 210.20 by revising paragraph (a) to read as follows:

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a) of this chapter. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the

presiding administrative law judge who is presiding or had last presided over the investigation. If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

* * * * *

13. Amend § 210.21 by revising:

- a. Paragraph (a);
- b. The last sentence of paragraphs (b)(2), (c) introductory text, and (d);
- c. The third sentence of (c)(2)(ii); and
- d. Paragraph (e).

The revisions read as follows:

§ 210.21 Termination of investigations.

(a) *Motions for termination.* (1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. A motion for termination of an investigation based on withdrawal of the complaint shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. If the agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, at least one copy of the agreement with such information deleted shall accompany the motion, in addition to a copy of the confidential version. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

(2) Any party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement, including an agreement to present the matter for arbitration, or a consent order, as provided in paragraphs (b), (c) and (d) of this section.

(b) * * *
(2) * * * Termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) * * * Termination by consent order need not constitute a determination as to violation of section 337.

(2) * * *

(ii) * * * Termination by consent order need not constitute a determination as to violation of section 337. * * *

* * * * *

(d) *Termination based upon arbitration agreement.* * * * Termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(e) *Effect of termination.* Termination issued by the administrative law judge shall constitute an initial determination.

§ 210.22 [Removed]

14. Remove and reserve § 210.22.

15. Amend § 210.25 by revising the second sentence of paragraph (f) to read as follows:

§ 210.25 Sanctions.

* * * * *

(f) * * * If the administrative law judge defers his adjudication in such a manner, his ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than 30 days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. * * *

Subpart E—Discovery and Compulsory Process

16. Amend § 210.28 by revising the fifth and sixth sentences of paragraph (d), revising the first sentence of paragraph (g), and revising paragraph (i)(4) to read as follows:

§ 210.28 Depositions.

* * * * *

(d) *Taking of deposition.* * * * When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is a correct writing of the recording. Thereafter, upon payment of reasonable charges therefor, that person shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent. * * *

* * * * *

(g) *Admissibility of depositions.* The fact that a deposition is taken and served upon the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. * * *

* * * * *

(i) * * *
(4) *As to completion and return of deposition.* Errors and irregularities in

the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, served, or otherwise dealt with by the person before whom it is taken are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

17. Amend § 210.29 by revising the fourth sentence of paragraph (b)(2) to read as follows:

§ 210.29 Interrogatories.

* * * * *

(b) * * *
(2) * * * The party upon whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within ten days of service of the interrogatories or within the time specified by the administrative law judge. * * *

* * * * *

18. Amend § 210.30 by revising the first sentence of paragraph (b)(2) to read as follows:

§ 210.30 Request for production of documents and things and entry upon land.

* * * * *

(b) * * *
(2) The party upon whom the request is served shall serve a written response within 10 days or the time specified by the administrative law judge. * * *

* * * * *

19. Amend § 210.31 by revising the second sentence of paragraph (b) and the last sentence of paragraph (d) to read as follows:

§ 210.31 Requests for admission.

* * * * *

(b) *Answers and objections to requests for admission.* * * * The matter may be deemed admitted unless, within 10 days or the period specified by the administrative law judge, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. * * *

* * * * *

(d) *Effect of admissions; withdrawal or amendment of admission.* * * * Any admission made by a party under this section is for the purpose of the pending investigation and any related proceeding as defined in § 210.3 of this chapter.

20. Amend § 210.32 by revising paragraph (g) to read as follows:

§ 210.32 Subpoenas.

* * * * *

(g) *Obtaining judicial enforcement.* In order to obtain judicial enforcement of

a subpoena issued under paragraphs (a)(3) or (c)(2) of this section, the administrative law judge shall certify to the Commission, on motion or sua sponte, a request for such enforcement. The request shall be accompanied by copies of relevant papers and a written report from the administrative law judge concerning the purpose, relevance, and reasonableness of the subpoena. If the request, relevant papers, or written report contain confidential business information, the administrative law judge shall certify nonconfidential copies along with the confidential versions. The Commission will subsequently issue a notice stating whether it has granted the request and authorized its Office of the General Counsel to seek such enforcement.

21. Amend § 210.34 by:

- a. Revising the section heading;
- b. Adding the designation "Note to paragraph (c):" to the undesignated text at the end of paragraph (c) and revising it;
- c. Revising paragraph (d); and
- d. Adding new paragraph (e).

The additions and revisions read as follows:

§ 210.34 Protective Orders; reporting requirement; sanctions and other actions.

* * * * *

- (c) * * *
- (5) * * *

Note to paragraph (c): The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with § 210.25(a)(2). Parties, including the party that identifies an alleged breach or makes a motion for sanctions, and the Commission shall treat the identity of the alleged breacher as confidential business information unless the Commission issues a public sanction. The identity of the alleged breacher means the name of any individual against whom allegations are made. The Commission or administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor. If before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(1) through (4) of this section shall be in the form of a recommended determination. When the motion is addressed to the administrative law judge, he shall grant or deny a motion for sanctions under paragraph (c)(5) of this section by issuing an order.

(d) *Reporting Requirement.* Each person who is subject to a protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission immediately upon learning that confidential business information disclosed to him or her

pursuant to the protective order is the subject of:

- (1) A subpoena;
- (2) A court or an administrative order (other than an order of a court reviewing a Commission decision);
- (3) A discovery request;
- (4) An agreement; or
- (5) Any other written request, if the request or order seeks disclosure, by him or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.5(b).

Note to paragraph (d): This reporting requirement applies only to requests and orders for disclosure made for use of confidential business information in non-Commission proceedings.

(e) *Sanctions and other actions.* After providing notice and an opportunity to comment, the Commission may impose a sanction upon any person who willfully fails to comply with paragraph (d) of this section, or it may take other action.

Subpart F—Prehearing Conferences and Hearings

22. Amend § 210.35 by redesignating existing paragraphs (a)(2) through (6) as (a)(3) through (7), respectively; and adding new paragraph (a)(2) to read as follows:

§ 210.35 Prehearing conferences.

(a) * * *

(2) Negotiation, compromise, or settlement of the case, in whole or in part;

* * * * *

23. Amend § 210.38 by revising paragraphs (a) and (d) to read as follows:

§ 210.38 Record.

(a) *Definition of the record.* The record shall consist of all pleadings, the notice of investigation, motions and responses, all briefs and written statements, and other documents and things properly filed with the Secretary, in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record (including physical exhibits), and any other items certified into the record by the administrative law judge or the Commission.

* * * * *

(d) *Certification of record.* The record, including all physical exhibits entered into evidence or such photographic reproductions thereof as the

administrative law judge approves, shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

24. Amend § 210.39 by revising paragraph (b) to read as follows:

§ 210.39 In camera treatment of confidential information.

* * * * *

(b) *Transmission of certain Commission records to district court.* (1) In a civil action involving parties that are also parties to a proceeding before the Commission under section 337 of the Tariff Act of 1930, at the request of a party to a civil action that is also a respondent in the proceeding before the Commission, the district court may stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission under certain conditions. If such a stay is ordered by the district court, after the determination of the Commission becomes final and the stay is dissolved, the Commission shall certify to the district court such portions of the record of its proceeding as the district court may request. Notwithstanding paragraph (a) of this section, the in camera record may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(2) To facilitate timely compliance with any court order requiring the Commission to transmit all or part of the record of its section 337 proceedings to the court, as described in paragraph (b)(1) of this section, a party that requests the court to issue an order staying the civil action or an order dissolving the stay and directing the Commission to transmit all or part of the record to the court must file written notice of the request with the Commission Secretary on the same date that it is filed with the court.

* * * * *

Subpart G—Determinations and Actions Taken

25. Amend § 210.42 by revising paragraphs (a)(1)(i) and (2), (h)(2) and (3), and (i) to read as follows:

§ 210.42 Initial determinations.

(a)(1)(i) *On issues concerning violation of section 337.* Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission

and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 no later than four (4) months before the target date set pursuant to § 210.51(a).

* * * * *

(2) *On certain motions to declassify information.* The decision of the administrative law judge granting a motion to declassify information, in whole or in part, shall be in the form of an initial determination as provided in § 210.20(b).

* * * * *

(h) * * *

(2) An initial determination under § 210.42(a)(1)(i) shall become the determination of the Commission 60 days after the date of service of the initial determination, unless the Commission within 60 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination. The findings and recommendations made by the administrative law judge in the recommended determination issued pursuant to § 210.42(a)(1)(ii) will be considered by the Commission in reaching determinations on remedy and bonding by the respondents pursuant to § 210.50(a).

(3) An initial determination filed pursuant to § 210.42(c) shall become the determination of the Commission 30 days after the date of service of the initial determination, except as provided for in paragraph (h)(5) and paragraph (h)(6) of this section, § 210.50(d)(3), and § 210.70(c), unless the Commission, within 30 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

* * * * *

(6) The disposition of an initial determination filed pursuant to § 210.42(c) which grants a motion for summary determination that would terminate the investigation in its entirety if it were to become the Commission's final determination, shall become the final determination of the Commission 45 days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(i) *Notice of determination.* A notice stating that the Commission's decision on whether to review an initial determination will be issued by the

Secretary and served on the parties. Notice of the Commission's decision will be published in the **Federal Register** if the decision results in termination of the investigation in its entirety, if the Commission deems publication of the notice to be appropriate under § 201.10 of subpart B of this part, or if publication of the notice is required under § 210.49(b) of this subpart or § 210.66(f) of subpart H of this part.

26. Amend § 210.43 by:

- a. Revising paragraphs (a)(1);
- b. Adding the designation "Note to paragraph (b)(1):" to the undesignated text at the end of paragraph (b)(1) and revising it;
- c. Adding a sentence to the end of paragraph (b)(3);
- d. Adding new paragraph (b)(5); and
- e. Revising paragraphs (c) and (d)(1).

The additions and revisions read as follows:

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) *Filing of the petition.* (1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a)(1) or (c), § 210.50(d)(3) or § 210.70(c) by filing a petition with the Secretary. A petition for review of an initial determination issued under § 210.42(a)(1) must be filed within 12 days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination must be filed within 10 business days after service of the initial determination. Petitions for review of all other initial determinations under § 210.42(c) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.50(d)(3) or § 210.70(c) must be filed within 10 days after service of the initial determination.

* * * * *

(b) * * *

Note to paragraph (b)(1): The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits.

* * * * *

(3) * * * In order to preserve an issue for review by the Commission or the U.S. Court of Appeals for the Federal Circuit that was decided adversely to a party, the issue must be raised in a petition for review, whether or not the Commission's determination on the ultimate issue, such as a violation of section 337, was decided adversely to the party.

* * * * *

(5) *Service of Petition.* All petitions for review of an initial determination shall be served on the other parties by messenger, overnight delivery, or equivalent means.

(c) *Responses to the petition.* Any party may file a response within eight (8) days after service of a petition of a final initial determination under § 210.42(a)(1), and within five (5) business days after service of all other types of petitions, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits.

(d) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.42(a)(1) within 60 days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.42(a)(2) or § 210.42(c), which grants a motion for summary determination that would terminate the investigation in its entirety if it becomes the final determination of the Commission, § 210.50(d)(3), or § 210.70(c) within 45 days after the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.42(c), except as noted above, within 30 days after the service of the initial determination on the parties, or by such other time as the Commission may order.

* * * * *

27. Amend § 210.45 by revising paragraph (c) to read as follows:

§ 210.45 Review of initial determinations on matters other than temporary relief.

* * * * *

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. In addition, the Commission may take no position on specific issues or portions of the initial determination of the administrative law judge. The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

28. Amend § 210.49 by revising paragraph (b) to read as follows:

§ 210.49 Implementation of Commission action.

* * * * *

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337 of the Tariff Act of 1930 or that there is reason to believe that there is a violation, together with the action taken relative to such determination under § 210.50(a) or § 210.50(d) of this part, or the modification or rescission in whole or in part of an action taken under § 210.50(a), shall promptly be published in the **Federal Register**. It shall also be promptly transmitted to the President or an officer assigned the functions of the President under 19 U.S.C. 1337(j)(1)(B), 1337(j)(2), and 1337(j)(4), together with the record upon which the determination and the action are based.

* * * * *

29. Amend § 210.50 by revising paragraphs (d)(1)(i) and (ii) to read as follows:

§ 210.50 Commission action, the public interest, and bonding by respondents.

* * * * *

(d) *Forfeiture or return of respondents' bonds.* (1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j). If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j). If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

* * * * *

§ 210.51 [Amended]

30. Amend § 210.51 in paragraph (a) by removing all occurrences of the number "15" and adding in its place the number "16".

Subpart H—Temporary Relief

31. Revise § 210.54 to read as follows:

§ 210.54 Service of motion by the complainant.

Notwithstanding the provisions of § 210.11 regarding service of the complaint by the Commission upon institution of an investigation, on the day the complainant files a complaint with the Commission (see § 201.8(a)(1) and § 201.8(a)(2) of this chapter), the complainant must serve non-confidential copies of both documents (as well as nonconfidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the complaint. If a complainant files any supplemental information with the Commission prior to institution, nonconfidential copies of that supplemental information must be served on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the complaint. The complaint, motion, and supplemental information, if any, shall be served by messenger, overnight delivery, or equivalent means. A signed certificate of service must accompany the complaint and motion for temporary relief. If the certificate does not accompany the complaint and the motion, the Secretary shall not accept the complaint or the motion and shall promptly notify the submitter. Actual proof of service on each respondent and embassy (e.g., certified mail return receipts, messenger, or overnight delivery receipts, or other proof of delivery)—or proof of a serious but unsuccessful effort to make such service—must be filed within 10 days after the filing of the complaint and motion. If the requirements of this section are not satisfied, the Commission may extend its 35-day

deadline under § 210.58 for determining whether to provisionally accept the motion for temporary relief and institute an investigation on the basis of the complaint.

32. Amend § 210.55 by revising paragraph (b) to read as follows:

§ 210.55 Content of service copies.

* * * * *

(b) If the Commission determines that the complaint, motion for temporary relief, or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter, the Commission may require the complainant to file and serve new nonconfidential versions of the aforesaid submissions in accordance with § 210.54 and may determine that the 35-day period under § 210.58 for deciding whether to institute an investigation and to provisionally accept the motion for temporary relief for further processing shall begin to run anew from the date the new non-confidential versions are filed with the Commission and served on the proposed respondents in accordance with § 210.54.

33. Amend § 210.56 by revising:
a. The first and fourth paragraphs of the sample notice in paragraph (a); and
b. The second sentence of paragraph (b) to read as follows:

§ 210.56 Notice accompanying service copies.

(a) * * *

Notice is hereby given that the attached complaint and motion for temporary relief will be filed with the U.S. International Trade Commission in Washington, DC on _____, 20___. The filing of the complaint and motion will not institute an investigation on that date, however, nor will it begin the period for filing responses to the complaint and motion pursuant to 19 CFR 210.13 and 210.59.

* * * * *

If the Commission determines to conduct an investigation of the complaint and motion for temporary relief, the investigation will be formally instituted on the date the Commission publishes a notice of investigation in the **Federal Register** pursuant to 19 CFR 210.10(b). If an investigation is instituted, copies of the complaint, the notice of investigation, and the Commission's Rules of Practice and Procedure (19 CFR part 210) will be served on each respondent by the Commission pursuant to 19 CFR 210.11(a).

* * * * *

(b) * * * The supplementary notice shall be served by messenger, overnight delivery, or equivalent means. * * *

34. Revise § 210.58 to read as follows:

§ 210.58 Provisional acceptance of the motion.

The Commission shall determine whether to accept a motion for temporary relief at the same time it determines whether to institute an investigation on the basis of the complaint. That determination shall be made within 35 days after the complaint and motion for temporary relief are filed unless the 35-day period is restarted pursuant to §§ 210.53(a), 210.54, 210.55 or 210.57 or exceptional circumstances exist which preclude adherence to the prescribed deadline. (See § 210.10(a)(1)). Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§ 210.52, 210.53(a) (if applicable), 210.54 through 210.56 as well as §§ 201.8, 210.4 and 210.5. The motion will be subject to the same type of preliminary investigatory activity as the complaint. (See § 210.9(b).) Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. Commission rejection of a motion for temporary relief will not preclude institution of an investigation on the complaint.

35. Amend § 210.66 by revising the last sentence of paragraph (c) to read as follows:

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

* * * * *

(c) * * * The parties shall serve their comments on other parties by messenger, overnight delivery, or equivalent means.

* * * * *

36. Amend § 210.67 by revising the section heading and paragraph (a) to read as follows:

§ 210.67 Remedy, the public interest, and bonding.

* * * * *

(a) While the motion for temporary relief is before the administrative law judge, he may compel discovery on matters relating to remedy, the public interest and bonding (as provided in § 210.61). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in § 210.66(a). Such findings may be superseded, however, by Commission findings on that issue as

provided in paragraph (c) of this section.

* * * * *

Subpart I—Enforcement Procedures and Advisory Opinions

§ 210.70 [Transferred]

37. Transfer § 210.70 from subpart I to subpart H.

38. Amend § 210.71 by revising paragraph (a)(1) to read as follows:

§ 210.71 Information gathering.

(a) *Power to require information.* (1) Whenever the Commission issues an exclusion order, the Commission may require any person to report facts available to that person that will help the Commission assist the U.S. Customs Service in determining whether and to what extent there is compliance with the order. Similarly, whenever the Commission issues a cease and desist order or a consent order, it may require any person to report facts available to that person that will aid the Commission in determining whether and to what extent there is compliance with the order or whether and to what extent the conditions that led to the order are changed.

* * * * *

39. Amend § 210.75 by revising paragraphs (b)(3), (b)(4)(ii), and (c) to read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

* * * * *

(b) * * *

(3) The Commission, in the course of a formal enforcement proceeding under this section may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing will not be subject to sections 554, 555, 556, 557 and 702 of title 5 of the United States Code. The Commission may delegate the hearing to a presiding administrative law judge, who shall certify an initial determination to the Commission. That initial determination shall become the determination of the Commission 90 days after the date of service of the initial determination unless the Commission, within 90 days after the date of such service shall have ordered review of the initial determination on certain issues therein, or by order shall have changed the effective date of the initial determination.

(4) * * *

(ii) Bring civil actions in a United States district court pursuant to paragraph (c) of this section (and section

337(f)(2) of the Tariff Act of 1930) to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order; or

* * * * *

(c) *Court enforcement.* To obtain judicial enforcement of an exclusion order, a cease and desist order, a consent order, or a sanctions order, the Commission may initiate a civil action in the U.S. district court. In a civil action under section 337(f)(2) of the Tariff Act of 1930, the Commission may seek to recover for the United States the civil penalty accruing to the United States under that section for the breach

of a cease and desist order or a consent order, and may ask the court to issue a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order. The Commission may initiate a proceeding to obtain judicial enforcement without any other type of proceeding otherwise available under section 337 or this subpart or without prior notice to any person, except as required by the court in which the civil action is initiated.

40. Amend § 210.79 by revising paragraph (a) to read as follows:

§ 210.79 Advisory Opinions.

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether any person's proposed

course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

* * * * *

41. Amend part 210 by adding Appendix A to read as follows:

APPENDIX A TO PART 210.—ADJUDICATION AND ENFORCEMENT

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Violation §210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination.
Forfeiture of respondent's bond §210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Forfeiture of complainant's temporary relief bond §210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Summary initial determination that would terminate the investigation if it became the Commission's final determination §210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Other matters §210.42(c)	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.
Formal enforcement proceedings §210.75(b).	By order of the Commission	By order of the Commission	90 days from service of the initial determination on private parties.

Issued: December 14, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-24591 Filed 12-19-07; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AB40

Fire Extinguishers in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA), is proposing to amend the current standard for the quantity and location of firefighting equipment and materials underground to ensure that they are readily available to quickly extinguish a fire. In lieu of the current requirements for rock dust and other firefighting materials, this proposed rule would allow the use of portable fire extinguishers in working sections of underground anthracite coal mines that have no electrical equipment at the face and produce less than 300 tons of coal per shift. The rule also would require an additional fire extinguisher in lieu of rock dust at temporary electrical installations in all underground coal mines.

DATES: All comments must be received at MSHA no later than midnight Eastern Standard Time on February 4, 2008.

ADDRESSES: (1) Identify all comments by "RIN 1219-AB40" and send them to MSHA as follows:

- Electronically through the Federal e-Rulemaking portal at <http://www.regulations.gov> or by e-mail to zzMSHA-comments@dol.gov.

- By facsimile to 202-693-9441.
- By mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. If comments are hand-delivered, please stop by the 21st floor first to check in with the receptionist.

(2) MSHA will post all comments on the internet without change, including any personal information they may contain. Rulemaking comments can be accessed via the internet at <http://www.msha.gov/regsinfo.htm> or in person at MSHA's public reading room

at 1100 Wilson Boulevard, Room 2349, Arlington, Virginia.

(3) Subscribe to MSHA's *list serve* at <http://www.msha.gov/subscriptions/subscribe.aspx> to receive an e-mail notification when MSHA publishes rulemaking documents in the **Federal Register**.

Hearings: Public hearings will be scheduled if requested.

Information Collection Requirements. Comments concerning the information collection requirements must be clearly identified as such and sent to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* All comments may be sent by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified by RIN: 1219-AB40 as comments on the information collection requirements and transmitted to MSHA as indicated above under **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey at 202-693-9440 (Voice), 202-693-9441 (Fax), or Silvey.Patricia@dol.gov (E-mail).

SUPPLEMENTARY INFORMATION:

I. Introduction

The existing safety standards under 30 CFR part 75, subpart L—Fire Protection, are designed to ensure that firefighting equipment and materials are readily available to quickly extinguish a fire and prevent its spread. Because of the explosive nature of coal dust and the possible presence of methane gas, there is great potential for a fire to spread to other areas of the underground coal mine. Historical records demonstrate that the consequences of a fire in an underground coal mine can be disastrous.

II. Background

The Bureau of Mines in the U.S. Department of the Interior (Bureau) promulgated and enforced fire protection standards under the Federal Coal Mine Safety Act (30 U.S.C. 451-483). These standards continued in effect under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) through a transfer provision in the law. On November 20, 1970 (35 FR 17890), the Bureau revised its standards addressing fire protection in underground coal mines. The revised standards continued in effect under the Federal Mine Safety and Health Act of 1977 (Mine Act) through a transfer provision in the law when the

enforcement of mine safety and health standards was moved from the Department of the Interior to the Department of Labor. The standard addressed in this rule has not changed since that time.

A. Petition for Modification of a Mandatory Safety Standard

Section 101(c) of the Mine Act allows a mine operator or the representative of miners to petition MSHA for a modification of an existing safety standard. After investigating each petition, MSHA may grant a modification from the application of a safety standard when MSHA determines that—

(1) The alternative method for achieving the desired result will at all times guarantee no less than the same measure of protection as the existing standard, or

(2) The application of the existing standard will result in a diminution of safety to miners at that mine.

This proposed rule would eliminate the need for a mine operator to file a petition for modification of an existing standard in order to permit the use of portable fire extinguishers in lieu of rock dust and other firefighting materials in the working sections of underground anthracite coal mines that produce less than 300 tons of coal per shift and use no electrical equipment at the face.

Also, many underground coal mine operators have filed petitions for modification to use portable fire extinguishers at temporary electrical installations. This proposed rule would eliminate the requirement for rock dust and instead would require portable fire extinguishers at underground temporary electrical installations. Adding this requirement would eliminate the need to petition for permission to use fire extinguishers at these locations.

B. Rock Dust for Fire Protection

Rock dust is an inorganic, non-combustible dust, such as crushed limestone, that the mine operator spreads on coal surfaces to reduce the chance of stirring up an explosive suspension of coal dust. The rock dust also can work as a fire suppressant by smothering or quenching the flame. It is widely used in coal mining to reduce the likelihood of coal dust explosions or flame propagation. A single bag of rock dust weighs about 40 pounds when dry. In damp environments, a bag of rock dust will absorb water, rendering it unusable for fire prevention or suppression purposes. Damp rock dust becomes somewhat plastic in consistency and dries into a hard, brick-

like mass. The presence of bags of rock dust can give a false sense of security for firefighting purposes because the rock dust can absorb water even through a sealed bag. The miner or mine operator can be unaware that the rock dust is useless as a fire suppressant until trying to use it. Bags of rock dust must be protected from moisture, checked frequently, and replaced if wet or hardened. This lifting and moving of heavy bags of rock dust increases the risk of personal injury for miners.

C. Requirements for Portable Fire Extinguishers

Existing standard § 75.1100-1 sets minimum requirements for the type and quality of firefighting equipment required in 30 CFR part 75, subpart L—Fire Protection. Paragraph (e) of § 75.1100-1 describes the criteria for a portable fire extinguisher as follows:

(e) *Portable fire extinguisher:* A portable fire extinguisher shall be either (1) a multipurpose dry chemical type containing a nominal weight of 5 pounds of dry powder and enough expellant to apply the powder or (2) a foam-producing type containing at least 2½ gallons of foam-producing liquids and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc., or Factory Mutual Research Corp., carrying appropriate labels as to type and purpose, shall be used. After March 30, 1971, all new portable fire extinguishers acquired for use in a coal mine shall have a 2A 10 BC or higher rating.

III. Section-by-Section Discussion

Existing standard § 75.1100-2 sets requirements for the quantity and location of firefighting equipment and materials in underground coal mines. At working sections, paragraph (a) requires 240 pounds of rock dust (about six bags), two portable fire extinguishers, and a ready supply of water or dry chemical. At permanent electrical installations, paragraph (e)(1) requires two portable fire extinguishers or one having twice the minimum capacity specified for a portable fire extinguisher in existing § 75.1100-1(e). Rock dust is not required at permanent electrical installations. At temporary electrical installations, however, paragraph (e)(2) requires one portable fire extinguisher and 240 pounds of rock dust.

A. Section 75.1100-2(a): Working Sections

Existing § 75.1100-2(a) includes different requirements for readily available firefighting equipment and materials in working sections based on the mine's production. Because anthracite coal mines typically produce only 10 to 20 tons of coal per shift, they

are covered by existing § 75.1100–2(a)(2), which requires—

(2) Each working section of coal mines producing less than 300 tons of coal per shift shall be provided with two portable fire extinguishers, 240 pounds of rock dust in bags or other suitable containers, and at least 500 gallons of water and at least 3 pails of 10 quart capacity. In lieu of the 500 gallon water supply a waterline with sufficient hose to reach the working places, a portable water car (500 gallons capacity) or a portable all-purpose dry powder chemical car of at least 125-pounds capacity may be provided.

These options, however, do not address or accommodate the typical conditions in the working sections of underground anthracite coal mines. This proposed rule would add new paragraph § 75.1100–2(a)(3) to provide an additional compliance option for underground anthracite coal mines and make nonsubstantive format changes to § 75.1100–2(a)(2).

1. Addition of § 75.1100–2(a)(3) for Underground Anthracite Coal Mines

New paragraph § 75.1100–2 would apply only to underground anthracite coal mines. Almost all of these mines still use mining methods that were developed over 150 years ago to suit their unique geological characteristics. Anthracite coal is a hard coal found in undulating, steeply pitched veins, and mined with slow, non-mechanized mining methods. In contrast, bituminous coal is softer and generally found in horizontal veins. Bituminous coal production uses highly mechanized methods and depends on electricity for face equipment.

Anthracite mining uses methods and systems that rely on manual labor with little or no mechanization. Electricity that can cause or contribute to a fire hazard is usually non-existent near the face. Typically, anthracite coal mines operate face equipment using air driven motors for coal drills, air driven fans to supplement face ventilation, and air driven saws and hoists for the cutting and placement of timber.

Mining conditions in underground anthracite coal mines are generally wet and removal of water from the face areas is a major problem. The steep grade permits natural water drainage in open, on-grade ditches from the face area to a slope sump where it is stored and eventually pumped to a suitable water treatment area. Waterlines are seldom installed to the face.

Anthracite coal has a low volatile ratio and the dust does not propagate an explosion. Anthracite coal's ignition temperature is high (925 to 970 degrees Fahrenheit) compared to bituminous coal's ignition temperature (700 to 900

degrees Fahrenheit). Thus, anthracite coal dust is harder to ignite than bituminous coal dust and the risk of a fire is lower in anthracite coal mines than in bituminous coal mines. There has been only one reported fire underground in an anthracite coal mine since implementation of the Mine Act. This fire occurred at a mine that used electrical equipment at the face.

In summary, almost all underground anthracite coal mines are steeply sloped with little space underground for storage of firefighting equipment or materials; they use hand-operated or mechanical equipment, rather than electrical equipment (a potential ignition source), underground at the face where coal is mined; and they are wet, causing rock dust to become hard and unusable for firefighting. In addition, anthracite coal mine dust has low volatility, is difficult to ignite, and does not propagate an explosion.

2. Discussion of Alternative for Underground Anthracite Coal Mines

Because of the uniqueness of the mining methods and conditions in underground anthracite mines, anthracite mine operators have petitioned MSHA to allow the use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The mine operators assert that the alternative method will at all times guarantee no less than the same measure of protection as that afforded by the standard. From 1994 through 2004, MSHA received over 60 petitions for modification of existing paragraph (a)(2) of § 75.1100–2 and granted 54 for working sections at underground anthracite coal mines. The rest were dismissed for reasons unrelated to the merits of the proposed alternative method. For example, one petition was dismissed because the mine went out of business. None of the petitions were denied for safety reasons. MSHA granted the petitions for a modification with the following conditions.

1. Fire extinguisher(s) having at least four times the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) shall be located no greater than 500 feet from the working face.

2. Fire extinguisher(s) having at least six times the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) shall be located at the entrance to the gangway at the bottom of the slope.

There were no significant adverse comments filed on these petitions. Based on MSHA's experience and investigation of these petitions for modification, MSHA concluded that the

use of fire extinguishers in the situations addressed is a safe alternative to existing requirements. The granted alternative method provides for a quick response to any fire on the section and does not reduce protection for miners. In addition, because there are a variety of fire extinguishers currently available, MSHA anticipates no problems in obtaining fire extinguishers.

This proposed rule would incorporate the language from these granted petitions for modification into new paragraph § 75.1100–2(a)(3). The Agency has made changes to the language from these petitions to clarify the mine operator's responsibility regarding the size of fire extinguishers required. Thus, this proposed rule would eliminate the need to file a petition for modification to use only portable fire extinguishers, in lieu of the firefighting equipment and materials required by existing paragraph (a)(2), for fighting fires at working sections of underground anthracite coal mines that have no electrical equipment at the working section. The proposed rule would not apply to the few underground anthracite coal mines that use electrical equipment at the working section.

B. Section 75.1100–2(e): Electrical Installations

Existing § 75.1100–2(e) causes unnecessary compliance difficulties for some mines with temporary electrical installations underground. Under the existing standard, permanent and temporary electrical installations have different requirements for firefighting equipment and materials. Existing § 75.1100–2(e) requires that—

(e) *Electrical installations.* (1) Two portable fire extinguishers or one extinguisher having at least twice the minimum capacity specified for a portable fire extinguisher in § 75.1100–1(e) shall be provided at each permanent electrical installation.

(2) One portable fire extinguisher and 240 pounds of rock dust shall be provided at each temporary electrical installation.

1. Characteristics of Underground Electrical Installations

The difference between permanent and temporary underground electrical installations can be negligible in regard to their potential fire hazard. For example, MSHA generally considers electrical installations located outby the working section to be permanent and those on the working section to be temporary. However, MSHA considers a battery charging station to be temporary because it moves, even though it is outby the working section. If the electrical installation is in a fireproof

enclosure, then MSHA considers it to be permanent. If not, MSHA considers it temporary. MSHA considers a power center supplying the belt line to be permanent, but one supplying a portable compressor to be temporary. Typically, temporary electrical installations are unattended pumping stations located in remote areas of the mine, battery charging stations, power installation transformers, and section power centers for operating electrical face equipment.

2. Elimination of Separate Requirements for Permanent and Temporary Electrical Installations

From 1994 through 2004, MSHA received 34 petitions for modification of paragraph (e)(2) of § 75.1100-2 and granted all of them. The petitioners asserted that it is difficult to comply with the current standard for temporary electrical installations in wet and damp environments, such as pumping stations, because the rock dust becomes unusable for firefighting purposes. The mine operator must check these locations frequently to assure that the rock dust is kept dry for use in the event of a fire. The petitioners assert that the exclusive use of portable fire extinguishers as an alternative means of extinguishing fires is at least as effective as the existing standard. They also have asserted that, in some cases, portable fire extinguishers may be a safer fire suppressant because lifting the heavy bags of rock dust increases the risk of personal injury.

In granting these petitions, MSHA acknowledged the tendency of rock dust to harden over time and become brick-like when exposed to humidity, which greatly reduces the value of the rock dust as a firefighting tool. MSHA has no evidence of adverse outcomes associated with these granted petitions. Although MSHA did not receive any comments contesting the granted petitions, MSHA received a few comments on the petitions requesting that the Agency require a minimum of two fire extinguishers as the alternative method. Two fire extinguishers may be preferable in some situations to allow two miners to fight the fire simultaneously or to provide a backup should one of the portable fire extinguishers fail.

3. Impact of This Proposed Rule

This proposed rule would modify existing § 75.1100-2(e) to eliminate the separate requirements for permanent and temporary electrical installations. It would remove the requirement for rock dust at temporary underground electrical installations and require two portable fire extinguishers, or one

having twice the minimum capacity, at all electrical installations. Essentially, the proposed rule would make the requirements for fire extinguishers at temporary electrical installations identical to the current requirements at permanent electrical installations. The Agency has made changes to the regulatory language to clarify the mine operator's responsibility regarding the size of fire extinguishers required. This revision would not reduce protection for miners.

MSHA believes that all of the proposed revisions offer greater flexibility, provide no less protection to affected miners, and do not result in a diminution of safety to miners.

IV. Executive Order 12866

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory action. Under the Executive Order, a "significant regulatory action" is one meeting any number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues. MSHA has determined that this proposed rule would not have an annual effect of \$100 million or more on the economy and that, therefore, it is not an economically "significant regulatory action" under section 3(f) of E.O. 12866. MSHA, however, has concluded that the proposed rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

A. Population-at-Risk

As of 2006, this proposed rule would apply to 670 underground coal mine operators employing 42,667 miners (excluding office workers).

B. Costs

This proposed rule potentially would affect all coal mines that have temporary electrical installations underground and about 20 active underground anthracite coal mines. As described below, MSHA estimates that the annual cost savings of this proposed rule would be \$2,366.¹

1. Costs of Portable Fire Extinguishers and Rock Dust

MSHA experience indicates that a 10- to 20-pound fire extinguisher is the industry standard. In addition, existing

standards already require the mine operator to inspect and maintain the fire extinguishers periodically and replace them as necessary. The portable fire extinguishers have a shelf life of about 4 years. The cost to refill an emptied fire extinguisher is about 25 percent of its initial cost of about \$25.00 for an industrial strength 2A:10B:C nominal 5-pound fire extinguisher. MSHA does not require mine operators to report fires lasting less than 10 minutes from time of discovery and, therefore, has no estimate of the frequency with which a portable fire extinguisher is used and refilled. MSHA considers the maintenance of portable fire extinguishers to be an essential business practice for underground coal mines.

The cost for 240 pounds of rock dust (six 40-pound bags) is about \$6.00 (\$1.00 per bag). Although rock dust usually does not require maintenance, it has to be replaced routinely in wet or damp environments, or otherwise protected to prevent it from becoming unusable. The shelf life of rock dust varies considerably in damp or wet environments. In addition to the labor cost for routine checking and replacing bags of rock dust, the cost associated with heavy, re-sealable plastic bags or other methods of prolonging the shelf life of rock dust under these conditions is about \$2 per bag.

2. Cost Savings for New Underground Anthracite Coal Mines

MSHA estimates that this proposed rule would have no cost impact on the 20 active underground anthracite coal mines because, currently, they are operating under an alternative method that allows them to provide and rely solely on portable fire extinguishers for firefighting on the working section. This proposed rule, however, would benefit new underground anthracite coal mines by eliminating the need for the mine operator to file a petition for modification in order to provide and rely solely on portable fire extinguishers in lieu of the water and rock dust required by the existing standard.

MSHA estimates that the average cost of filing a petition for modification is \$465. MSHA estimates that it takes a mine supervisor, earning \$57.82 per hour, 8 hours to prepare the petition for modification and that, on average, it takes a clerical worker, earning \$20.96 per hour, 0.1 hours to copy and mail a petition.² On average, two new underground anthracite coal mines open

¹ \$2,366 = \$929 (savings to new anthracite coal mines) + \$1,436 (savings to new temporary electrical installations).

² \$464.66 = (8 hours × \$57.82) + (0.1 hour × \$20.96).

each year.³ Therefore, the associated annual cost savings for new underground anthracite coal mines would be about \$929.⁴

3. Cost Savings for Temporary Electrical Installations at Underground Coal Mines

Existing paragraph (e)(1) of § 75.1100–2 requires two portable fire extinguishers, or one fire extinguisher having at least twice the minimum capacity specified in existing § 75.1100–1(e), at each permanent underground electrical installation. Existing paragraph (e)(2) of § 75.1100–2 requires one portable fire extinguisher and 240 pounds of rock dust at each temporary underground electrical installation. This proposed rule would eliminate the distinction between permanent and temporary electrical installations. It would modify existing § 75.1100–2(e) by removing the sub-paragraph designations (1) and (2) and applying the requirements for permanent electrical installations currently in paragraph (1) to all underground electrical installations. For the purpose of this analysis, MSHA estimates that most existing temporary electrical installations are already in compliance with this proposed rule because they contain two portable fire extinguishers or one having at least twice the minimum capacity.

As previously noted, from 1994 through 2004, MSHA received and granted 34 petitions for modification of existing § 75.1100–2(e)(2). This averages to be about 3.1 petitions per year. Under the proposed rule, it would be unnecessary for a mine operator to file a petition for modification to obtain permission to rely exclusively on fire extinguishers for fighting fires at the mine's temporary electrical installations. Based on 3.1 petitions per year at an average cost of \$465 for filing a petition for modification, MSHA estimates that the annual cost savings would be about \$1,436 for underground coal mines.⁵

C. Benefits

The proposed rule would allow the exclusive use of portable fire extinguishers in certain locations in the mine without the need for a mine operator to file a petition for modification and wait for MSHA approval.

The most significant benefit is that rock dust, that can quickly be rendered ineffective by dampness, can be

replaced immediately by a more effective and reliable fire suppressant, a portable fire extinguisher. An additional advantage of portable fire extinguishers is that they are easier to transport. A mine operator will usually be able to replace a damaged or spent fire extinguisher more quickly than 240 pounds of rock dust. MSHA also can reasonably anticipate a decreased risk of personal injury related to lifting and moving heavy bags of rock dust that have become hard and unusable.⁶

D. Feasibility

MSHA has concluded that the requirements of the proposed rule would be both technologically and economically feasible. This proposed rule would be technologically feasible because it would not be technology-forcing nor involve activities on the frontiers of scientific knowledge. This proposed rule would be economically feasible because it provides a cost saving to underground coal mines. Cost savings are based on new underground anthracite coal mine operators not having to file petitions for modification to use portable fire extinguishers in lieu of rock dust and other fire fighting materials at the working sections of underground anthracite coal mines that use no electrical equipment at the face and produce less than 300 tons of coal per shift. Likewise, there would be a cost savings for both existing and new underground coal mine operators not having to file petitions for modification to use portable fire extinguishers in lieu of rock dust at temporary underground electrical installations.

V. The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small businesses. Further, MSHA has made a determination with respect to whether or not MSHA can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the SBREFA amendments to the RFA, MSHA must include in the rule a factual basis for this certification. If a rule will have a significant economic impact on a substantial number of small

entities, MSHA must develop a regulatory flexibility analysis.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and, consequently, must use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer miners.

MSHA has also looked at the impacts of MSHA's rules on a different subset of mines that MSHA and the mining community have traditionally referred to as "small mines," those having fewer than 20 miners. In general, these "small mines" differ from mines employing 20 or more miners not only in the number of miners, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA's rules and the impact of the rules on them will also tend to be different. It is for this reason that "small mines" employing fewer than 20 miners are of special concern to us.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on "small entities" while continuing MSHA's traditional definition of "small mines." MSHA concludes that the Agency can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. MSHA has determined that this is the case both for mines affected by this rulemaking with fewer than 20 miners and for mines affected by this rulemaking with 500 or fewer miners.

B. Factual Basis for Certification

This proposed rule would provide at least the same level of protection for miners as the current standard. It would result in a net cost savings and have no adverse economic impact on the underground coal mining industry.

MSHA estimated that 2006 production for underground coal mines was 7,817,859 tons for mines that had fewer than 20 miners and 277,634,777 tons for mines that had 500 or fewer miners. Using the 2005 price of underground coal of \$36.42 per ton, MSHA estimates the 2006 underground coal revenues to be about \$285 million

³ This is the average number of underground anthracite coal mines that opened in each year from 1999–2005.

⁴ \$929 = 2 petitions × \$464.66 per petition.

⁵ \$1,436 = 3.1 petitions × \$464.66 per petition.

⁶ MSHA injury data contain 332 injuries between 1999 and September 2005 where the phrase "rock dust" appears in the accident narrative. Of these 332 injuries, 120 (=39%) involved lifting, carrying, or moving rock dust or bags of rock dust.

for mines employing fewer than 20 miners and \$10.1 billion for mines employing 500 or fewer miners. Using either MSHA's traditional definition of a small mine (those having fewer than 20 miners) or SBA's definition of a small mine (those having 500 or fewer miners), MSHA estimates that the proposed rule would result in a savings in the compliance cost for underground coal mines.

VI. Paperwork Reduction Act of 1995

Due to this rulemaking, mine operators would no longer have to petition MSHA for a modification of existing paragraphs (a)(2) and (e)(2) of § 75.1100-2 in order to rely exclusively on fire extinguishers for firefighting purposes. Existing Office of Management and Budget (OMB) paperwork package 1219-0065 includes the annual paperwork burden related to the preparation and filing of petitions with MSHA, including petitions for modification to use fire extinguishers. This proposed rule would reduce the paperwork burden in OMB paperwork package 1219-0065 by \$2,366 and 41 hours annually.⁷

Existing OMB paperwork package 1219-0054 includes the annual paperwork burden related to examining fire extinguishers every 6 months and writing the date of the examination on a tag attached to the fire extinguisher. MSHA estimates that the paperwork burden for examining and tagging additional fire extinguishers at temporary electrical installations would be negligible because almost all temporary electrical installations are already in compliance.

VII. Other Regulatory Considerations

A. *The Unfunded Mandates Reform Act of 1995 and Executive Order 12875: Enhancing the Intergovernmental Partnership (58 FR 58093)*

This proposed rule would not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it increase private sector expenditures by more than \$100 million annually; nor would it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

⁷ \$2,366 = \$929 (savings for new anthracite coal mines) + \$1,436 (savings for temporary electrical installations) and 41 hours = (8 + 0.1) hours per petition × (2 + 3) petitions.

B. *The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families*

This proposed rule would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. *Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights (53 FR 8859)*

This proposed rule would not implement a policy with "takings" implications. Accordingly, Executive Order 12630 requires no further agency action or analysis.

D. *Executive Order 12988: Civil Justice Reform (61 FR 4729)*

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the federal court system. Accordingly, this proposed rule meets the applicable standards provided in section 3 of Executive Order 12988.

E. *Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885)*

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. *Executive Order 13132: Federalism (64 FR 43255)*

This proposed rule would not have "federalism implications" because it would not "have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Accordingly, Executive Order 13132 requires no further agency action or analysis.

G. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments (63 FR 27655)*

This proposed rule would not have "tribal implications" because it would not "have substantial direct effects on one or more Indian tribes, on the relationship between the federal

government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." Accordingly, Executive Order 13175 requires no further agency action or analysis.

H. *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355)*

This proposed rule would not be a "significant energy action" because it would not be "likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, Executive Order 13211 requires no further agency action or analysis.

I. *Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking (67 FR 53461)*

MSHA has thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V of this preamble, MSHA has determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272 requires no further agency action or analysis.

VIII. Petitions for Modification

On the effective date of a final rule, all existing granted petitions for modification for the use of fire extinguishers in lieu of rock dust and other firefighting materials on working sections in underground anthracite coal mines and at temporary electrical installations in underground coal mines under § 75.1100-2 paragraphs (a)(2) and (e)(2), respectively, would be revoked. Thereafter, mine operators would be required to comply with the provisions of the final rule.

List of Subjects in 30 CFR Part 75

Coal mines, Fire prevention, Mine safety and health, Safety, Underground mining.

Dated: December 12, 2007.

Richard E. Stickler,
Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, the Mine Safety and Health Administration is proposing to amend 30 CFR part 75 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Amend § 75.1100–2 by revising paragraph (a)(2), adding paragraph (a)(3), and revising paragraph (e) to read as follows:

§ 75.1100–2 Quantity and location of firefighting equipment.

(a) * * *

* * * * *

(2) Each working section of coal mines producing less than 300 tons of coal per shift shall be provided with the following:

(i) Two portable fire extinguishers; and

(ii) 240 pounds of rock dust in bags or other suitable containers; and

(iii) At least 500 gallons of water and at least three pails of 10-quart capacity; OR a waterline with sufficient hose to reach the working places; OR a portable water car of at least 500-gallon capacity; OR a portable, all-purpose, dry-powder chemical car of at least 125-pound capacity.

(3) As an alternative to paragraph (a)(2) of this section, each working section with no electrical equipment at the face of an anthracite coal mine producing less than 300 tons of coal per shift shall be provided with the following:

(i) Portable fire extinguishers containing a total capacity of at least 30 pounds of dry chemical or 15 gallons of foam and located at the entrance to the gangway at the bottom of the slope; and

(ii) Portable fire extinguishers containing a total capacity of at least 20 pounds of dry chemical or 10 gallons of foam and located within 500 feet from the working face.

* * * * *

(e) *Electrical installations.* At each electrical installation, the operator shall provide two portable fire extinguishers or one having at least 10 pounds of dry chemical or 5 gallons of foam.

* * * * *

[FR Doc. E7–24747 Filed 12–19–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2007–HA–0010, RIN 0720–AB09]

32 CFR Part 199

TRICARE Program; Overpayments Recovery

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to the CHAMPUS and TRICARE program regulation that governs the recoupment of erroneous payments. The proposed rule implements changes required by the Debt Collection Improvement Act of 1996 and the revised Federal Claims Collection Standards.

DATES: Comments must be received on or before February 19, 2008. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, (303) 676–3401.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On December 23, 1985, the Office of the Secretary of Defense published a final rule in the **Federal Register** (50 FR 52315), clarifying specific procedures and criteria in the assertion, collection or compromise of federal claims and the suspension or termination of collection action on such claims arising under the operation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Section 199.11,

“Overpayments Recovery,” addresses claims in favor of the United States arising under the Federal Claims Collection Act (recoupment claims).

This proposed rule implements changes required by the Debt Collection Improvement Act of 1996 (DCIA) and the revised Federal Claims Collection Standards, which were jointly issued by the Department of the Treasury (Treasury), and the Department of Justice (DOJ). The DCIA centralized the collection of most delinquent non-tax debt at the Department of the Treasury Financial Management Service (Treasury). Agencies are now required to refer debts to Treasury for centralized administrative offset under the Treasury Offset Program (TOP) and to transfer debts to Treasury for collection on the agencies’ behalf, a process known as cross-servicing.

Section-by-Section Analysis

Paragraph (a) of this proposed rule provides that it applies to the TRICARE program and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Section (b)(1) of this proposed rule has been updated to include the DCIA and the revised Federal Claims Collection Standards, 31 CFR parts 900–904, as authority for collection, as well as Treasury regulations, found at 31 CFR part 285, subpart A, implementing the DCIA and related statutes governing the offset of Federal salaries (5 U.S.C. 5514, 5 CFR 550, subpart K), administrative offset (31 U.S.C. 3716), administrative offset of tax refunds (31 U.S.C. 3720A) and regulations implementing the offset of military pay under Title 37 U.S.C. 1007(c). The reference to waiver of collection authorized by Section 743 of the National Defense Authorization Act for Fiscal Year 1996 has been deleted. The legislation authorizing waiver has expired.

Paragraph (c) of this proposed rule has been updated to reflect that the Director, TRICARE Management Activity (TMA), or a designee, is responsible for ensuring that timely collection action is pursued. The Office of CHAMPUS (OCHAMPUS) has been disestablished. The functions of OCHAMPUS are now being performed by the TMA. The current regulation reflects that agency authority to compromise, suspend, or terminate collection action was limited to claims that did not exceed \$20,000. The proposed rule increases this amount to \$100,000 at Paragraph (g), the amount authorized by 31 U.S.C. 3711(a)(2).

Paragraph (e) of the proposed rule is updated to reflect that the authority to assert, settle, compromise or to suspend

or terminate collection on claims arising under the Federal Claims Collection Act, has been delegated to the Director, TMA.

Paragraph (f)(1) of the proposed rule adds a provision that recoupment procedures may be modified or adapted to conform to network agreements and that the recoupment provisions of the proposed rule apply if recoupment under the network agreements is not successful.

Paragraph (f)(3) of the proposed rule clarifies a requirement that the TRICARE contractor must first attempt to recover an erroneous payment from another health insurance plan through the contractor's coordination of benefits procedures. If the overpayment cannot be recovered from the other plan, or if the other plan has made payment, the erroneous payment will be recovered from the party that received the erroneous payment from TRICARE.

Paragraph (f)(6)(iii) of the proposed rule provides that a minimum of one demand letter is required and states that the specific content, timing and number of demand letters may be tailored to the type and amount of debt and the debtor's response, if any. Paragraph (6)(ii) of the current regulation states that normally a total of three progressively stronger written demands for payment be made to a debtor at approximately 30-day intervals and that the demands for payment will be made by CHAMPUS fiscal intermediary and OCHAMPUS. The proposed rule updates this language to reflect that normally the TRICARE contractor will initiate initial collection action to effect recoupment.

Paragraph (f)(6)(iv) of the proposed rule adds language providing that the initial or subsequent demand letter(s) may notify debtors of the mandatory requirement to report delinquent debts to credit reporting agencies and to refer delinquent debts to collection agencies, the Treasury Offset Program (TOP) for collection by administrative offset from Federal tax refunds and other amounts payable by the Government, offset from state payments as well as the requirement that delinquent debts be transferred to Treasury for collection. It also provides that letters may include TMA policies for referring delinquent debts to the Department of Justice.

Paragraph (f)(6)(v) of the proposed rule deletes language found at Paragraph (f)(6)(iii) of the current regulation which stated that offset under the provisions of 31 U.S.C. 3716 was not to be used with respect to debts owed by any state or local government. The collection of debts owed by state and local

governments through administrative offset is no longer prohibited.

Paragraph (f)(6)(v)(A) of the proposed rule is added to implement a requirement of the DCIA that eligible non-tax debts delinquent over 180 days be referred to Treasury for centralized administrative offset, unless otherwise exempted from referral. Debts that were formerly referred directly to the Internal Revenue Service for Tax Refund Offset will be referred for centralized administrative offset. It also provides that salary offsets under 5 U.S.C. 5514 that were formerly effected through referral to an employee's paying agency, pursuant to Paragraph (f)(6)(vi) of 32 CFR § 199.11 will be effected through referral for centralized administrative offset.

Paragraph (f)(6)(vi) of the proposed rule adds this section to implement a mandatory requirement of the DCIA that eligible non-tax debts delinquent over 180 days be transferred to Treasury or a Treasury-Designated Collection Center for collection through cross-servicing, unless otherwise exempted from referral.

Paragraph (f)(6)(ix) of the proposed rule increases the minimum amount of installment payment that may be accepted to \$75.00 per month unless the debtor demonstrates financial hardship. Paragraph (f)(6)(iv) of the current regulation provides that the minimum amount is \$50.00.

Paragraph (f)(6)(xi) of the proposed rule adds language that requires TMA to use government-wide collection contracts to obtain debt collection services through private contractors as provided in 31 CFR 901.5(b). The current regulation provides for TMA to contract for such services.

Paragraph (f)(6)(xii) of the proposed rule adds language which provides that Treasury will report debts transferred to it for collection to credit reporting agencies on behalf of TMA. Paragraph (g)(1) of the proposed rule updates language to authorize the Director, TMA to compromise, suspend or terminate collection action of debts that do not exceed \$100,000 (exclusive of interest, penalties and administrative costs) or less, or such other amount as the Attorney General shall authorize, as provided in 31 CFR 902.1(a). Paragraph (b) of the current regulation limits this authority to \$20,000. Paragraph (g)(3) of the current regulation has been deleted, because the legislation authorizing the waiver has expired.

Paragraph (h) of the proposed rule increases the threshold for referral of cases to the Department of Justice from \$600 to \$2,500 or such other amount as

the Attorney General shall prescribe, as provided in 31 CFR 904.4(a).

The effect of the proposed rule would avoid the expense of court proceedings for both the government and the debtor, as well as reduce administrative handling, provide greater flexibility to recovery efforts, and promote timely settlements of outstanding federal claims.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services, and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review"

Executive Order 12886 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts.

Pub. L. 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a Regulation, which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this proposed rule is not subject to any of these requirements.

This proposed rule, although not economically significant under E.O. 12866, it has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. The changes set forth in the proposed rule are required by the Debt Collection Improvement Act of 1996 (Public Law 104-134, 110 Stat. 1321, 1358 (1996) (DCIA)), as implemented by the Federal Claims Collection Standards, joint regulations issued by the Department of the Treasury and the Department of Justice, 31 CFR parts 900-904.

Pub. L. 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501, et seq.)

It has been certified that this rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995.

Executive Order 13132, Federalism

We have examined the impact of the proposed rule under E.O. 13132 and it does not have policies that have federalism implications that would 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 various levels of government. Therefore, consultation with State and local officials is not required.

This is a proposed rule. Public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, and Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199— [AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.11 is proposed to be revised to read as follows:

§ 199.11 Overpayments recovery.

(a) *General.* Actions to recover overpayments arise when the government has a right to recover money, funds or property from any person, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except another Federal agency, because of an erroneous payment of benefits under both CHAMPUS and the TRICARE program under § 199.17 of this part. The term "Civilian Health and Medical Program of the Uniformed Services" (CHAMPUS) is defined in 10 U.S.C. 1072(4), and referred to under § 199.17 as the basic CHAMPUS program, otherwise known as TRICARE Standard. The term "TRICARE program" is defined in 10 U.S.C. 1072(7) and is referred to under § 199.17 as the triple-option benefit of TRICARE Prime, TRICARE Extra, and TRICARE Standard. It is the purpose of this section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefit

payments arising out of the administration of CHAMPUS and the TRICARE program. For the purpose of this section, references herein to TRICARE beneficiaries, claims, benefits, payments, or appeals shall include CHAMPUS beneficiaries, claims, benefits, payments, or appeals. A claim against several joint debtors arising from a single incident or transaction is considered one claim. The Director, TRICARE Management Activity (TMA), or a designee, may pursue collection against all joint debtors and is not required to allocate the burden of payment between debtors.

(b) *Authority—(1) Federal statutory authority.* The Federal Claims Collection Act, 31 U.S.C. 3701, *et seq.*, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (DCIA), provides the basic authority under which claims may be asserted pursuant to this section. The DCIA is implemented by the Federal Claims Collection Standards, joint regulations issued by the Department of the Treasury and the Department of Justice (DOJ) (31 CFR parts 900–904), that prescribe government-wide standards for administrative collection, offset, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of debts to private collection contractors for resolution, and referral to the Department of Justice for litigation to collect debts owed the Federal government. The regulations under this part are also issued under Treasury regulations implementing the DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5514; 5 CFR 550, subpart K), administrative offset (31 U.S.C. 3716; 31 CFR subpart A); administrative offset of tax refunds (31 U.S.C. 3720A) and offset of military pay (37 U.S.C. 1007(c); Volume 7A, Chapter 50 and Volume 7B, Chapter 28 of the Department of Defense Financial Management Regulation, DOD 7000.14-R¹ (DoDFMR))

(2) *Other authority.* Federal claims may arise under authorities other than the federal statutes, referenced above. These include, but are not limited to: (i) State worker's compensation laws (ii) State hospital lien laws (iii) State no-fault automobile statutes (iv) Contract rights under terms of insurance policies

(c) *Policy.* The Director, TMA, or a designee, shall aggressively collect all debts arising out of its activities. Claims

arising out of any incident, which has or probably will generate a claim in favor of the government, will not be compromised, except as otherwise provided in this section, nor will any person not authorized to take final action on the government's claim, compromise or terminate collection action. Title 28 U.S.C. 2415–2416 establishes a statute of limitation applicable to the government where previously neither limitations nor laches were available as a defense. Claims falling within the provisions of this statute will be referred to the Department of Justice without attempting administrative collection action, if such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) *Appealability.* This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of TRICARE. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.10 of this part may affect the processing of federal claims arising under this section. Those appeal procedures afford a TRICARE beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is an appealable issue. For example, a TRICARE contractor may erroneously make payment for services, which are excluded as TRICARE benefits because they are determined to be not medically necessary. In that event, the contractor will initiate recoupment action, and at the same time, the contractor will offer an administrative appeal as provided in § 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, the pendency of the appeal may provide a basis for the suspension of collection in the recoupment case. If an appeal were resolved entirely in favor of the appealing party, it would provide a basis for the termination of collection action in the recoupment case.

(e) *Delegation.* Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, and compromise or to suspend or terminate collection action arising on claims under the Federal Claims

¹ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

Collection Act has been delegated to the Director, TMA, or a designee.

(f) *Recoupment of erroneous payments.* (1) Erroneous payments are expenditures of government funds, which are not authorized by law or this part. Examples which are sometimes encountered in the administration of TRICARE include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, incorrect application of the deductible or co-payment or payment for services which were not medically necessary. Claims in favor of the government arising, as the result of the filing of false TRICARE claims or other fraud, fall under the cognizance of the Department of Justice. Consequently, procedures in this section apply to such claims only when specifically authorized or directed by the Department of Justice. (See 31 CFR 900.3.) Due to the nature of contractual agreements between network providers and TRICARE prime contractors, recoupment procedures may be modified or adapted to conform to network agreements. The provisions of § 199.11 shall apply if recoupment under the network agreements is not successful.

(2) *Scope*—(i) *General.* Paragraph (f) of this section and the paragraphs following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, patient, beneficiary, provider, physician or other supplier of products or services under TRICARE.

(ii) *Debtor defined.* As used herein, “debtor” means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who for any reason has been erroneously paid under TRICARE. It includes an individual, partnership, corporation, professional corporation or association, estate, trust or any other legal entity.

(iii) *Delinquency defined.* A debt is “delinquent” if it has not been paid by the date specified in the initial written demand for payment (that is, the initial written notification) or other applicable contractual agreement, unless other satisfactory payment arrangements have been made by the date specified in the initial written demand for payment. A debt is considered delinquent if at any time after entering into a repayment agreement, the debtor fails to satisfy any obligations under that agreement.

(3) *Other health insurance claims.* Claims arising from erroneous TRICARE payments in situations where the

beneficiary has entitlement to an insurance, medical service, health and medical plan, including any plan offered by a third party payer as defined in 10 U.S.C. 1095(h)(1) or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396, *et. seq.*), through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped following the procedures in paragraph (f) of this section. If the other plan has not made payment to the beneficiary or provider, the contractor shall first attempt to recover the overpayment from the other plan through the contractor’s coordination of benefits procedures. If the overpayment cannot be recovered from the other plan, or if the other plan has made payment, the overpayment will be recovered from the party that received the erroneous payment from TRICARE.

(4) *Claim denials due to clarification or change.* In those instances where claim review results in the denial of benefits previously provided, but now denied due to a change, clarification or interpretation of the public law or this part, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification or interpretation.

(5) *Good faith payment.* (i) The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a file listing of persons eligible to receive benefits under TRICARE. However, it is the responsibility of the Uniformed Services to provide eligible TRICARE beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution identifying persons claiming to be eligible TRICARE beneficiaries, and furnish otherwise covered services and supplies to such persons in good faith, TRICARE benefits may be paid subject to prior approval by the Director, TMA, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care because of its own careless identification procedures.

(ii) When it is determined that a person was not a TRICARE beneficiary, the TRICARE contractor and the civilian source of medical care are expected to make all reasonable efforts to obtain

payment or to recoup the amount of the good faith payment from the person who erroneously claimed to be the TRICARE beneficiary. Recoupment of good faith payments initiated by the TRICARE contractor will be processed pursuant to the provisions of paragraph (f) of this section.

(6) *Recoupment procedures*—(i) *Initial action.* When an erroneous payment is discovered, the TRICARE contractor normally will be required to take the initial action to effect recoupment. Such actions will be in accordance with the provisions of this part and the TRICARE contracts and will include a demand (or demands) for refund or an offset against any other TRICARE payment(s) becoming due the debtor. When the efforts of the TRICARE contractor to effect recoupment are not successful within a reasonable time, recoupment cases will be referred to the Office of General Counsel, TMA, for further action in accordance with the provisions of paragraph (f) of this section. All requests to debtors for refund or notices of intent to offset shall be in writing.

(ii) *Demand for payment.* Written demand(s) for payment shall inform the debtor of the following:

(A) The basis for and amount of the debt and the consequences of failing to cooperate to resolve the debt;

(B) The right to inspect and copy TRICARE records pertaining to the debt;

(C) The opportunity to request an administrative review by the TRICARE contractor; and that such a request must be received by the TRICARE contractor within 90 days from the date of the initial demand letter;

(D) That payment of the debt is due within 30 days from the date of the initial demand notification;

(E) That interest will be assessed on the debt at the Treasury Current Value of Funds rate, pursuant to 31 U.S.C. 3717, and will begin to accrue on the date of the initial demand letter; and that interest will be waived on the debt, or any portion thereof, which is paid within 30 days from the date of the initial demand notification letter;

(F) That administrative costs and penalties will be charged pursuant to 31 CFR 901.9;

(G) That collection by offset against current or subsequent claims or other amounts payable from the government may be taken;

(H) The opportunity to enter into a written agreement to repay the debt;

(I) The name, address, and phone number of a contact person or office that the debtor may contact regarding the debt.

(iii) A minimum of one demand letter is required. However, the specific content, timing and number of demand letters may be tailored to the type and amount of the debt, and the debtor's response, if any. Contractors' demand letters must be mailed or hand-delivered on the same date they are dated.

(iv) The initial or subsequent demand letters may also inform the debtor of the requirement to report delinquent debts to credit reporting agencies and to collection agencies, the requirement to refer debts to the Treasury Offset Program for offset from Federal income tax refunds and other amounts payable by the Government, offset from state payments, the requirement to refer debts to the Department of Treasury for collection and TRICARE policies concerning the referral of delinquent debts to the Department of Justice for enforced collection action. The initial or subsequent demand letter may also inform the debtor of TRICARE policies concerning waiver. When necessary to protect the Government's interest (for example to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this regulation, including referral to the Department of Justice for litigation. There should be no undue delay in responding to any communication received from the debtor. Responses to communications from debtors should be made within 30 days of receipt whenever feasible. If prior to the initiation of the demand process or at any time during or after completion of the demand process, the Director, TMA, or a designee, determines to pursue or is required to pursue offset, the procedures applicable to administrative offset, found at paragraph (f)(6)(v) of this section must be followed. If it appears that initial collection efforts are not productive or if immediate legal action on the claim appears necessary, the claim shall be referred promptly by the contractor to the Office of General Counsel, TMA.

(v) *Collection by administrative offset.* Collections by offset will be undertaken administratively in every instance when feasible. Collections may be taken by administrative offset under 31 U.S.C. 3716, the common law or other applicable statutory authority. No collection by offset may be undertaken unless the debtor has been sent a written demand for payment, including the procedural safeguards described in paragraph (f)(6)(ii) of this section, unless the failure to take the offset would substantially prejudice the Government's ability to collect the debt, and the time before payment is to be made does not reasonably permit the

time for sending written notice. Such prior offset must be promptly followed by sending a written notice and affording the debtor the opportunity for a review by the TRICARE contractor. Examples of erroneous payments include, but are not limited to, claims submitted by individuals ineligible for TRICARE benefits, claims submitted for non-covered services or supplies, claims for which payments by another insurance or health plan reduces TRICARE liability and from claims made from participating providers in which payment was initially erroneously made to the beneficiary. The resolution of recoupment claims rarely involves issues of credibility or veracity and a review of the written record is ordinarily an adequate means to correct prior mistakes. For this reason, the pre-offset oral hearing requirements of the Federal Claims Collection Standards, 31 CFR 901.3(e) do not apply to the recoupment of erroneous TRICARE payments. However, in instances where an oral hearing is not required, the debtor will be afforded an administrative review if the TRICARE contractor receives a written request for an administrative review within 90 days from the date of the initial demand letter. The appeals procedures described in § 199.10 of this part, affords a TRICARE beneficiary or participating provider an opportunity for an administrative appellate review, including under certain circumstances, the right to an oral hearing before a hearing officer when an appealable issue exists. TRICARE contractors may take administrative action to offset erroneous payments against other current TRICARE payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or part of a debt may be offset depending on the amount available for offset. Any requests for offset received from other agencies and garnishment orders issued by courts of competent jurisdiction will be forwarded to the Office of General Counsel, TMA. Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the TRICARE official or officials charged with the responsibility to discover and

collect such debts. This limitation does not apply to debts reduced to judgment. This section does not apply to debts arising under the Social Security Act, except as provided in 42 U.S.C. 404, payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c), debts arising under, or payments made under, the Internal Revenue Code, except for offset of tax refunds or tariff laws of the United States; offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716; offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States; offset or recoupment under common law, state law, or federal statutes specifically prohibiting offset or recoupment of particular types of debts or offsets in the course of judicial proceedings, including bankruptcy.

(A) *Referral for centralized administrative offset.* When cost-effective, legally enforceable non-tax debts delinquent over 180 days delinquent that are eligible for collection through administrative offset shall be referred to the Department of the Treasury for administrative offset, unless otherwise exempted from referral. Referrals shall include certification that the debt is past due and legally enforceable and that TMA has complied with all due process requirements of the statute-authorizing offset. Administrative offset, including administrative offset against tax refunds due debtors under 26 U.S.C. 6402, in accordance with 31 U.S.C. 3720A, shall be effected through referral for centralized administrative offset, after debtors have been afforded at least sixty (60) days notice required in paragraph (f)(6) of this section. Salary offsets shall be effected through referral for centralized administrative offset, after debtors have been afforded due process required by 5 U.S.C. 5514, in accordance with 31 CFR 285.7. Referrals for salary offset shall include certification that the debts are past due, legally enforceable debts and that TMA has complied with all due process requirements under 5 U.S.C. 5514 and applicable agency regulations. The Treasury, Financial Management Service (FMS) may waive the salary offset certification requirement set forth in 31 CFR 285.7, as a prerequisite to submitting the debt to FMS for offset from other payment types. If FMS waives the certification requirement, before an offset occurs, TMA will provide the employee with the notice and opportunity for a hearing as

required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable agency regulations have been met. TMA is not required to duplicate notice and administrative review or salary offset hearing opportunities before referring debts for centralized administrative offset when the debtor has been previously given them.

(B) *Referral for non-centralized administrative offset.* Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due legally enforceable non-tax delinquent debts that are eligible for referral may be collected through non-centralized administrative offset through a request directly to the payment-authorizing agency. Referrals shall include certification that the debts are past due and that the agency has complied with due process requirements under 31 U.S.C. 3716(a) or other applicable authority and applicable agency regulations concerning administrative offset. Generally, non-centralized administrative offsets will be made on an *ad hoc* case-by-case basis, in cooperation with the agency certifying or authorizing payments to the debtor.

(vi) *Collection by transfer of debts to Treasury or a Treasury-designated debt collection center for collection through cross-servicing.* (A) The Director, TMA or a designee, is required to transfer legally enforceable non-tax debts that are delinquent 180 days or more to the Department of the Treasury for collection through cross-servicing (31 U.S.C. 3711(g); 31 CFR 285.12.) Debts referred or transferred to Treasury or Treasury-designated debt collection centers shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts. Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. This fee may be paid out of amounts collected and may be added to the debt as an administrative cost. Referrals will include certification that the debts transferred are valid, legally enforceable debts, that there are no legal bars to collection and that the agency has complied with all prerequisites to a particular collection action under the applicable laws, regulations or policies, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

(B) The requirement of paragraph (1) of this section does not apply to any debt that:

- (1) Is in litigation or foreclosure.
- (2) Will be disposed of under an approved asset sale program.
- (3) Has been referred to a private collection contractor for a period of time acceptable to Treasury.
- (4) Will be collected under internal offset procedures within 3 years after the debt first became delinquent.
- (5) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.
- (vii) *Collection by salary offset.* When a debtor is a member of the military service or a retired member and collection by offset against other TRICARE payments due the debtor cannot be accomplished, and there have been no positive responses to a demand for payment, the Director, TMA, or a designee, may refer the debt for offset from the debtor's pay account pursuant to 37 U.S.C. 1007(c), as implemented by Volume 7A, Chapter 50 and Volume 7B, Chapter 28 of the DoDFMR. Collection from a Federal employee may be effected through salary offset under 5 U.S.C. 5514.

(A) For collections by salary offset the Director, TMA, or designee, will issue written notification, as required by 5 CFR 550.1104(d) at least 30 days before any offsets are taken. In addition, the notification will advise the employee that if he or she retires, resigns or his or her employment ends before collection of the debt is completed, collection may be made from subsequent payments of any nature due from the United States (e.g., final salary payment, lump-sum leave under 31 U.S.C. 3716 due the employee as of date of separation.) A debtor's involuntary payment of all or part of a debt being collected will not be construed as a waiver of any rights the debtor may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary or the employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay. No interest will be paid on amounts waived or determined not to be owed unless there are statutory or contractual provisions to the contrary.

(B) *Petition for hearing.* The notice of the proposed offset will advise the debtor of his or her right to petition for a hearing. The petition for hearing must be signed by the debtor or his or her representative and must state whether he or she is contesting debt validity,

debt amount and/or the terms of the proposed offset schedule. It must explain with reasonable specificity all the facts, evidence and witnesses, if any (in the case of an oral hearing and a summary of their anticipated testimony), which the debtor believes support his or her position, and include any supporting documentation. If contesting the terms of the proposed offset schedule, the debtor must provide financial information including a completed Department of Justice Financial Statement of Debtor form (OBD-500 or other form prescribed by DOJ), including specific details concerning income and expenses of the employee, his or her spouse and dependents for 1-year period preceding the debt notification and projected income and expenses for the proposed offset period and a statement of the reason why the debtor believes the salary offset schedule will impose extreme financial hardship. Upon receipt of the petition for hearing, the Director, TMA, or a designee, will complete reconsideration. If the Director, TMA, or a designee determines that the debt amount is not owed, that a less amount is owed, or that the terms of the employee's proposed offset schedule are acceptable, it will advise the debtor and request that the employee accept the results of the reconsideration in lieu of a hearing. If the employee declines to accept the results of reconsideration in lieu of a hearing, the debtor will be afforded a hearing. Ordinarily, a petition for hearing and required submissions that are not timely filed, shall be accepted after expiration of the deadline provided in the notice of the proposed offset, only when the debtor can demonstrate to the Director, TMA, or a designee, that the timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it). Each request for an exception to the timely filing requirement will be considered on its own merits. The decision of the Director, TMA, or a designee, on a request for an exception to the timely filing requirement shall be final.

(C) *Extreme financial hardship.* The maximum authorized amount that may be collected through involuntary salary offset is the lesser of 15 percent of the employee's disposable pay or the full amount of the debt. An employee who has petitioned for a hearing may assert that the maximum allowable rate of involuntary offset produces extreme

financial hardship. An offset produces an extreme financial hardship if the offset prevents the employee from meeting the costs necessarily incurred for the essential expenses of the employee, employee's spouse and dependents. These essential expenses include costs incurred for food, housing, necessary public utilities, clothing, transportation and medical care. In determining whether the offset would prevent the employee from meeting the essential expenses identified above, the following shall be considered:

(1) Income from all sources of the employee, the employee's spouse, and dependents;

(2) The extent to which assets of the employee, employee's spouse and dependents are available to meet the offset and essential subsistence expenses;

(3) Whether these essential subsistence expenses have been minimized to the greatest extent possible;

(4) The extent to which the employee or the employee's spouse can borrow money to meet the offset and other essential expenses; and

(5) The extent to which the employee and the employee's spouse and dependents have other exceptional expenses that should be taken into account and whether these expenses have been minimized.

(D) *Form and content of hearings.* The resolution of recoupment claims rarely involves issues of credibility or veracity and a review of the written record is ordinarily an adequate means to determine the validity or amount of the debt and/or the terms of a proposed offset schedule. The Director, TMA, or a designee, will determine whether an oral hearing is required. A debtor who has petitioned for a hearing, but who is not entitled to an oral hearing will be given an administrative hearing, based on the written documentation submitted by the debtor and the Director, TMA, or a designee. If the Director, TMA, or a designee, determines that the debtor should be afforded the opportunity for an oral hearing, the debtor may elect to have a hearing based on the written record in lieu of an oral hearing. The Director, TMA, or a designee, will provide the debtor (or his representative) notification of the time, date and location of the oral hearing to be held if the debtor has been afforded an oral hearing. Copies of records documenting the debt will be provided to the debtor or his representative (if they have not been previously provided), at least 3 calendar days prior to the date of the oral hearing. At oral hearings, the only evidence permitted,

except oral testimony, will be that which was previously submitted as pre-hearing submissions. At oral hearings, the debtor may not raise any issues not previously raised with TMA. In the absence of good cause shown, a debtor who fails to appear at an oral hearing will be deemed to have waived the right to a hearing and salary offset may be initiated.

(E) *Costs for attendance at oral hearings.* Debtors and their witnesses will bear their own costs for attendance at oral hearings.

(F) *Hearing official's decision.* The Hearing Official's decision will be in writing and will identify the documentation reviewed. It will indicate the amount of debt that he or she determined is valid and shall state the amount of the offset and the estimated duration of the offset. The determination of a hearing official designated under this section is considered an official certification regarding the existence and amount of the debt and/or the terms of the proposed offset schedule for the purposes of executing salary offset under 5 U.S.C. 5514. The Hearing Official's decision must be issued at the earliest practical date, but not later than 60 days from the date the petition for hearing is received by the Office of General Counsel, TMA, unless the debtor requests, and the Hearing Official grants a delay in the proceedings. If a hearing official determines that the debt may not be collected by salary offset, but the Director, TMA, or a designee, finds the debt is still valid, the Director, TMA or a designee, may seek collection through other means, including but not limited to, offset from other payments due from the United States.

(viii) RESERVED

(ix) *Collection of installments.* Debts, including interest, penalty and administrative costs shall be collected in one lump sum whenever possible. However, when the debtor is financially unable to pay the debt in one lump sum, the TRICARE contractor or the Director, TMA, or designee, may accept payment in installments. Debtors claiming that lump sum payment will create financial hardship may be required to complete a Department of Justice Financial Statement of Debtor form or provide other financial information that will permit TMA to verify such representations. TMA may also obtain credit reports to assess installment requests. Normally, debtors will make installment payments on a monthly basis. Installment payment shall bear a reasonable relationship to the size of the debt and the debtor's ability to pay. Except when a debtor can demonstrate

financial hardship or another reasonable cause exists, installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less. (31 CFR 901.8(b)). Normally, installment payments of \$75 or less will not be accepted unless the debtor demonstrates financial hardship. Any installment agreement with a debtor in which the total amount of deferred installments will exceed \$750, should normally include an executed promissory agreement. Copies of installment agreements will be retained in the contractor's or TMA, Office of General Counsel's files.

(x) *Interest, penalties, and administrative costs.* Title 31 U.S.C. 3717 and the Federal Claims Collection Standards, 31 CFR 901.9, require the assessment of interest, penalty and administrative costs on delinquent debts. Interest shall accrue from the date the initial debt notification is mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (the Treasury tax and loan account rate). The collection of interest on the debt or any portion of the debt, which is paid within 30 days after the date on which interest begins to accrue, shall be waived. The Director, TMA, or designee, may extend this 30-day period on a case-by-case basis, if it reasonably determines that such action is appropriate. The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness; except that where the debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded; that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. However, if a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement, shall be added to the principal under the new repayment agreement. The collection of interest, penalties and administrative costs may be waived in whole or in part as a part of the compromise of a debt as provided in paragraph (g) of this section. In addition, the Director, TMA, or designee may waive in whole or in part, the collection of interest, penalties, or administrative costs assessed herein if he or she determines that collection would be against equity and good conscience and not in the best interest of the United States. Some situations in

which a waiver may be appropriate include:

(A) Waiver of interest consistent with 31 CFR 903.2(c)(2) in connection with a suspension of collection when a TRICARE appeal is pending under § 199.10 of this part where there is a substantial issue of fact in dispute.

(B) Waiver of interest where the original debt arose through no fault or lack of good faith on the part of the debtor and the collection of interest would impose a financial hardship or burden on the debtor. Some examples in which such a waiver would be appropriate include: a debt arising when a TRICARE beneficiary in good faith files and is paid for a claim for medical services or supplies, which are later determined not to be covered benefits, or a debt arising when a TRICARE beneficiary is overpaid as the result of a calculation error on the part of the TRICARE contractor or TMA.

(C) Waiver of interest where there has been an agreement to repay a debt in installments, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is so large in relation to the size of the installments that the debtor can reasonably afford to pay, that it is likely the debt will never be repaid in full. When a debt is paid in installments, the installment payments first will be applied to the payment of outstanding penalty and administrative cost charges, second, to accrued interest and then to principal. Administrative costs incurred as the result of a debt becoming delinquent (as defined in paragraph (f)(2)(iii) of this section) shall be assessed against a debtor. These administrative costs represent the additional costs incurred in processing and handling the debt because it became delinquent. The calculation of administrative costs should be based upon cost analysis establishing an average of actual additional costs incurred in processing and handling claims against other debtors in similar stages of delinquency. A penalty charge, not exceeding six percent a year, shall be assessed on the amount due on a debt that is delinquent for more than 90 days. This charge, which need not be calculated until the 91st day of delinquency, shall accrue from the date that the debt became delinquent.

(xi) *Referral to private collection agencies.* TMA shall use government-wide debt collection contracts to obtain debt collection services provided by private contractors in accordance with 31 CFR 901.5(b).

(xii) *Reporting delinquent debts to credit reporting agencies.* Delinquent consumer debts shall be reported to

credit reporting agencies. Delinquent debts are debts which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial debt notification letter, or those for which the debtor has entered into a written payment agreement and installment payments are past due 30 days or longer. Such referrals shall comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The provisions of the Privacy Act do not apply to credit bureaus (31 CFR 901.4(1)). There is no requirement to duplicate the notice and review opportunities before referring debts to credit bureaus. Debtors will be advised of the specific information to be transmitted (i.e., name, address, and taxpayer identification number, information about the debt). Procedures developed for such referrals must ensure that an accounting of the disclosures shall be kept which is available to the debtor; that the credit reporting agencies are provided with corrections and annotations of disagreements of the debtor; and that reasonable efforts are made to ensure that the information to be reported is accurate, complete, timely and relevant. When requested by a credit-reporting agency, verification of the information disclosed will be provided promptly. Once a claim has been reviewed and determined to be valid, a complete explanation of the claim will be given the debtor. When the claim is overdue, the individual will be notified in writing that payment is overdue; that within not less than 60 days, disclosure of the claim shall be made to a consumer reporting agency unless satisfactory payment arrangements are made, or unless the debtor requests an administrative review and demonstrates some basis on which the debt is legitimately disputed; and of the specific information to be disclosed to the consumer reporting agency. The information to be disclosed to the credit reporting agency will be limited to information necessary to establish the identity of the debtor, including name, address and taxpayer identification number; the amount, status and history of the claim; and the agency or program under which the claim arose. Reasonable action will be taken to locate an individual for whom a current address is not available. The requirements of this section do not apply to commercial debts, although commercial debts shall be reported to commercial credit bureaus. The Department of the Treasury will report debts transferred to it for collection to

credit reporting agencies on behalf of the Director, TMA, or a designee.

(xiii) *Use and disclosure of mailing addresses.* In attempting to locate a debtor in order to collect or compromise a debt under this section, the Director, TMA, or a designee, may send a written request to the Secretary of the Treasury, or a designee, for current address information from records of the Internal Revenue Service. TMA may disclose mailing addresses obtained under this authority to other agencies and to collection agencies for collection purposes.

(g) *Compromise, suspension or termination of collection actions arising under the Federal Claims Collection Act—(1) Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of TRICARE may be compromised or collection action taken thereon may be suspended or terminated in compliance with the Federal Claims Collection Act, 31 U.S.C. 3711, as implemented by the Federal Claims Collection Standards, 31 CFR parts 900–904. The provisions concerning compromise, suspension or termination of collection activity pursuant to 31 U.S.C. 3711 apply to debts, which do not exceed \$100,000 or any higher amount authorized by the Attorney General, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or any higher amount authorized by the Attorney General, exclusive of interest, penalties and administrative costs, the authority to suspend or terminate rests solely with the DOJ.

(2) *Authority.* TRICARE contractors are not authorized to compromise or to suspend or terminate collection action on TRICARE claims. Only the Director, TMA, or designee or Uniformed Services claims officers acting under the provisions of their own regulations are so authorized.

(3) *Basis for compromise.* A compromise should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time collection will take. A claim may be compromised hereunder if the government cannot collect the full amount if:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The cost of collecting the claim does not justify enforced collection of the full amount; or

(iii) The government is unable to enforce collection of the full amount within a reasonable time by enforced collection proceedings; or

(iv) There is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed; or

(v) The cost of collecting the claim does not justify enforced collection of the full amount.

(4) *Basis for suspension.* Collection action may be suspended for the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim, considering its size and the amount, which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor's financial condition is expected to improve; or

(iii) The debtor is unable to make payments on the government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action and;

(A) The applicable statute of limitations has been tolled or started running anew; or

(B) Future collections can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims with due regard to the 10-year limitation for administrative offset under 31 U.S.C. 3716(e)(1); or

(C) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended and such temporary suspension is likely to enhance the debtor's ability fully to pay the principal amount of the debt with interest at a later date.

(iv) Consideration may be given by the Director, TMA, or designee to suspend collection action pending action on a request for a review of the government's claim against the debtor or pending an administrative review under § 199.10 of this part of any TRICARE claim or claims directly involved in the government's claim against the debtor. Suspension under this paragraph will be made on a case-by-case basis as to whether:

(A) There is a reasonable possibility that the debt (in whole or in part) will be found not owing from the debtor;

(B) The Government's interest would be protected if suspension were granted by reasonable assurance that the debt would be recovered if the debtor does not prevail; and

(C) Collection of the debt will cause undue hardship.

(5) Collection action may be terminated for one or more of the following reasons:

(i) TMA cannot collect or enforce collection of any substantial amount through its own efforts or the efforts of others, including consideration of the judicial remedies available to the government, the debtor's future financial prospects, and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, and either;

(iii) The costs of collection are anticipated to exceed the amount recoverable; or

(iv) It is determined that the debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations; or

(v) The debt cannot be substantiated; or

(vi) The debt against the debtor has been discharged in bankruptcy. Collection activity may be continued subject to the provisions of the Bankruptcy Code, such as collection of any payments provided under a plan of reorganization or in cases when TMA did not receive notice of the bankruptcy proceedings.

(6) In determining whether the debt should be compromised, suspended or terminated, the responsible TMA collection authority will consider the following factors:

(i) Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; and the availability of assets or income which may be realized upon by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at a forced sale;

(iv) The probability of proving the claim in court because of legal issues involved or because of a bona fide dispute of the facts; the probability of full or partial recovery; the availability of necessary evidence and related pragmatic considerations. Debtors may be required to provide a completed Department of Justice Financial Statement of Debtor form (OBD-500 or such other form that DOJ shall prescribe) or other financial information that will permit TMA to verify debtors' representations. TMA may obtain credit reports or other financial information to

enable it independently to verify debtors' representations.

(7) *Payment of compromised claims—*

(i) *Time and manner.* Compromised claims are to be paid in one lump sum whenever possible. However, if installment payments of a compromised claim are necessary, a legally enforceable compromise agreement must be obtained. Payment of the amount that TMA has agreed to accept as a compromise in full settlement of a TRICARE claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised amount is not settled until full payment of the compromised amount has been made within the time and manner prescribed. Compromise agreements must provide for the reinstatement of the prior indebtedness, less sums paid thereon, and acceleration of the balance due upon default in the payment of any installment.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to default.

(iii) Effect of compromise, waiver, suspension or termination of collection action. Pursuant to the Internal Revenue Code, 26 U.S.C. 6050P, compromises and terminations of undisputed debts totaling \$600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed. Amounts, other than those discharged in bankruptcy, will be included in the debtor's gross income for that year. Any action taken under paragraph (g) of this section regarding the compromise of a federal claim, or waiver or suspension or termination of collection action on a federal claim is not an initial determination for the purposes of the appeal procedures in § 199.10.

(h) *Referrals for collection—*(1) *Prompt referral.* Federal claims of \$2,500, exclusive of interest, penalties and administrative costs, or such other amount as the Attorney General shall from time to time prescribe on which collection action has been taken under the provisions of this section which cannot be collected or compromised or on which collection action cannot be suspended or terminated as provided herein, will be promptly referred to the Department of Justice for litigation in accordance with 31 CFR part 904. Such referrals shall be made as early as possible consistent with aggressive collection action made by TRICARE contractors and TMA. Referral will be made with sufficient time to bring timely suit against the debtor. Referral

shall be made by submission of a completed Claims Collection Litigation Report (CCLR), accompanied by a signed Certificate of Indebtedness. Claims of less than the minimum amount shall not be referred unless litigation to collect such smaller claims is important to ensure compliance with TRICARE's policies or programs; the claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the referring office for enforcement; or the debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and judicial remedies available to the Government.

(2) *Preservation of evidence.* The Director, TMA, or a designee will take such action as is necessary to ensure that all files, records and exhibits on claims referred, hereunder, are properly preserved.

(i) *Claims involving indication of fraud, filing of false claims or misrepresentation.* Any case in which there is an indication of fraud, the filing of a false claim or misrepresentation on the part of the debtor or any party having an interest in the claim, shall be promptly referred to the Director, TMA, or designee. The Director, TMA, or a designee, will investigate and evaluate the case and either refers the case to an appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all TRICARE beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until the Director, TMA, or designee, authorizes payment or denial of the claims. Collection action on all claims in which a suspicion of fraud, misrepresentation or filing false claims arises, will be suspended pending referral to the appropriate law enforcement agencies by the Director, TMA, or a designee. Only the Department of Justice has authority to compromise, suspend or terminate collection of such debts.

Dated: December 14, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Establishment of Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management, Cape Hatteras National Seashore

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice of establishment and Notice of the first and second meetings of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore.

SUMMARY: The Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore (Seashore) is established under the authority of 16 U.S.C. 1a-2(c), and in accordance with the Negotiated Rulemaking Act, 5 U.S.C. 561-570. The establishment of this Committee is in the public interest and supports the NPS in performing its duties and responsibilities under the NPS Organic Act, 16 U.S.C. 1 *et seq.*; Executive Order 11644, as amended by Executive Order 11989; 36 CFR 4.10; the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; the enabling legislation for the Seashore, 16 U.S.C. 459 *et seq.*; and other legal authorities.

An unusual combination of events in the preparation, approval, and transmission of this notice has resulted in the publication of this notice less than 15 days before the date of the first meeting and official date of establishment. The National Park Service has made extraordinary efforts to provide other forms of notification to all Committee members and to the public.

DATES: The Committee will hold its first meeting on January 3-4, 2008, from 8:30 a.m. to 5:30 p.m. on January 3, and from 8:30 a.m. to 3:30 p.m. on January 4. The meetings on both days will be held at the Avon Fire Hall, 40159 Harbor Drive, Avon, North Carolina 27915.

The Committee will hold its second meeting on February 26-27, 2008, from 8:30 a.m. to 5:30 p.m. on February 26, and from 8:30 a.m. to 3:30 p.m. on February 27. The meetings on both days will be held at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hills, North Carolina 27948.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Outer Banks Group, 1401 National Park Drive, Manteo, North Carolina 27954, (252) 473-2111, ext. 148.

SUPPLEMENTARY INFORMATION: The Committee's function is to assist directly in the development of special regulations for management of off-road vehicles (ORVs) at Cape Hatteras National Seashore (Seashore). Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the NPS published a general regulation at 36 CFR 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR 1.5 regarding closures. Members of the Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed special regulation, to be published by the NPS in the **Federal Register**, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

In accordance with the Negotiated Rulemaking Act, 5 U.S.C. 561-570, a Notice of Intent to Establish a Negotiated Rulemaking Advisory Committee was published in the **Federal Register** on June 28, 2007, providing a 30-day public comment period which concluded July 30, 2007. The NPS received 143 comment letters or comment entries in the NPS Planning, Environment, and Public Comment (PEPC) on-line system during the comment period.

Responses to Comments Suggesting Additions to the Committee

The NPS received comments from a number of nonresident owners and renters of vacation homes asking that representatives of the Hatteras Landing Homeowners Association, Inc., and the Hatteras Island Homeowners Coalition be appointed as members of the Committee to represent their interests (nonresident property owners/renters and pedestrian and safety issues respectively) and to better balance the representation of interests on the Committee. One commenter noted that Hatteras Island is a premier surfing destination on the East Coast, and asked that NPS consider appointing a local resident from the Eastern Surfers Association or a representative from the Surfrider Foundation to represent interests of surfers.

Response

The NPS is aware that a balanced Committee is necessary for discussions

to be meaningful and fair. The Negotiated Rulemaking Act states that a Federal agency considering negotiated rulemaking must determine that there are a limited number of identifiable interests that will be significantly affected by the rule, and that there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified. The Act also states that a Federal agency can use the services of a "convener" to make these determinations. The NPS, working through the U.S. Institute for Environmental Conflict Resolution, contracted with the Consensus Building Institute and Fisher Collaborative Services, which subsequently assisted in identifying interests that would be significantly affected by a proposed rule, and representatives of those interests. The Cape Hatteras National Seashore: Negotiated Rulemaking Feasibility Report (Feasibility Report) noted that there is no Outer Banks-wide organization that represents nonresident property owners and that there is no known, local or regional organized group whose primary interest is pedestrian beach use and public safety. The NPS agrees that nonresident homeowner and pedestrian-only areas interests are underrepresented in its initial proposal. Accordingly, NPS has recommended that the Hatteras Landing Homeowners Association be given a seat on the Committee with its president, Jeffrey Wells, appointed as a member to represent the interests of nonresident homeowners. The NPS has further recommended that the Hatteras Island Homeowners Coalition be given a seat on the Committee with its president, Stephen Kayota, appointed as a member to represent pedestrian and safety interests.

The Surfrider Foundation and the Eastern Surfing Association promote conservation and protection of ocean and coastal environments from pollution. Because the conservation and environmental protection interest is represented by other groups with similar perspectives, NPS determined that the interests of surfers would be represented adequately by the other conservation/environmental groups and that the access and experience interests, which are also important to surfers, would be represented adequately by other groups in the user category such as the Cape Hatteras Recreational Alliance and the Watersports Industry Association.

Comments Suggesting Restructuring the Committee

Several comments stated that the Committee was not balanced, citing the overlapping group memberships of a number of the ORV and recreational fishing proponent members. One comment suggested that a smaller and more balanced Committee should be created. Some comments suggested removing proposed members perceived as argumentative, biased, and not willing to look for consensus.

A Commenter also suggested that the two proposed representatives from the Watersports Industry Association be replaced by representatives from the Eastern Surfing Association or the Surfrider Foundation to represent interests of surfers. This comment questioned the appropriateness of appointing individuals with vested business interests in access to the beach for business purposes and stated that the Watersports Industry Association does not have a broad base of support for the sports enjoyed on Hatteras and Ocracoke.

Response

The NPS understands that a number of representatives have overlapping memberships in different groups. The Feasibility Report also noted this overlap while recognizing that, even though there are common interests, each member also represents a different perspective and interest that needs to be represented for the Committee to negotiate a proposed rule that will consider all interests. All interest groups significantly affected by the ORV regulation must be involved in any meaningful negotiation. Moreover, the final membership proposed must represent a balance of interests. The NPS believes that the final composition of the Committee will accomplish these purposes.

The NPS has been advised by the Department of the Interior ethics office that appointment to a negotiated rulemaking committee of individuals with interests in access to the beach for business purposes is acceptable. Further, ethics rules relating to advisory committees will be discussed at an early meeting of the Committee to ensure that members understand them. Finally, NPS agrees that the Watersports Industry Association is concerned with a broader spectrum of activities than are enjoyed at Cape Hatteras National Seashore, but notes that those activities, such as surfing, enjoyed on Hatteras and Ocracoke are included within its interests.

Comments on Committee Purpose and Process

Comments were received on additional factors surrounding the establishment of the Committee. Broadly categorized, these comments addressed: the willingness of members to negotiate and reach consensus, and proposed procedures and guidelines for the Committee.

Response

Committee members are required to negotiate in good faith, including considering others' perspectives and approaching negotiations with an open mind. Every proposed Committee member has agreed to do this. Also, to police itself, the Committee will adopt ground rules to enhance its ability to negotiate and reach consensus. Finally, the NPS Designated Federal Official for the Committee has the authority to recommend to the Secretary that a member who is not negotiating in good faith be removed from the Committee.

The procedures and guidelines for the Committee that one commenter proposed are similar to those recommended by the Feasibility Report with which the NPS has concurred. The NPS expects that the Committee will consider these procedures and guidelines when it adopts its ground rules.

Additional Comments

A number of comments were received that did not address the establishment, scope or membership of the negotiated rulemaking Committee, but did address the general issue of ORVs at Cape Hatteras National Seashore. Those comments fell into the following categories: Support or opposition for different levels of ORV access; options for specific elements of an ORV management plan; opinions on the meaning of the Seashore's enabling legislation; support for strict enforcement and penalties for violations of ORV regulations; concerns about visitor safety and beach driving; park values, including recreational surf-fishing, enjoyment of wildlife and nature, opportunity for family bonding, and enjoyment of the park's beaches; potential impacts of ORV management on socioeconomics, visitor use and experience, wildlife and wildlife habitat, and topographic conditions; the recent U.S. District Court Order; the Interim Protected Species Management Strategy/Environmental Assessment; and the proposed critical habitat designation.

Response

The NPS is preparing an ORV Management Plan and associated environmental impact statement that will evaluate a full range of reasonable alternatives for ORV management at Cape Hatteras National Seashore. The NPS will take these comments into consideration when preparing the plan.

Committee Membership

The Secretary of the Interior has appointed the following primary and alternate members to the Committee:

Civic and Homeowner Associations:

1. Rodanthe-Waves-Salvo Civic Association, member C.A. Duke, alternate Pat Weston (Greater Kinnakeet Shores Homeowners, Inc., and Rodanthe-Waves-Salvo Civic Association).

2. Avon Property Owners Association, member Frank Folb, alternate Pat Weston (Greater Kinnakeet Shores Homeowners, Inc., and Rodanthe-Waves-Salvo Civic Association).

3. Hatteras Island Homeowners Coalition, member Steven Kayota, alternate Vincenzo Sanguineti (Hatteras Island Homeowners Coalition).

4. Hatteras Village Civic Association, member Roy Kingery.

5. Hatteras Landing Homeowners Association, Inc., member Jeffrey Wells.

Commercial Fishermen:

6. North Carolina Fisheries Association, Michael Peele, alternate William Foster (North Carolina Fisheries Association).

Environmental and Natural Resource Conservation Groups, State/Regional/Local:

7. Southern Environmental Law Center, member Derb Carter, alternate Michelle Nowlin (Southern Environmental Law Center).

8. North Carolina Audubon, member Walker Golder, alternate Sidney Maddock (National Audubon Society).

Environmental and Natural Resource Conservation Groups, National:

9. Coalition of National Park Service Retirees, member Robert Milne, alternate Dwight Rettie (Coalition of National Park Service Retirees).

10. Defenders of Wildlife, member Jason Rylander, alternate Andrew Hawley (Defenders of Wildlife).

11. Natural Resources Defense Council and The Wilderness Society, member Destry Jarvis, alternate Leslie Jones (The Wilderness Society).

12. The Nature Conservancy, member Sam Pearsall, alternate Aaron McCall (The Nature Conservancy).

Government, County:

13. Dare County, member Warren Judge, alternate Lee Wrenn (Dare County).

14. Hyde County, member David Scott Esham, alternate Eugene Ballance (Hyde County).

Government, Federal:

15. Cape Hatteras National Seashore, member Michael Murray, alternate Thayer Broili (Cape Hatteras National Seashore).

16. U.S. Fish and Wildlife Service, member Pete Benjamin, alternate David Rabon (U.S. Fish and Wildlife Service).

Government, State:

17. North Carolina Marine Fisheries Commission, member Wayne Mathis, alternate Sara Winslow (North Carolina Marine Fisheries Commission).

18. North Carolina Wildlife Resources Commission, member David Allen, alternate Susan Cameron (North Carolina Wildlife Resources Commission).

Tourism, Visitation, and Business organizations:

19. Cape Hatteras Business Allies, member Judy Swartwood, alternate David Goodwin (Cape Hatteras Business Allies).

20. Outer Banks Chamber of Commerce, member Scott Leggat, alternate Sam Hagedon (Outer Banks Chamber of Commerce).

21. Outer Banks Visitors Bureau, member Carolyn McCormick, alternate Renee Cahoon (Outer Banks Chamber of Commerce).

User Groups, OVR Use:

22. North Carolina Beach Buggy Association, member Jim Keene, alternate David Joyner (North Carolina Beach Buggy Association).

23. United Four Wheel Drive Associations, member Carla Boucher, alternate Lyle Piner (United Four Wheel Drive Associations).

User Groups, Open Access:

24. Outer Banks Preservation Association, member John Alley, alternate John Couch (Outer Banks Preservation Association).

User Groups, Other Users:

25. Cape Hatteras Bird Club, member Ricky Davis, alternate Raymond Moore (Cape Hatteras Bird Club).

26. Cape Hatteras Recreational Alliance, member Jim Lyons, alternate Burnham Gould, Jr. (Cape Hatteras Recreational Alliance).

27. Water Sports Industry Association, member Trip Forman, alternate Matt Nuzzo (Water Sports Industry Association).

User Groups, Recreational Fishing:

28. American Sportfishing Association, member Bob Eakes, alternate Patricia Doerr (American Sportfishing Association).

29. Cape Hatteras Anglers Club, member Larry Hardham, alternate Robert Davis (Cape Hatteras Anglers Club).

30. Recreational Fishing Alliance, member Patrick Paquette, alternate Ronald Bounds (Recreational Fishing Alliance).

In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress.

Notice of First and Second Meeting:

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the first and second meeting of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore. (See **DATES** section.)

These, and any subsequent meetings, will be held for the following reason: to work with the National Park Service to assist in potentially developing special regulations for ORV management at Cape Hatteras National Seashore.

The proposed agenda for the first and second meeting of the Committee may contain the following items: FACA Ethics Briefing, Managing Administrative Record, Review FACA Charter, Discuss and Approve Groundrules, NEPA Update, Subcommittee Update, Alternatives Discussion, Review and Approve Workplan, and Public Comment. However, the Committee may modify its agenda during the course of its work. The meetings are open to the public. Interested persons may provide brief oral/written comments to the Committee during the public comment period of the meeting or file written comments with the Park Superintendent.

Certification

I hereby certify that the administrative establishment of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.*, and other statutes relating to the administration of the National Park System.

Dated: November 26, 2007.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 07-6152 Filed 12-19-07; 8:45 am]

BILLING CODE 4310-X6-P

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 223**

RIN 0596-AB81

Notice of Extension of Public Comment Period—Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products**AGENCY:** Forest Service, USDA.**ACTION:** Notice of Extension of Public Comment Period.

SUMMARY: The public comment period is being extended an additional 30 days for the proposed rule governing the disposal of special forest products from National Forest System lands. The original notice called for comments to be submitted by December 21, 2007 (FR 72, 59496-59506, published on Monday, October 22, 2007). As stated in the original Public Notice, special forest products include, but are not limited to, wildflowers, mushrooms, moss, nuts, seeds, tree sap, and Christmas trees. The proposed rule also formally establishes a pilot program to charge and collect fees for the harvest and sale of forest botanical products on National Forest System lands. The proposed rule is intended to facilitate sustainable harvest of special forest products and forest botanical products. Public comment is invited and will be considered in the development of the final rule.

DATES: Comments must be received in writing by January 22, 2008.

ADDRESSES: Send written comments to Director, Forest Management Staff, USDA Forest Service, Mail Stop 1103, 1400 Independence Avenue, SW., Washington, DC 20250, by fax to (202) 205-1045, or by e-mail to wospecialproducts@fs.fed.us. Comments also may be submitted via the World Wide Web/Internet at <http://www.regulations.gov>. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at the Office of the Director, Forest Management Staff, Third Floor SW., Yates Building, 201 14th Street, SW., Washington, DC. Persons wishing to inspect the comments are encouraged to call ahead (202) 205-1766 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Service, Forest Management Staff, (202) 205-1753, or Sharon Nygaard-Scott, Forest Management Staff, (202) 205-1766.

Individuals who use telecommunication devices for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Dated: December 14, 2007.

Gloria Manning,*Associate Deputy Chief, NFS.*

[FR Doc. E7-24710 Filed 12-19-07; 8:45 am]

BILLING CODE 3410-11-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**36 CFR Part 1281**

[NARA-07-0005]

RIN 3095-AA82

Presidential Library Facilities**AGENCY:** National Archives and Records Administration.**ACTION:** Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) is issuing regulations under the Presidential Libraries Act (PLA) amendments of 1986 (codified at 44 U.S.C. 2112). Section 2112 requires the Archivist of the United States to promulgate architectural and design standards for Presidential libraries and to report to Congress before he accepts title to or enters into an agreement to use land, a facility, and equipment as a Presidential library. The Archivist must also report to Congress before accepting a gift for the purpose of making any physical or material change or addition to an existing library. Because new Presidential libraries have traditionally been built by private, nonprofit charitable foundations, either by themselves or in collaboration with state and local government or universities, this proposed rule will affect these nonfederal entities.

DATES: Comments on the proposed rule must be received by February 19, 2008.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* Submit comments by facsimile transmission to 301-837-0319.

- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT:

Nancy Allard at (301) 837-1477 or Laura McCarthy at (301) 837-3023.

SUPPLEMENTARY INFORMATION: New Presidential libraries have traditionally been built by private, nonprofit charitable foundations that raise money from non-federal sources. State and local governments and universities may help with construction by providing land, money, and infrastructure improvements for the library. Upon completion of the library, the land, facility, and equipment comprising the library are either donated to the National Archives and Records Administration (NARA) or made available for its use, usually in perpetuity.

The Archivist is authorized to accept new libraries, as well as gifts that modify existing libraries, pursuant to 44 U.S.C. 2112. That provision also requires the Archivist to promulgate architectural and design standards for Presidential libraries and to ensure that an endowment to defray a portion of the cost of building operations is established by the donor of a new library and deposited in the National Archives Trust Fund prior to the Archivist's acceptance of the library.

The endowment requirement applies to the library of any President who took the oath of office as President for the first time on or after January 20, 1985 (i.e., for the libraries of President George H.W. Bush and all subsequent presidents). The amount of the endowment is based on several factors specified in statute, including the size and cost of the facility that is turned over to NARA. This regulation defines the method to be used for calculating size and cost, as well as the equipment covered by the endowment requirement. In connection with determining the size of a Presidential library, NARA uses the *Building Owners and Managers Association (BOMA) Standard Method for Measuring Floor Areas in Office Buildings*, dated June 7, 1996, ANSI Z76.1-1996.

Before the Archivist can accept and take title to or enter into an agreement to use land, a facility, and equipment as a Presidential library, he must submit a written report on the proposed Presidential archival depository to Congress. The report must include, among other things, certification that the facility and equipment meet the architectural and design standards for Presidential libraries as promulgated by the Archivist, and information about the

cost of the library and the size of the endowment being provided.

We published a notice of proposed rulemaking on August 25, 1998 (63 FR 45203), for a 60-day comment period. No comments were received, but NARA decided to defer completion of the rulemaking. This proposed rule, rewritten in plain language format, replaces the previous proposal and reflects statutory changes that have gone into effect since then.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

Paperwork Reduction Act

This proposed rule contains information collection activities which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. These information collection requirements, contained in §§ 1281.16 and 1281.18 have been approved by OMB under the control number 3095-0036 with a current expiration date of June 30, 2008.

List of Subjects in 36 CFR Part 1281

Archives and records, Federal buildings and facilities, Reporting and recordkeeping.

For the reasons set forth in the preamble, NARA proposes to add a new Part 1281 in Subchapter G of Chapter XII, Title 36, Code of Federal Regulations, to read as follows:

PART 1281—PRESIDENTIAL LIBRARY FACILITIES

Sec.

- 1281.1 What is the scope of this part?
- 1281.2 What definitions apply to this part?
- 1281.4 What are the architectural and design standards for Presidential libraries?
- 1281.6 What certifications must be provided to NARA?
- 1281.8 What information must be provided to NARA for its report to Congress on a new Presidential library facility?
- 1281.10 When does a foundation consult with NARA before offering a gift of a physical or material change, or addition to an existing library?
- 1281.12 What information must be provided to NARA for its report to Congress on a change or addition to a Presidential library facility?
- 1281.14 What type of endowment is required for a Presidential library?
- 1281.16 What standard does NARA use for measuring building size?
- 1281.18 Publications incorporated by reference.

Authority: 44 U.S.C. 2104(a), 2112.

§ 1281.1 What is the scope of this part?

(a) This part implements provisions of the Presidential Libraries Act, codified at 44 U.S.C. 2112(a) and (g).

(1) The Act requires the Archivist of the United States to promulgate architectural and design standards for new and existing Presidential libraries in order to ensure that such depositories:

(i) Preserve Presidential records subject to Chapter 22 of this title and papers and other historical materials accepted for deposit under section 2111 of this title; and

(ii) Contain adequate research facilities.

(2) In addition the Archivist must submit a written report to the Congress before accepting new libraries or certain proposed physical or material changes or additions to an existing library; and to ensure, for existing libraries subject to the mandatory endowment requirement, that the endowment specified by 44 U.S.C. 2112(g) has been transferred to the National Archives Trust Fund before acceptance by the Archivist.

(b) This part applies to design and construction of new libraries that are offered to NARA on or after the effective date of this regulation and to material changes or additions to new and existing libraries funded wholly by gift on or after that date.

§ 1281.2 What definitions apply to this part?

The following definitions apply to this part:

Architectural and design standards. This term refers to the document cited in § 1281.4.

Archival functions. The term means arranging, describing, reviewing, preserving, reproducing, restoring, exhibiting, and making available Presidential and other records and historical materials in the care and custody of the Presidential libraries, and includes the salaries and expenses of NARA personnel performing those functions.

BOMA standard. This term refers to the Building Owners and Managers Association (BOMA) *Standard Method for Measuring Floor Areas in Office Buildings*, dated June 7, 1996, and also listed as ANSI Z65.1-1996, that has been adopted by NARA as the standard for measuring the size of the facility and the value for calculating the endowment.

Endowment library. This term means a Presidential library that is subject to the endowment requirements of 44 U.S.C. 2112(g). The term includes the existing libraries of presidents who took the oath of office as President for the

first time on or after January 20, 1985, the proposed library of President George W. Bush, and the libraries of presidents who take the oath of office as President for the first time on or after July 1, 2002.

Equipment. As used in this part, the term means operating equipment that must be furnished with the new library and included in the calculation of the required endowment. Operating equipment is fundamental to the operation of the library and is normally built into the facility or permanently mounted to the structure.

Existing library. This term means a Presidential library that has been accepted by the Archivist under 44 U.S.C. 2112(a) and established as part of the system of Presidential libraries managed by NARA.

Facility operations. This term means those activities, including administrative services, involved with maintaining, operating, protecting, and improving a Presidential library.

Foundation. This term means a private organization organized under state law to construct a new Presidential library. The term usually refers to nonprofit charitable organizations that meet the requirements of Section 501(c)(3) of the Internal Revenue Code (26 CFR 501(c)(3)). The term specifically includes "foundation" and "institute," as those terms are used in 44 U.S.C. 2112(a)(1)(B).

Historical materials. The term "historical materials" has the meaning set forth at 44 U.S.C. 2101.

New library. This term means a Presidential library for a President who took the oath of office as President for the first time on or after January 20, 1985, that has not been accepted by the Archivist under 44 U.S.C. 2112(a). Presidential libraries that have been accepted by the Archivist and established as part of the system of Presidential libraries that are managed by NARA are "existing libraries."

Physical or material change or addition. This term means any addition of square footage, as defined by the BOMA Standard, or any physical or material change to the existing structure of an existing library that results in a significant increase in the cost of facility operations.

Presidential library. This term means a Presidential archival depository as defined in 44 U.S.C. 2101.

Presidential records. The term has the meaning set forth at 44 U.S.C. 2201.

§ 1281.4 What are the architectural and design standards for Presidential libraries?

The Archivist is required by 44 U.S.C. 2112(a)(2) to promulgate architectural and design standards for Presidential

libraries. The standards address the architectural, design, and structural requirements of a new Presidential library and additions or renovations, and they ensure that Presidential libraries are safe and efficient to operate and provide adequate and secure research and museum facilities. A copy of the standards is provided to the foundation upon request and is available from the Office of Presidential Libraries (NL), Room 2200, 8601 Adelphi Rd., College Park, MD 20740-6001.

§ 1281.6 What certifications must be provided to NARA?

(a) The foundation must provide to NARA design and construction certifications specified in the architectural and design standards.

(b) Any item that NARA finds is not in compliance with the architectural and design standards must be corrected by the foundation or, if not corrected by the foundation, will be corrected by NARA with the foundation paying the full cost of taking necessary corrective action.

§ 1281.8 What information must be provided to NARA for its report to Congress on a new Presidential library facility?

(a) NARA must submit a report to Congress on a proposed new library pursuant to 44 U.S.C. 2112(a)(3). The foundation that is building the library must help NARA as necessary in compiling the information needed for this report. If a State, political subdivision, university, institution of higher learning, or institute participates in the construction of the new library (e.g., by making land available for the facility), that party is subject to the same requirement. Requested information must be sent to the Office of Presidential Libraries (NL), Room 2200, 8601 Adelphi Rd., College Park, MD 20740-6001 far enough in advance of the anticipated date of transfer of the Library for NARA to compile and submit the report so that it may lie before Congress for the minimum time period specified in 44 U.S.C. 2112(a)(5). The normal lead time for submitting the required information is at least six months in advance of the anticipated date of transfer, but the submission date is subject to negotiation between NARA and the foundation in specific cases. The collection of information by NARA for these purposes has been approved under the Paperwork Reduction Act by the Office of Management and Budget with the control number 3095-0036.

(b) Paragraph (a)(3) of 44 U.S.C. 2112 lists the information that NARA must include in its report to Congress. The

foundation and NARA will agree as part of the planning process for a new library on what information the foundation will provide and when. The same requirement applies to other entities involved in the construction of a new library (e.g., a local government or university). Foundations will normally be responsible, at a minimum, for providing the following information to NARA:

(1) A description of the land, facility, and equipment offered as a gift or to be made available without transfer of title, which must include:

(i) The legal description of the land, including plat, and evidence of clear title to the land upon which the library is constructed;

(ii) Site plan, floor plans, building sections and elevations, artist's representation of building and grounds;

(iii) Description of building contents, including furniture, equipment, and museum installations; and

(iv) Measurement of the facility in accordance with § 1281.16;

(2) A statement specifying the estimated total cost of the library and the amount of the endowment required pursuant to 44 U.S.C. 2112(g);

(3) An offer or other statement setting forth the terms of the proposed agreement for transfer or use of the facility, if any;

(4) Copies of any proposed agreements between the state, other political subdivision, the donating group, other institutions, and the United States which may affect ownership or operation of the library facility;

(5) A statement of and copies of any proposed agreements concerning the proposed support of library programs by non-federal sources; and

(6) A statement on cost-saving design features of the building.

(7) A written certification that the library and the equipment therein will comply with NARA standards.

§ 1281.10 When does a foundation consult with NARA before offering a gift of a physical or material change, or addition to an existing library?

A foundation must consult with the Office of Presidential Libraries before beginning the process of offering a gift for the purpose of making a physical or material change or addition to a new or existing library. NARA will furnish the interested foundation the current architectural and design standards as specified in § 1281.4. Others may request a single copy by writing the Office of Presidential Libraries (NL), Room 2200, 8601 Adelphi Road, College Park, Maryland 20740-6001.

§ 1281.12 What information must be provided to NARA for its report to Congress on a change or addition to a Presidential library facility?

(a) NARA must submit a report to Congress on a proposed physical or material change or addition to an existing library that is being funded wholly by gift. The foundation or other party offering the gift to NARA must help NARA as necessary in compiling the information needed for the report. Required information must be sent to the Office of Presidential Libraries (NL), Room 2200, 8601 Adelphi Rd., College Park, MD 20740-6001, far enough in advance of the Archivist's acceptance of the gift for NARA to compile and submit the report to Congress in accordance with 44 U.S.C. 2112(a)(5). The normal lead time for submitting the required information on physical or material changes or additions is at least nine (9) months in advance of the anticipated date that work will begin on the physical or material change or addition to the library. The collection of information contained in this section has been approved under the Paperwork Reduction Act by the Office of Management and Budget with the control number 3095-0036.

(b) Paragraph (a)(4) of 44 U.S.C. 2112 lists the information that NARA must include in its report to Congress. The donor and NARA will agree as part of the planning process what information the donor will provide and when, but donors will normally be responsible, at a minimum, for providing the following information to NARA:

(1) A description of the gift, which must include as appropriate:

(i) The legal description of the land, including plat;

(ii) Site plan, floor plans, building sections and elevations, artist's representation of building and grounds as they will be affected by the gift;

(iii) Description of building contents that are part of the gift, including furniture, equipment, and museum installations;

(iv) For endowment libraries, a measurement of the addition or change to the facility in accordance with § 1281.14; and

(v) A review of all critical spaces where NARA holdings will be stored, used, or exhibited, including information on life-safety, environmental, holdings storage, and other systems against NARA standards.

(2) A statement of the estimated total cost of the proposed physical or material change or addition to the library, and, for endowment libraries, an estimate of the amount of the additional

endowment required pursuant to 44 U.S.C. 2112(g).

(3) A statement of the purpose of the proposed change or addition.

(4) A written certification that the library and the equipment therein will comply with NARA standards after the change or addition is made.

§ 1281.14 What type of endowment is required for a Presidential library?

(a) *Endowment requirement—new libraries.* The foundation or organization that is offering NARA a new Presidential library must establish an endowment for the library, by gift or bequest, in the National Archives Trust Fund before the Archivist may accept the transfer of the library. The purpose of the endowment is to help NARA defray the cost of facility operations. The endowment requirement for the prospective new library of President George W. Bush is set forth in paragraphs 2 and 3 of 44 U.S.C. 2112(g). The endowment requirements for the new libraries of presidents taking the oath of office from the first time on or after July 1, 2002, are set forth in paragraphs 2, 3, and 5 of 44 U.S.C. 2112(g).

(b) *Endowment requirement—change or addition to an endowment library.* For a proposed physical or material change or addition to an endowment library that is being funded wholly by gift, the foundation or other organization that is offering the gift must agree, as a condition of the gift, to transfer monies by gift or bequest to the library's existing endowment in the National Archives Trust Fund in an amount sufficient to satisfy the requirements of paragraphs 2, 3, and 5 of 44 U.S.C. 2112(g). The Archivist must determine that the additional endowment monies have been transferred to the Trust Fund before he accepts the gift of the physical or material change or addition.

(c) *Use of endowment income.* The income from a library's endowment is available to cover the cost of facility operations, but is not available for the performance of archival functions.

(d) *Calculating a library's endowment.* The formulas for calculating the required endowment are set forth in 44 U.S.C. 2112(g)(3)–(5).

(e) *Equipment costs that must be included in the endowment calculation.* The cost of all operating equipment provided with a new library must be included in the endowment calculation pursuant to 44 U.S.C. 2112(g)(3). The Archivist will provide in the architectural and design standards, a list of equipment guidelines, recommendations, and minimum

requirements for a foundation's use in designing and building a new library. The list is not exhaustive and requirements may change with evolving technology, program requirements, and the final library design.

(f) *Formula for a shared use library building.* For endowment purposes, the construction cost of a shared use library building containing both NARA and Foundation-controlled areas will be determined using the following formula: The percentage of the usable square footage of the NARA-controlled areas to the usable square footage of the entire building multiplied by the cost of the entire building. That figure is then used in calculating a library's endowment as specified by subsection (d) of this section and 44 U.S.C. 2112(g)(3)–(5).

§ 1281.16 What standard does NARA use for measuring building size?

For purposes of 44 U.S.C. 2112(g)(3) and (4), and this part, NARA has adopted the BOMA *Standard Method for Measuring Floor Areas in Office Buildings* (ANSI Z65.1–1996) as the standard for measuring the size of the facility and the value for calculating the endowment. The architectural and design standards contain the description of the area to be measured as to obtain the useable square footage and the exclusions to the measurement.

§ 1281.18 Publications incorporated by reference.

The Building Owners and Managers Association (BOMA) *Standard Method for Measuring Floor Areas in Office Buildings*, ANSI Z65.1–1996, dated June 7, 1996, is hereby incorporated by reference in this part. The standard cited in this paragraph is available from the American National Standards Institute, (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. It is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference will be submitted for approval by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

Dated: December 14, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–24746 Filed 12–19–07; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0970; FRL–8508–7]

Revision to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). This revision concerns nitrogen oxides (NO_x) and carbon monoxide (CO) emissions from boilers, steam generators and process heaters at petroleum refineries. We are proposing to approve a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 22, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0970, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947-4115, steckel.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

Table of Contents

- I. The State’s Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule?
- II. EPA’s Evaluation
 - A. EPA’s Previous Action
 - B. How is EPA evaluating the rule?
 - C. Why is EPA re-proposing to approve this rule?
 - D. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. The State’s Submittal

A. What rule did the State submit?

EPA is proposing to approve BAAQMD Rule 9–10, Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries, adopted by the BAAQMD on July 17, 2002, and submitted by the California Air Resources Board on August 12, 2002. On September 11, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

BAAQMD adopted an earlier version of this rule on January 5, 1994, and CARB submitted it to us on July 23, 1996. We published a limited approval and limited disapproval of this previous version of Rule 9–10 into the SIP on March 29, 2001 (66 FR 17078).

C. What is the purpose of the submitted rule?

Rule 9–10 limits the emissions of nitrogen oxides (NO_x) and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries. NO_x emissions contribute to producing ground-level

ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_x emissions.

II. EPA’s Evaluation

A. EPA’s Previous Action

On March 29, 2001 (66 FR 17078), EPA published a limited approval and limited disapproval of a previous version of this rule, because the rule improved the SIP overall, but some rule provisions failed to satisfy the requirements of section 110 of the CAA. On August 12, 2002, BAAQMD submitted a revised version of Rule 9–10 for approval into the SIP, to address the deficiencies identified by EPA in 2001.

On October 7, 2002 (67 FR 62389), EPA published a direct final rule to approve this revised version of BAAQMD Rule 9–10 into the California SIP. In association with the direct final rule, EPA published a proposed rule to allow an opportunity for the public to comment on the approval of Rule 9–10 into the California SIP (67 FR 62427). Based on the proposed approval of Rule 9–10, EPA made an interim final determination to stay the imposition of sanctions that resulted from the March 29, 2001, limited disapproval action. The interim final rule to stay the imposition of sanctions was published concurrently on October 7, 2002 (67 FR 62388).

Adverse comments were received in response to the October 7, 2002, proposed rule. As a result, EPA published a withdrawal of the direct final rule on November 25, 2002 (67 FR 70555). The proposed approval remained in effect, and therefore the interim final determination regarding sanctions was not affected by the withdrawal because the determination was based on the proposed approval of Rule 9–10. The comments received are being addressed in today’s proposed rule.

B. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). However, as further explained in our response to public comments below, we believe that Rule 9–10 is not required to fulfill RACT or

Reasonably Available Control Measures (RACTM) to be approved into the SIP. Therefore, BAAQMD Rule 9–10 was primarily evaluated for enforceability and whether it would relax existing SIP requirements.

As mentioned in the October 7, 2002, proposed approval, the guidance and policy documents that we use to help evaluate enforceability and other general requirements consistently include the following:

1. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,” (the NO_x Supplement), 57 FR 55620, November 25, 1992.

2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook).

3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).

We believe BAAQMD Rule 9–10 meets the evaluation criteria and is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

C. Why is EPA re-proposing to approve this rule?

In our proposed action on October 7, 2002, we stated that BAAQMD Rule 9–10 must fulfill RACT and that the rule was consistent with the relevant policy and guidance regarding RACT (67 FR 62386). As further explained in our response to public comments below, we have re-evaluated whether Rule 9–10 is subject to federal RACT requirements in CAA section 182(f). We believe that Rule 9–10 is not required to fulfill RACT to be approved into the SIP. Additionally, as a marginal 8-hour ozone nonattainment area, the BAAQMD is not required to submit an attainment demonstration showing that it has adopted all necessary RACT. See 70 FR 71659. In today’s action, we are again proposing to fully approve BAAQMD Rule 9–10 into the SIP. In this proposed rule, we are giving the public an opportunity to review and comment on the changes in our evaluation of the rule.

D. Public Comments and EPA Responses

EPA’s proposed action on October 7, 2002, provided a 30-day public comment period. During this period, we received comments from the following parties:

1. Brigitte Tollstrup, Sacramento Metropolitan Air Quality Management

District (SMAQMD); letter dated October 23, 2002, and received October 30, 2002.

2. Ken Kloc, Our Children's Earth Foundation (OCE); letter dated November 6, 2002, and received November 12, 2002.

3. Suma Peesapati, Community for a Better Environment (CBE); letter dated November 6, 2002, and received November 12, 2002.

4. Peter Hess, Bay Area Air Quality Management District (BAAQMD); letter dated November 30, 2002. The BAAQMD letter, in support of the EPA approval action, was received after the close of the comment period. However, we considered BAAQMD comments and included information from the BAAQMD in our responses.

The comments and our responses are summarized below.

Comment 1: SMAQMD and CBE contend that sources of NO_x in the BAAQMD must implement RACT under section 182(f) of the Act because the BAAQMD's redesignation plan, which relied on Rule 9–10 as a maintenance measure, was disapproved and “the NO_x waiver” revoked by EPA. See 63 FR 37258. CBE further contends that the BAAQMD must implement all RACM under section 172(c)(1) of the Act.

Response 1: The BAAQMD contends and EPA agrees that Rule 9–10 is not subject to federal RACT requirements in CAA section 182(f). Since the early 1990's, the Bay Area has fluctuated in and out of attainment with respect to the National Ambient Air Quality Standard (NAAQS) for ozone. Despite being designated as a nonattainment area under both the 1-hour and the recently promulgated 8-hour ozone standards, the Bay Area has not been subject to the NO_x RACT requirements contained in CAA section 182(f) since the early 1990's as explained below.

- From 1990 to 1992, the Bay Area did not experience any exceedances of the original 1-hour ozone NAAQS and submitted requests to EPA for redesignation to attainment and for a waiver of the CAA section 182(f) NO_x RACT requirements. The request for “the NO_x waiver” was based on a claim by the BAAQMD that a modeling analysis indicated that additional NO_x reductions would tend to raise local Bay Area ozone levels. On May 22, 1995, EPA redesignated the Bay Area to attainment and granted the BAAQMD's request for the NO_x waiver. See 60 FR 27028. As a result, the BAAQMD was not subject to the section 182(f) NO_x RACT requirements.

- From 1995 to 1996, the Bay Area experienced a number of exceedances of the 1-hour NAAQS. As a result, EPA

redesignated the Bay Area to nonattainment and revoked “the NO_x waiver” on July 10, 1998. See 63 FR 37258. Under certain circumstances, the redesignation may have required that the BAAQMD impose NO_x RACT requirements, however, EPA's redesignation was made pursuant to our authority in part D, subpart 1 of the Act, which does not impose specific NO_x RACT requirements. As stated in our final rulemaking, “[b]ecause the Bay Area is being redesignated under subpart 1 of the Act, there are no mandatory NO_x measures which must be adopted.” See 63 FR 37273. Specific NO_x RACT requirements are found in part D, subpart 2. Therefore, the BAAQMD was not subject to the CAA section 182(f) NO_x RACT requirements.

- With additional exceedances of the 1-hour NAAQS from 1999 to 2000, EPA made a formal finding on September 20, 2001, that the Bay Area had not attained the standard, and EPA disapproved the BAAQMD's 1999 Ozone Attainment Plan. See 66 FR 48340. This finding required that the BAAQMD submit a new ozone attainment plan. However, the CAA section 182(f) NO_x RACT requirements were still not necessary because BAAQMD's nonattainment status was established under part D, subpart 1 of the Act in our 1998 rulemaking.

- From 2001 to 2003, the Bay Area did not experience any exceedances of the 1-hour NAAQS. As a result, EPA made a finding of attainment on April 22, 2004, which would also serve to relieve the BAAQMD of any possible unmet obligations with regard to RACT it may have had under the 1-hour standard. See 69 FR 21717.

- On June 15, 2004, EPA's designation of the Bay Area as an 8-hour ozone marginal nonattainment area became effective. See 69 FR 23857. As with all marginal areas, the BAAQMD is not required to submit a SIP that meets RACT. See “Final Rule to Implement the 8-hour Ozone NAAQS—Phase 2,” 70 FR 71653.

With regard to the section 172(c)(1) requirement that nonattainment areas must provide for RACM, we have interpreted this requirement to mean that it would not be reasonable to require implementation of those measures which might in fact be available for implementation yet would not advance the area's attainment date. See *id.* at 71653. Because we have determined that the Bay Area attained the revoked 1-hour ozone NAAQS (see 69 FR 21717), Rule 9–10 would not be expected to advance the Bay Area's attainment date and, therefore, would not be considered a necessary RACM

measure under section 172(c)(1). Additionally, as a marginal 8-hour ozone nonattainment area, the BAAQMD is not required to submit an attainment demonstration showing that it has adopted all RACM necessary. See 70 FR 71659.

Comment 2: SMAQMD, OCE and CBE commented that Rule 9–10 contains several provisions that do not satisfy the RACT requirements of CAA section 182(f), citing more stringent standards imposed by other air pollution control agencies in California. These stricter provisions should be considered technologically feasible because they have been adopted in other areas and should therefore be required to be implemented by nonattainment areas including the BAAQMD.

Response 2: The BAAQMD is not required to submit rules which satisfy the RACT requirements of section 182(f). See Response 1 for a more detailed explanation.

Comment 3: SMAQMD, OCE and CBE highlight more stringent limits that were adopted by the BAAQMD but not submitted to EPA for approval into the SIP. SMAQMD and OCE argue that the adoption of a more stringent standard by the BAAQMD is further evidence that the submitted limits do not represent RACT.

Response 3: As discussed in Response 1, the BAAQMD need not submit regulations containing RACT requirements. The BAAQMD argues that the rule provisions which were not submitted to EPA for inclusion in the SIP implement California Best Available Retrofit Control Technology (BARCT). Measures necessary to meet California's more stringent air quality standards are not required to meet the NAAQS and therefore need not be submitted to EPA for inclusion in the SIP. The BAAQMD has determined which provisions of Rule 9–10 are necessary to meet the NAAQS and submitted them to EPA. The omission from the submitted version of Rule 9–10 of the other more stringent limits cited by the commenters does not affect EPA's ability to independently evaluate the submitted version of Rule 9–10 against applicable CAA requirements.

Comment 4: CBE urged EPA to require BAAQMD to submit the entire rule for inclusion in the SIP as required by the Act. CBE had requested that the BAAQMD include Rule 9–10, in its entirety, in the BAAQMD's 2001 and Revised 2001 Ozone Attainment Plans. CBE requests that EPA remedy the situation by requiring the BAAQMD to submit all provision of Rule 9–10.

Response 4: See Response 3.

Comment 5: OCE requested that EPA conduct a RACT evaluation of Rule 9–10 and re-propose approval of Rule 9–10 once that evaluation is complete.

Response 5: A RACT evaluation of Rule 9–10 is not required. For further discussion regarding RACT requirements in the BAAQMD, see Response 1.

III. EPA Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

All sanctions and sanction clocks, which were triggered as a result of the disapproval action on March 29, 2001 (66 FR 17078), continue to be stayed as a result of the interim final determination published on October 7, 2002 (67 FR 62388). The comments received in response to the October 7, 2002, proposed rule approval have not changed our conclusion that the submitted rule complies with the relevant CAA requirements. The sanctions and sanction clocks will be permanently terminated on the effective date of the final rule approval.

IV. 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 proposed 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 preexisting 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 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 proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a State 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. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 27, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7–24715 Filed 12–19–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2006–024; Docket 2007–0001; Sequence 12]

RIN: 9000–AK86

Federal Acquisition Regulation; FAR Case 2006–024, Travel Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to change the travel cost principle to ensure a consistent application of the limitation on allowable contractor airfare costs.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before February 19, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–024 by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

- To search for any document, first select under “Step 1,” “Documents with an Open Comment Period” and select under “Optional Step 2,” “Federal Acquisition Regulation” as the agency of choice. Under “Optional Step 3,” select “Proposed Rules”. Under “Optional Step 4,” from the drop down list, select “Document Title” and type the FAR case number “2006–024”. Click the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Search for Documents” tab at the top of the screen. Select from the agency field “Federal Acquisition Regulation”, and type “2006–024” in the “Document Title” field. Select the “Submit” button.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006-024 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT Mr. Edward Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2006-024.

SUPPLEMENTARY INFORMATION:

A. Background

The travel cost principle at FAR 31.205-46(b) currently limits allowable contractor airfare costs to “the lowest customary standard, coach, or equivalent airfare offered during normal business hours.” The Councils are aware that this limitation is being interpreted inconsistently, either as *lowest coach fare available to the contractor* or *lowest coach fare available to the general public*, and these inconsistent interpretations can lead to confusion regarding what costs are allowable.

The Councils agreed that the current language at FAR 31.205-46(b) does not promote consistency in the application of the cost principle and that, accordingly, the cost principle requires clarification. The Councils considered three alternative approaches to revising the cost principle:

1. Do nothing, leaving FAR 31.205-46 unchanged;
2. Amend FAR 31.205-46(b) to explicitly state that allowable contractor airfare costs are limited to the lowest standard or coach fare available to the *general public*; or
3. Amend FAR 31.205-46(b) to explicitly state that allowable contractor airfare costs are limited to the lowest standard or coach fare available to the contractor.

With regard to the first option, the Councils do not believe that the cost principle can be left unchanged based on the different interpretations of which the Councils have become aware. The Councils also believe that establishing the lowest coach fare available to the general public as the benchmark for cost allowability is not a feasible option in

practice. Under such a standard, contractors could potentially be required to continuously monitor a fluctuating fare market to determine what was the lowest fare available on a given day. Likewise, Government auditors could not reasonably recreate the competitive fare market for each instance of a contractor’s travel in determining compliance with the cost principle.

Accordingly, the Councils believe that the reasonable standard to apply in determining the allowability of airfares is the *lowest coach fare available to the contractor*. It is not prudent to allow the costs of the lowest coach fares available to the general public when contractors have obtained lower fares as a result of direct negotiation.

Furthermore, the Councils believe that the cost principle should be clarified to omit the term “standard” from the description of the classes of allowable airfares since that term does not describe actual classes of airline service. The Councils believe that “customary coach, or equivalent” more accurately describes the classes of service for which the cost will be considered allowable.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006-024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 10, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205-46 by revising paragraph (b) to read as follows:

31.205-46 Travel costs.

* * * * *

(b) Airfare costs, in excess of the lowest priced coach class, or equivalent, airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

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[FR Doc. E7-24730 Filed 12-19-07; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2007-0052]

RIN 2127-AJ93

Federal Motor Vehicle Safety Standards; Platform Lifts for Motor Vehicles; Platform Lift Installations in Motor Vehicles

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

ACTION: Notice of proposed rulemaking (NPRM); grant in part, denial in part of petitions for rulemaking.

SUMMARY: This document responds to six petitions for rulemaking to amend the Federal motor vehicle safety standards on platform lift systems for motor vehicles. The purpose of these standards is to prevent injuries and fatalities during lift operation. Pursuant to the agency's partial grant of the petitions, NHTSA proposes to amend the platform lift standards to revise the lighting requirements for lift controls; the location, performance requirements, and test specifications for threshold warning signals; the specifications for the wheelchair test device; the wheelchair retention device and inner roll stop tests; and the lighting requirements for public use lifts.

In addition, NHTSA denies a request to amend the wheelchair test device specifications to include anti-tipping devices and proposes several technical changes designed to further clarify these standards. Finally, this notice discusses a November 3, 2005, interpretation clarifying specific components of the threshold warning signal test specified in one of the standards.

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202-366-9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may

contact Mr. William Evans, Office of Crash Avoidance Safety Standards at (telephone: 202-366-2272) (Fax: 202-493-2990). For legal issues, you may contact Mr. Edward Glancy, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Petitions for Rulemaking
 - A. Amend the Control Panel Switch Requirements in S6.7.6.2 of FMVSS No. 403 So That Lift Controls in a Location Remote From the Driver's Seating Position Are Not Subject to the Illumination Requirements in S5.3 of FMVSS No. 101
 - B. Amend the Threshold Warning Signal Requirements in S6.1.4 of FMVSS No. 403 To Permit Warning Lights To Be Mounted in a Location Clearly Visible in Reference to the Lift
 - C. Amend the Threshold Warning Signal Requirements in S6.1.4 and S6.1.6 of FMVSS No. 403 To Clarify the Units of Measurement and Minimum Required Luminance at the Designated Measurement Point
 - D. Amend the Threshold Warning Test in S7.4 of FMVSS No. 403 To Include a Performance Test for Warning Systems Using Infrared and Other Sensor Technologies
 - E. Amend the Wheelchair Test Device Specification in S7.1.2 of FMVSS No. 403 To Include Anti-Tip Devices
 - F. Amend the Wheelchair Retention Impact Test Specifications in S7.7 of FMVSS No. 403 To Permit Use of a Loaded Wheelchair Test Device
 - G. Amend the Requirements for Platform Lighting on Public Lifts in S4.1.5 of FMVSS No. 404 To Reduce the Illumination Levels to Those Specified by the ADA and FTA
- III. Technical Changes
 - A. Amend S7 of FMVSS No. 403 To Require Performance of the Handrail Test in S7.12 on a Lift/Vehicle Combination Rather Than on a Test Jig
 - B. Correct Figure 2 in FMVSS No. 403 To Make It Consistent With the Threshold Beacon Warning Requirements in S6.1.6
 - C. Clarify the Control Panel Switch Requirements in S6.7.4 of FMVSS No. 403
 - D. Amend the Interlock Requirements and Test Procedures in S6.10.2.4, S6.10.2.5, S6.10.2.6, S6.10.2.7, S7.5 and S7.6 of FMVSS No. 403
- IV. November 3, 2005 Interpretation
- V. Proposed Compliance Date
- VI. Public Participation
- VII. Rulemaking Analyses and Notices

I. Background

December 27, 2002 Final Rule

On December 27, 2002, the agency published in the **Federal Register** a final rule establishing FMVSS No. 403, *Platform lift systems for motor vehicles*, and FMVSS No. 404, *Platform lift installations in motor vehicles* (67 FR 79416). These two new standards provide practicable, performance-based requirements and compliance procedures for the regulations promulgated by the DOT under the Americans with Disabilities Act (ADA).¹ FMVSS Nos. 403 and 404 provide that only lift systems and vehicles manufactured with lift systems that comply with objective safety requirements may be placed in service.

FMVSS No. 403 establishes requirements for platform lifts that are designed to carry passengers with limited mobility, including those who rely on wheelchairs, scooters, canes and other mobility aids, so that they can move into and out of motor vehicles. The standard requires that these lifts meet minimum platform dimensions and maximum size limits for platform protrusions and gaps between the platform and either the vehicle floor or the ground. The standard also requires handrails, a threshold warning signal, and retaining barriers and specifies performance tests.

FMVSS No. 404 establishes requirements for vehicles that, as manufactured, are equipped with platform lifts. The lifts installed on those vehicles must be certified as meeting FMVSS No. 403, must be installed according to the lift manufacturer's instructions, and must continue to meet all of the applicable requirements of FMVSS No. 403 after installation. The standard also requires that specific information be made available to lift users.

Recognizing that the usage patterns of platform lifts used in public transit differ from those of platform lifts for individual (i.e., private) use, the agency established separate requirements for public use lifts and private use lifts. FMVSS No. 404, S4.1.1 requires that the lift on each lift-equipped bus, school bus and multipurpose passenger vehicle other than a motor home with a gross vehicle weight rating (GVWR) more than

¹ Pub. L. 101-336, 42 U.S.C. 12101, *et seq.* The ADA directed the DOT to issue regulations to implement the transportation vehicle provisions that pertain to vehicles used by the public. Titles II and III of the ADA set specific requirements for vehicles purchased by municipalities for use in fixed route bus systems and vehicles purchased by private entities for use in public transportation to provide a level of accessibility and usability for individuals with disabilities. 42 U.S.C. 12204.

4,536 kg (10,000 lb) must be certified as meeting all applicable public use lift requirements set forth in FMVSS No. 403. FMVSS No. 404, S4.1.2 requires the lift on each lift-equipped vehicle with a GVWR of 4,536 kg (10,000 lb) or less to be certified to either the public use or private use lift requirements set forth in FMVSS No. 403. Stricter requirements apply to vehicles with public use lifts than to vehicles with private use lifts, as public use lifts generally are subject to more stress and cyclic loading and will be used by more numerous and varied populations.

As required by the ADA, FMVSS Nos. 403 and 404 are consistent with the Architectural and Transportation Barriers Compliance Board (ATBCB) guidelines published on September 6, 1991 (56 FR 45530). In order to provide manufacturers sufficient time to meet any new requirements established in FMVSS Nos. 403 and 404, the agency provided a two-year lead-time, which scheduled the standards to become effective on December 27, 2004.

October 1, 2004 Final Rule

On October 1, 2004, in response to petitions for reconsideration of its December 27, 2002 final rule, the agency published a final rule in the **Federal Register** revising FMVSS Nos. 403 and 404. Among the changes made by the October 1, 2004 final rule, the agency amended the requirements for lighting on public use lifts, edge guard requirements, and the wheelchair test device specifications (69 FR 58843).

On December 23, 2004, the agency published an interim final rule in the **Federal Register** delaying the compliance date until April 1, 2005 for FMVSS No. 403 and July 1, 2005 for FMVSS No. 404 (69 FR 76865). On July 15, 2005, the agency published in the **Federal Register** a denial of petitions for reconsideration of its October 1, 2004 final rule (70 FR 40917). The July 15, 2005 document did not address the petitions received from the Blue Bird Body Company (Blue Bird), the School Bus Manufacturers Technical Council (SBMTC), which represents school bus manufacturers (including Blue Bird), and the Manufacturers Council of Small School Buses (MCSSB), an affiliate of the National Truck Equipment Association formed to represent the interest of small manufacturers, requesting changes in the required level of lighting on public use lift platforms, as that issue was outside the scope of the October 2004 final rule. The notice stated that the agency would treat the documents as petitions for rulemaking and respond in a separate notice. Today's notice addresses the issue

raised by the Blue Bird, SBMTC and MCSSB petitions.

Petitions for Rulemaking

Since that time, NHTSA received three additional petitions for rulemaking seeking revisions to FMVSS Nos. 403 and 404. Specifically, we received petitions from Maxon Lift Corporation (Maxon), Ricon Corporation (Ricon) and the Lift-U Division of Hogan Manufacturing, Inc. (LIFT-U), all of which are platform lift manufacturers. The petitioners requested that the agency amend: (A) The control panel switch requirements in S6.7.6.2 of FMVSS No. 403 so that lift controls in locations remote from the driver's seating position are not subject to the illumination requirements in S5.3 of FMVSS No. 101; (B) the threshold warning signal requirements in S6.1.4 of FMVSS No. 403 to permit warning lights to be mounted in a location clearly visible in reference to the lift; (C) the threshold warning signal requirements in S6.1.4 and S6.1.6 of FMVSS No. 403 to clarify the units of measurement and minimum required luminance at the designated measurement point; (D) the threshold warning test in S7.4 of FMVSS No. 403 to include a performance test for warning systems using infrared and other sensor technologies; (E) the wheelchair test device specification in S7.1.2 of FMVSS No. 403 to include anti-tip devices; (F) the wheelchair retention device impact test specifications in S7.7 of FMVSS No. 403 to permit use of a loaded wheelchair test device; and (G) the requirements for platform lighting on public use lifts in S4.1.5 of FMVSS No. 404 to reduce the required illumination levels to those specified by the ADA and FTA. The issues raised by petitioners are addressed below in Section II of this notice.

Technical Changes

In Section III of this notice, the agency proposes additional technical changes to FMVSS Nos. 403 and 404 designed to further clarify these standards, including revisions to: (A) S7 of FMVSS No. 403 to require performance of the handrail test in S7.12 on a lift/vehicle combination rather than on a test jig; (B) Figure 2 in FMVSS No. 403 to make it consistent with the threshold beacon warning requirements in S6.1.6; (C) the control panel switch requirements in S6.7.4 of FMVSS No. 403; and (D) the Interlock Requirements and Test Procedures in S6.10.2.4, S6.10.2.5, S6.10.2.6, S6.10.2.7, S7.5 and S7.6 of FMVSS No. 403.

November 3, 2005 Interpretation of S7.4 of FMVSS No. 403

In Section IV of this notice, the agency discusses an interpretation of S7.4 of FMVSS No. 403, dated November 3, 2005, issued to Maxon. The November 3 interpretation clarified specific procedures that should be performed as part of the threshold warning signal test. Although the agency has decided against revising the language of S7.4, we include a discussion of the matter in this notice to ensure wide-spread dissemination of its interpretation.

II. Petitions for Rulemaking

A. Amend the Control Panel Switch Requirements in S6.7.6.2 of FMVSS No. 403 So That Lift Controls in a Location Remote From the Driver's Seating Position Are Not Subject to the Illumination Requirements in S5.3 of FMVSS No. 101

A petition for rulemaking was received from Maxon, in which it requested that the agency revise the control panel switch requirements in S6.7.6.2 of FMVSS No. 403 so that lift controls located outside the immediate vicinity of the driver's seating position are not subject to the illumination requirements in S5.3 of FMVSS No. 101. S6.7.6.2 requires that public use lifts have characters illuminated in accordance with S5.3 of FMVSS No. 101 when the vehicle's headlights are illuminated. S5.3.2.2(a)-(b) of FMVSS No. 101 requires that controls provide adjustable illumination to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions.

Maxon stated that it is not reasonable for the agency to apply the illumination requirements in S5.3 of FMVSS 101 to lift controls on public use lifts that are not located near the driver's seat. Maxon stated that, even in dark ambient road conditions, when a driver gets up from his seat to be near the lift during operation, the interior lights of the vehicle likely will be on and will ruin the driver's dark adaptation. The petition noted that, even if the vehicle's interior lights are off, the platform lights required by FMVSS Nos. 403 and 404 are bright enough to ruin a driver's dark adaptation.

Agency's response: The agency tentatively agrees with Maxon. The purpose of applying the illumination requirements in S5.3 of FMVSS No. 101 to public use lifts is to prevent illuminated lift controls located in the area of the driver's seat from distracting a driver who has adapted to dark

ambient roadway conditions. Although the current language in S6.7.6.2 of FMVSS No. 403 does not address the issue of control location, the agency never intended the more stringent illumination requirements applicable to dashboard controls and displays to apply to lift controls not located in the vicinity of the driver. Accordingly, we propose amending S6.7.6.2 to clarify that only public use lift controls located within the portion of the passenger compartment specified in S5.3.4(a) of FMVSS No. 101 (i.e., the portion of the passenger compartment which is forward of a transverse vertical plane 110 mm rearward of the manikin "H" point with the driver's seat in its rearmost driving position) must have characters that are illuminated in accordance with S5.3 of that standard, when the vehicle's headlights are illuminated. However, to prevent errors in operation during dark conditions, NHTSA believes that lift controls located away from the driver's seat should be illuminated in some fashion. We therefore are proposing to amend S6.7.6.2 also to require that lift controls located outside the portion of the passenger compartment specified in S5.3.4(a) of FMVSS No. 101 must have a means for illuminating the characters to make them visible under daylight and nighttime conditions.

B. Amend the Threshold Warning Signal Requirements in S6.1.4 of FMVSS No. 403 To Permit Warning Lights To Be Mounted in a Location Clearly Visible in Reference to the Lift

Maxon petitioned the agency also to amend the threshold warning signal location requirements in S6.1.4 of FMVSS No. 403. S6.1.4 requires, in part, that the visual warning signal be installed such that it does not require more than a ± 15 degree side-to-side head rotation as viewed by a passenger in a wheelchair backing onto the platform from the interior of the vehicle. In its petition, Maxon stated that this location requirement does not indicate whether NHTSA intends a passenger to use peripheral vision to satisfy the standard. If not, it took the position that warning signals would need to be installed on the opposite side of the bus. The visibility of the warning signals in that location might be blocked by a chair, person or structure within the bus, and wiring associated with the lights would need protection from cutting and other damage. Maxon requested that the warning signal requirements of S6.1.4 be amended to permit warning lights to be mounted in a location clearly visible in reference to the lift, which presumably would result

in more options for locating the warning signal where passengers will see it.

Agency response: The location requirements for a threshold warning signal in S6.1.4 of FMVSS No. 403 were adopted from Society of Automotive Engineers (SAE) J2093, *Design Considerations For Wheelchair Lifts For Entry To or Exit From a Personally Licensed Vehicle* (SAE J2093), which provides that "the visual warning shall be located such that it can be seen by a person backing onto the lift wherever the lift is installed." SAE J2093 requires that an unobstructed line-of-sight pathway must exist between the warning signal and the general area where a passenger transitions from the vehicle floor to the lift platform. The SAE requirement permits the warning signal to be located on the vehicle or the lift, provided a clear line-of-sight exists.

In promulgating S6.1.4, NHTSA modified SAE J2093 to include additional language designed to address the safety needs of persons in powered wheelchairs, who often have limited side-to-side head movement, and of passengers who transverse onto the lift platform in a forward direction. Specifically, S6.1.4 includes a requirement not found in SAE J2093 that the warning signal be installed such that it does not require more than ± 15 degrees side-to-side head rotation as viewed by a passenger backing onto the platform from the interior of the vehicle and contains a similar head rotation limitation applicable to passengers traveling forward onto the platform. However, S6.1.4 does not specify the position from which the warning signal must be viewed; whether the measurement is a line-of-sight measurement or whether peripheral vision may be used; or a reference point for determining the ± 15 degrees side-to-side head rotation. Consequently, the agency acknowledges that the language added by NHTSA to SAE J2093 created ambiguity in the warning signal location requirement. To eliminate this ambiguity, we propose amending S6.1.4 to revert to language similar to that which appears in SAE J2093.

The agency would prefer to define the threshold warning signal requirement generally, rather than in specific geographic terms, due to the many variables that may affect a passenger's line-of-sight, including variation in vehicle type, lift design and a passenger's visual acuity. Even a clear line-of-sight between a passenger backing onto the lift and a warning signal does not ensure that a passenger will see the signal, as in the case of a passenger looking away from the signal or who has a visual impairment may not

see it. For this reason, S6.1.3 requires public use lifts to have both visual and audible warnings. Nevertheless, we believe that specifying a point in S6.1.4 from which the warning signal must be viewed will eliminate confusion stemming from the language "as viewed by a passenger backing onto the platform from the interior of the vehicle." Accordingly, we propose to amend S6.1.4 also to provide that the point from which the warning signal must be visible will be 914 mm (3 ft) above the center of the threshold area as shown in Figure 2 of that Standard. The proposed revision will allow the threshold warning beacon to be mounted on the vehicle or the interior portion of the lift as long as there is a clear line-of-sight between the beacon and the point 914 mm (3 ft) above the center of the threshold warning area.

C. Amend the Threshold Warning Signal Requirements in S6.1.4 and S6.1.6 of FMVSS No. 403 To Clarify the Units of Measurement and Minimum Required Luminance at the Designated Measurement Point

Ricon also petitioned the agency to amend the threshold warning signal requirements in S6.1.4 and S6.1.6. S6.1.4 provides, among other things, that the visual warning required by S6.1.2 and S6.1.3 must be a flashing red beacon with a minimum intensity of 20 candela. S6.1.6 provides that the intensity of the visual warning required by S6.1.4 is measured at the location 914 mm (3ft) above the center of platform threshold area. Ricon stated in its petition that, after discussions with industry suppliers of lighting equipment, it has confirmed that "candela" is a measurement of output at the source, not of output measured a specified distance from the source. Ricon suggested that the correct terminology for the measurement of luminous intensity at a specified distance from the source either should be "lux" or "foot-candles." On the basis of its discussions with industry suppliers and its own analysis of what it characterized as the "worst-case condition (i.e., Public Use—Motor Coach applications)," Ricon suggested also that NHTSA replace the "minimum intensity of 20 candelas" language in S6.1.4 with "minimum intensity of 3.0 Lux (.27 foot candles)." According to the petitioner, this change would negate the need for any change in the language of S6.1.6.

Agency response: We agree with Ricon that the requirement in S6.1.4 of a beacon with a minimum intensity of 20 candelas provides a measurement of minimum luminous intensity at the

source and that foot-candles or Lux (lm/ft²) would be the correct unit of measurement of the density of light that falls on a surface. As discussed above, NHTSA originally based its threshold warning signal requirements on SAE J2093, which provides in part that a visual threshold warning signal "shall be a flashing red beacon of a minimum 21 candlepower (candlepower is luminous intensity expressed in candelas) and be located such that it can be seen by a person backing onto the lift wherever the lift is installed." Unlike S6.1.6, the SAE requirement does not specify a measurement point. Thus, when the agency adopted FMVSS No. 403, it did not include in S6.1.4 or S6.1.6 the minimum criteria necessary to measure the illuminance or light density required at the measurement point specified in S6.1.6.

The location of a warning beacon, its distance from the measurement point and the illuminance level necessary at the measurement point to alert passengers all are factors that vary from vehicle to vehicle. Consequently, it would be quite difficult for us to identify in S6.1.6 a universally applicable measuring point from which to assess a beacon's compliance with the 20 candela minimum intensity requirement in S6.1.4. Accordingly, to eliminate the problem of specifying appropriate units and an acceptable minimum illuminance at the measurement point, the agency proposes to amend S6.1.6 to bring the requirement in line with SAE J2093, the standard on which it was based. Specifically, to ensure that passengers recognize when a warning beacon is flashing, S6.4.2 would continue to require that the beacon have a minimum luminous intensity of 20 candelas. However, the agency proposes to eliminate from S6.1.6 the current measurement at the measurement point requirement and, instead, replace it with a more general visibility requirement, consistent with our proposed revision to S6.1.4, discussed above in Section II. B. of this Notice, entitled *Amend the Threshold Warning Signal Requirements in S6.1.4 of FMVSS No. 403 To Permit Warning Lights To Be Mounted In a Location Clearly Visible In Reference To the Lift*. Specifically, the agency proposes new language for S6.1.4 providing that the intensity of the audible warning and the visibility of the visual warning required by S6.1.2 and S6.1.3 are measured/observed at a location 914 mm (3 ft) above the center of the platform threshold area detailed in Figure 2 of the standard.

D. Amend the Threshold Warning Test in S7.4 of FMVSS No. 403 To Include a Performance Test for Warning Systems Using Infrared and Other Sensor Technologies

In its petition, LIFT-U requests that we amend the specifications for the threshold warning signal test to include a performance test for threshold sensors that do not detect weight. S7.4.2 details the performance test for demonstrating compliance with S6.1.2 and S6.1.3. It specifies the use of the unloaded power wheelchair test device specified in S7.1.2. The test procedure consists of maneuvering one front wheel of the unloaded test device onto any portion of the threshold area defined in S4 of FMVSS 403 while the lift platform is at the vehicle floor level loading position. The platform then is moved down until the alarm is actuated. The wheel of the test device is removed from the threshold area to deactivate the alarm and the vertical distance between the platform and the threshold area is measured to determine whether the distance is greater than 25 mm (1 in).

LIFT-U acknowledged that the test prescribed in S7.4, which calls for use of an unoccupied test device, is effective for validating sensor technologies that sense weight, such as pressure sensitive mats. However, the petitioner stated that the unoccupied test device may not be suitable for testing the compliance of threshold warning technologies that do not use weight as a detection criterion, such as infrared and other sensors. LIFT-U pointed out that S6.1 does not specify use of a particular threshold warning system required to detect a passenger in the threshold area of a lift and that there are many sensor technologies that are effective for detecting people in safety applications. LIFT-U stated also that NHTSA has made clear in its commentary and letters of interpretation relating to FMVSS 403 that the purpose the threshold warning required by S6.1 is to detect and alert a passenger entering the threshold area when the platform lift is not in proper position. Because its infrared technology accomplishes the purpose of S6.1, LIFT-U requested that we revise S7.4 to include a performance test that would permit warning systems with sensors that do not detect weight to demonstrate compliance with S6.1.2 and S6.1.3. Specifically, the petitioner suggested that NHTSA adopt a test that is substantially identical to the current performance requirement with the addition of an occupant in the wheelchair test device.

Agency Response: The agency grants LIFT-U's petition and is proposing to

revise S7.4 to include a performance test to enable threshold warning systems using infrared and other technologies to demonstrate compliance with S6.1 and S6.3. When NHTSA adopted S7.4, infrared-based sensor systems for platform lifts did not exist. However, as currently drafted, S7.4 does not limit the technologies permitted under the agency's threshold-warning systems requirement only to pressure sensitive mats. Instead, NHTSA originally mandated use of the unoccupied wheelchair test device for the threshold warning performance test because its downward force triggers weight-based warning systems and its structure triggers light beam-based warning systems. Use of the wheelchair test device also reduces the need for additional test fixtures and represents the most common mobility device accommodated by platform lifts. Additionally, when one front wheel of the unloaded test device is placed on the platform, it exerts a relatively low downward force (approximately 11.3 kg (25 pounds)) and has a contact area/foot-print sufficient to assure that the warning system will detect a passenger using a wheelchair, cane or walker, or even a small child without a mobility aid, who may be preparing to board the platform from the vehicle floor.

While S7.4 is broad enough to encompass more than just weight-based warning systems, we do not want to limit the technologies that may be used to meet this performance standard. Use of warning systems with infrared and other sensor technologies to comply with S6.1.2 and S6.1.3 is consistent with the purpose of the threshold warning requirements to protect passengers from moving onto a lift platform from the interior of a vehicle when it is not safe to do so. NHTSA therefore is proposing to amend the test procedure in S7.4 to allow a human representative of a 5th percentile female, as specified in FMVSS No. 208, S29.1(f) and S29.2, to be present in the wheelchair test device during the threshold warning test. We selected the 5th percentile female as it is representative of the smallest human subject that properly can occupy the wheelchair test device, which is an adult size powered wheelchair. A 5th percentile female seated in the wheelchair test device increases from approximately 11.3 kg (25 pounds) to approximately 18.1 kg (40 pounds) the force exerted by the front wheel of the test device on the lift platform. However, NHTSA does not believe that this increase in weight will detract from the effectiveness of the test to assess the

compliance of weight-based warning systems, as a pressure sensitive mat with 40 lb threshold for actuation still will detect a passenger using a mobility aid or a small child without a mobility aid who may be boarding the lift platform from the vehicle floor. If a lift manufacturer chooses to certify to S6.1.2 and S6.1.3 with a human representative of a 5th percentile female in the S7.4 test procedure, the manufacturer shall select this option by the time it certifies the lift and may not thereafter select a different test option for the lift.

E. Amend the Wheelchair Test Device Specification in S7.1.2 of FMVSS No. 403 To Include Anti-tip Devices

Ricon petitioned the agency to amend the wheelchair test device specification in S7.1.2 of FMVSS No. 403 to include anti-tipping devices. The specification set forth in S7.1.2 currently does not permit the wheelchair test device to be outfitted with an anti-tipping device. In its petition, Ricon states that it is common industry practice to equip powered wheelchairs with an anti-tipping feature, especially if the wheelchair is to be used in public transportation. Ricon states also that the addition of this feature to S7.1.2 will make the test device more representative of current industry standards.

Agency response: The agency denies Ricon's request that the wheelchair test device specification set forth in S7.1.2 of FMVSS No. 403 be amended to include anti-tipping devices. The wheelchair test device is used in the wheelchair retention device impact tests specified in S7.7 to determine whether a lift's wheelchair retention equipment complies with S6.4.7.1 and S6.4.7.2. It also is used in the inner roll stop tests specified in S7.8 to assess whether its inner roll stops comply with the requirements in S6.4.8.3. In these tests, the test device evaluates the ability of the wheelchair retention device and inner roll stop to prevent the wheelchair from rolling over the outer and inner edges of the platform. Neither test is designed specifically to simulate real world operating conditions.

When the means of retaining a wheelchair test device is an outer barrier, the addition of anti-tipping bars limits the climbing ability of the test device and decreases the utility of the impact test. The agency notes also that a user can rotate anti-tipping devices to an "up" position, which renders them ineffective, or easily remove them. Additionally, not all wheelchairs used on platform lifts are equipped with anti-tipping devices. For these reasons, the

agency believes that the addition of anti-tip devices to S7.1.2 would not necessarily make the wheelchair test device more representative of a real world operating environment, but would reduce the effectiveness of the compliance tests.

F. Amend the Wheelchair Retention Impact Test Specifications in S7.7 of FMVSS No. 403 To Permit Use of a Loaded Wheelchair Test Device

Ricon petitioned the agency also to amend the wheelchair retention impact test requirements in S7.7 of FMVSS No. 403 to permit the addition of weight to the wheelchair test device. S7.7 currently does not permit the wheelchair test device to be loaded during the wheelchair retention device impact test. In support of its petition, Ricon submitted a technical analysis indicating that the center of gravity of an unloaded wheelchair changes significantly with respect to the lift upon impact with an outer barrier serving as a wheelchair retention device. Ricon found that, in combination with the continued forward motion of the drive wheels, this change in the center of gravity upon impact with the outer barrier causes the test device to flip backward, resulting in failure of the impact test. Ricon's analysis indicated that this occurrence is unrelated to the height of the outer barrier. On the basis of its analysis, Ricon concluded that the addition of weight (it recommended a load of 110 pounds (50 kilograms) to simulate a 5th percentile female occupant) to the seat of the wheelchair test device during the impact test will prevent the wheelchair from flipping backward after impact with the test barrier and make the test more representative of real world conditions.

Agency Response: The agency grants Ricon's petition to propose amending the wheelchair retention impact test specifications to add weight to the seat of the wheelchair test device during the impact test specified in S7.7. This test examines whether a wheelchair test device will roll over or plow through a platform's wheelchair retention device upon impact at different speeds and wheelchair directions. Data from recent testing performed by NHTSA confirms the results of the technical analysis submitted by Ricon. Adding a low profile weight to the seat of the wheelchair test device will help stabilize it during both the wheelchair retention and inner roll stop impact tests. Adding weight to the wheelchair test device, however, also will increase the force with which the test device strikes the barrier being tested, which

could cause some currently acceptable barriers to fail. Therefore, NHTSA proposes an amendment to S7.7 to permit, but not require, the addition of a 50 kilogram (110 pound) weight to the seat of the wheelchair test device, distributed evenly and symmetrically, during testing. This load will provide some additional stability and, in most cases, will prevent the wheelchair test device from falling backwards after impact with the wheelchair retention barrier. If a lift manufacturer chooses to certify to S6.4.7 with a 50 kilogram weight in the seat of the wheelchair test device in the S7.7 test procedure, the manufacturer shall select this option by the time it certified the lift and may not thereafter select a different test option.

The petition from Ricon and our recent testing prompted the agency to consider revising other aspects of the wheelchair retention device and inner roll stop tests specified in S7.7 and S7.8. Our testing indicated that during forward impact tests on wheelchair retention and roll stop devices, even a loaded wheelchair test device sometimes fell backwards on the platform or remained upright, but without all four wheels in contact with the platform. During some rearward outer barrier impact tests, the wheelchair test device climbed the outer barrier and went off the platform.

Technically, these outcomes constitute failures of the wheelchair retention test specified in S7.7 and the inner roll stop test specified in S7.8. We believe that the outcomes were caused by the continued application of power to the drive wheels of the wheelchair test device after impact.

In the case of wheelchair retention device and inner roll stop impact tests, the wheelchair test device is used primarily as a barrier evaluator. It tests whether the wheelchair test device will plow through or roll over the barrier when striking it at specific speeds. We believe that it could be difficult to design wheelchair retention devices and inner roll stops that protect wheelchair passengers from all possible situations without interfering with the normal operation of the lift. We also believe that it is sufficient to ensure that the strength and configuration of wheelchair retention devices and inner roll stops are such that wheelchairs will not plow through or roll over them. With such systems in place and in typical real world situations, occupied wheelchairs will not be moving at high rates of speed on the platform, occupants will terminate drive power upon impact with a barrier, and occupied wheelchairs will be retained on the platform without falling over.

Thus, the technical failures described in Ricon's petition and replicated in our testing appear to be more a function of current test methods than the inadequacy of the wheelchair retention device or inner roll stop being tested.

Consequently, the agency is proposing amendments to the test specifications in S7.7 and S7.8 to provide for termination of the wheelchair drive motors via the wheelchair controller after the initial impact of any portion of the wheelchair test device with the barrier. These tests currently require that a test device remain powered following the impact with a barrier. However, maintaining power to the test device after the impact not only contributes to the technical failures discussed above (i.e., those unrelated to the adequacy of the outer barrier or inner roll stop being tested), but also may result in testing inconsistencies, due to differences in the drive wheel torque and stall rates of some test devices.

Terminating power during the wheelchair retention and inner roll stop impact tests will stabilize the wheelchair test device after impact and thereby help prevent such technical failures and related damage to the wheelchair test device and/or lift. At the same time, the proposed amendment will not reduce significantly the force with which the test device strikes the barrier or otherwise compromise the effectiveness of the tests. In addition, removing power to the drive motors via the wheelchair controller rather than by terminating power at the batteries will prevent the automatic parking brakes of the test device from engaging, which could undermine the integrity of the tests.

As these tests are complete after impact, NHTSA proposes amending S6.4.7 to strike the current requirement that the wheelchair test device remain upright with all of its wheels in contact with the platform surface following impact. Instead, NHTSA proposes to revise S6.4.7 to provide that a wheelchair retention device passes the impact test if, after impact, the wheelchair test device remains supported by the platform surface with none of the axles of its wheels extending beyond the plane perpendicular to the platform reference plane (Figure 1) which passes through the edge of the platform surface that is traversed when entering or exiting the platform from the ground level loading position. The proposed test criteria references axles rather than wheels to prevent the occurrence of another type of technical failure (i.e., test failure unrelated to the adequacy of the barrier) during rearward testing, when the large wheels of the

wheelchair test device may rest on the platform and touch the outer barrier with tires extending beyond the plane after impact.

On the same basis, NHTSA proposes amending S6.4.8.3 to provide that an inner roll stop passes the impact portion of the test if the front wheels of the wheelchair test device do not extend beyond the plane that is perpendicular to the platform reference plane (Figure 1) and which passes through the edge of the platform where the roll stop is located when the lift is at ground level loading position.

G. Amend the Requirements for Platform Lighting on Public Lifts in S4.1.5 of FMVSS No. 404 To Reduce the Illumination Levels to Those Specified by the ADA and FTA

Blue Bird, the SBMTC and the MCSBB requested that the agency amend S4.1.5 to reduce the required platform illumination levels to those specified by the ADA and FTA.² S4.1.5 currently requires that public use lifts have a light or set of lights that provides at least 54 lm/m² (5 lm/ft²) of luminance on all portions of the surface of the platform, throughout the range of passenger operation. S4.1.5 requires also that, at ground level, all portions of the lift's unloading ramp have at least 11 lm/m² (1 lm/sqft). The platform lighting requirements in FMVSS No. 404 apply to public-use lifts installed on vehicles with a GVWR greater than 4536 kg (10,000 pounds), including motor coaches, transit buses and school buses.

Section 38.31 of the ADA Accessibility Specifications for Transportation Vehicles requires 2 lm/sqft of illumination on the lift platform at floor level and 1 lm/sqft of illumination on the lift platform or ramp at ground level. While S4.1.5 of FMVSS No. 404 and Section 38.31 of the ADA Accessibility Specifications impose lighting requirements for platforms or ramps at ground level that are identical, S4.1.5 imposes a platform lighting requirement, throughout the range of operation, that is more than 2½ times greater than that required by the ADA.

In support of its request, the MCSBB argues that the ADA platform lighting requirements have been in effect for some time and appear to be reasonable. It therefore contends that continuing to require compliance with the higher lighting requirements set forth in S4.1.5 seems "quite excessive and unjustified." Blue Bird, the MCSBB, and the SBMTC all state that imposing lighting

requirements in excess of those required by the ADA could have adverse safety effects, including a potential burn risk to users, distraction to oncoming drivers and glare in the eyes of users. The SBMTC also states that the higher luminance level requirements could place a drain on a vehicle's battery during lift operation, which typically occurs with the vehicle's engine shut off. Additionally, Blue Bird notes that the December 27, 2002 Final Rule identifies the ADA and FTA as sources for the platform lighting requirements set forth in S4.1.5. Yet, as discussed above, S4.1.5 adopted a platform lighting standard that, in parts, far exceeds ADA and FTA standards.

Agency Response: The agency grants the petitions of Blue Bird, the SBMTC and the MCSBB to propose amending S4.1.5 to reduce the required platform illumination levels to those specified by the ADA and FTA. The lighting requirements in S4.1.5 were based, generally, on guidelines and requirements that specified lighting levels for similar access areas in different modes of public transport. For example, the Federal Aviation Administration (FAA) Human Factors Design Guide³ provides for a minimum illumination level on corridors of approximately 110 lm/m² or 110 Lux (10.2 lm/ft² or 10.2 foot-candle). Similar guidelines identify a suggested illumination level of as much as 100 lm/m² or 100 Lux (9.3 lm/ft² or 9.3 foot-candle) for general lighting in corridors, stairs and other access areas. Although not specific to lift platforms, the lighting guidelines and requirements applicable to corridors and stairs are relevant to lift platforms, as corridors, stairs and platform lifts all are types of access areas. Given the lighting requirements applicable to these comparable access areas, the agency therefore believes it is not accurate to describe as "excessive" or "unjustified" the requirement in S4.5.1 that a platform lift be illuminated by at least 54 lm/m² (5 lm/ft²), throughout the range of passenger operation.

That being said, Blue Bird is correct in noting that NHTSA's December 27, 2002 Final Rule identifies the ADA and FTA as the sources for the platform lighting requirements set forth in S4.1.5, even though S4.5.1's illumination requirements, in parts, exceed ADA and FTA lighting specifications significantly. Additionally, in our

² The ADA lighting specification was based on existing Federal Transit Administration (FTA) lighting requirements set forth in 49 CFR 609.15.

³ U.S. Department of Transportation, Federal Aviation Administration Human Factors Design Guide for acquisitions of Commercial-off-the-shelf subsystems, non-developmental items, and developmental systems, January 15, 1996, DOT/FAA/CT-96/1.

October 1, 2004, final rule (69 FR 58843), which responded to petitions for reconsideration, NHTSA stated as one justification for moving the lighting requirements from FMVSS No. 403 to FMVSS No. 404 and to demonstrate that such a move would not impose an additional burden on public use manufacturers—that “public-use vehicle manufacturers already must comply with ADA lighting standards, which require lighting on doorways, stepwells, lifts and ramps.” However, the platform lighting requirements in FMVSS No. 404—and the ADA would need to be coextensive in order to avoid placing an additional burden on manufacturers by requiring that they comply both with the ADA and with the more rigorous lighting requirements in FMVSS No. 404.

We note also that the National Technology Transfer and Advancement Act⁴ would have required NHTSA to adopt industry and government platform lighting standards, provided they were not impractical.⁵ In retrospect, the extent to which the agency intended to adopt the FTA-based ADA lighting standard applicable to public use lifts is unclear. However, amending S4.1.5 to reduce the required platform illumination levels to those specified by the ADA and FTA at this juncture would be consistent with that Act.

Therefore, as a result of the petitions from Blue Bird, the SBMTC and the MCSSB and for the reasons stated above, NHTSA is persuaded to propose changing the minimum illumination required on lift platforms to that required by the ADA and FTA. Additionally, in response to comments received by the agency about the lack of a test procedure to demonstrate compliance with the lighting requirement, NHTSA is proposing to amend S4.5.1 to provide vehicle manufacturers with guidance relative to platform illumination testing, which NHTSA proposes should be done with a vehicle’s engine shut off.

⁴ The National Technology Transfer and Advancement Act requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies when such technical standards are available (see section 12(d) of Pub. L. 104–113) and are consistent with authorizing legislation of the agencies.

⁵ As defined in OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, “impractical” includes circumstances in which such use would fail to serve the agency’s program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard.

III. Technical Changes

A. Amend S7 of FMVSS No. 403 To Require Performance of the Handrail Test in S7.12 on a Lift/Vehicle Combination Rather Than on a Test Jig

S6.4.9 of FMVSS No. 403 details the handrail requirements for public and private use lifts. S6.4.9.8 of that standard provides that “when tested in accordance with S7.12.1, there must be at least 38 mm (1.5 inches) of clearance between each handrail and any portion of the vehicle, throughout the range of passenger operation.” In order to measure this clearance, the lift must be mounted on a vehicle during the test. However, the test conditions and procedures set forth in S7 currently permit the tests specified in S7.12 to be performed with a lift installed on a test jig rather than on a vehicle. If performed on a test jig, it is not possible to determine clearances between the handrails and the vehicle during the test. NHTSA proposes to amend S7 of FMVSS No. 403 to require the handrail test to be performed on a lift/vehicle combination.

B. Correct Figure 2 in FMVSS No. 403 To Make it Consistent With the Threshold Beacon Warning Requirements in S6.1.6

It has come to NHTSA’s attention that a dimension in Figure 2 is incorrect. The height of the measurement point from which the intensity of the threshold audible warning is measured and the threshold warning beacon must be visible is identified as 919 mm. Because S6.1.6 provides that this measurement point is 914 mm (3 feet), we are proposing to replace Figure 2 with revised Figure 2, which shows a measurement point of 914 mm (3 feet), consistent with the requirements of S6.1.6.

C. Clarify the Control Panel Switch Requirements in S6.7.4 of FMVSS No. 403

It has come to our attention through letters from lift manufacturers in response to NHTSA’s compliance testing that some confusion exists about the control panel switch requirements in S6.7.4 of FMVSS 403. S6.7.4 provides that, except for the POWER function, the control panel switches that control the stow (fold), deploy (unfold), down (lower) and up (raise) functions must prevent the simultaneous performance of more than one function. Commenters have indicated that S6.7.4 does not specify what is required when two or more switches are actuated simultaneously. To clarify what the standard requires, NHTSA is proposing

to amend S6.7.4 to provide that if an initial function is actuated, then one or more other functions are actuated while the initial function remains actuated, the platform must either continue in the direction dictated by the initial function or stop. Compliance test procedure TP–403–00, Laboratory Test Procedure for FMVSS No. 403, Platform Lift Systems for Motor Vehicles addresses this issue and can be viewed or obtained from the NHTSA Web site (<http://www.nhtsa.dot.gov>).

D. Amend the Interlock Requirements and Test Procedure in S6.10.2.4, S6.10.2.5, S6.10.2.6, S6.10.2.7, S7.5 and S7.6 of FMVSS No. 403

As a result of compliance testing and subsequent, related communications from a lift manufacturer, it has come to NHTSA’s attention that some confusion exists about how the test that is specified in S7.5 is to be used to verify compliance with the interlock requirements in S6.10.2.5 (interlock to prevent vertical movement of the lift unless the wheelchair retention device is deployed) and S6.10.2.6 (interlock to prevent outer barrier deployment while barrier area is occupied). Based on communications received by the agency, it appears that some manufacturers believe that the portion of the test procedure described in S7.5.2 applies only to the requirements of S6.10.2.5 and that the portion of the procedure described in S7.5.3 applies only to S6.10.2.6. Consequently, NHTSA proposes revising and renumbering these sections to reinforce the fact that S7.5.2 and S7.5.3 together constitute one test procedure used to determine compliance with the interlock requirements in S6.10.2.5 as well as with the interlock requirements in S6.10.2.6.

Confusion also exists about how the test that is specified in S7.6 and verifies compliance with the inner roll stop occupancy interlock requirements and the inner roll stop non-deployment interlock requirements applies to the inner roll stop requirements in S6.10.2.4. Specifically, the test procedure set forth in S7.6.2 and S7.6.3 uses as a reference point for determining the location at which the roll stop “starts to deploy.” By contrast, the inner roll stop non-deployment interlock requirement set forth in S6.10.2.4 assesses compliance at “the level where the inner roll stop is designed to deploy.” At least one manufacturer found the conflicting terminology between the test procedure and this requirement incompatible. Consequently, NHTSA has proposed revising S7.6.2 and S7.6.3 to replace

references to “start to deploy” with references to “designed to deploy,” consistent with the requirement set forth in S6.10.2.4. Additionally, to maintain symmetry between the outer barrier and inner roll stop interlock test procedures, we have proposed revising and renumbering these sections to reinforce the fact that S7.6.2 and S7.6.3 together constitute one test procedure used to determine compliance with the interlock requirements set forth in both S6.10.2.4 and S6.10.2.7.

NHTSA also is aware of additional confusion stemming from the portion of the outer barrier interlock test procedure specified in S7.5.2. The current test procedure detailed in S7.5.2 provides that the platform should be stopped and its distance from the ground measured at the location where the outer barrier begins to deploy to verify that it is not greater than 75 mm (3 in). This measurement has little value because NHTSA is concerned mainly that the outer barrier be fully deployed by the time the platform is 75 mm (3 in) above the ground. NHTSA proposes new language in S7.5.1.1 and S7.5.1.2 that provides for the platform to be moved up until the outer barrier starts to deploy. This maneuver will help to determine the edge where to place the wheel of the wheelchair test device. The new proposed language then instructs that the front wheel of the wheelchair test device be placed on the edge of the outer barrier and that the platform be moved up until it stops. If both interlocks are working correctly, the wheel of the wheelchair test device will prevent the outer barrier from deploying, the wheelchair test device wheel will not move vertically upward more than 13 mm (0.5 in) and the platform will automatically stop before its upper surface is greater than 75 mm (3 in) above the ground. If the outer roll stop deploys and raises the wheelchair test device wheel off the platform more than 13 mm (0.5 inches), the lift fails S6.10.2.6. If the wheelchair test device wheel prevents the outer barrier from deploying and the platform stops at a level greater than 75 mm (3 in) above the ground, the lift fails S6.10.2.5.

It has come to NHTSA’s attention that similar confusion exists with respect to the inner roll stop interlock test detailed in S7.6.2. S7.6.2 provides that the location where the inner roll stop starts to deploy should be noted during testing. However, this location is of little value when assessing compliance with S6.10.2.5, as NHTSA is interested primarily in the location where the inner roll stop fully deploys—not where it starts to deploy. Unlike the outer barrier, NHTSA has no specification

relative to the level at which inner roll stops should deploy. The inner roll stop will fully deploy at different levels depending on the lift design. Therefore, during testing, NHTSA notes the location where the inner roll stop deploys fully on the particular lift being tested, as well as when the wheel of the wheelchair test device prevents deployment; the platform automatically should stop before it goes beyond the location where the inner roll stop deploys fully.

New proposed language in S7.6.2 and S7.6.3 now requires that the location where the inner roll stop fully deploys should be noted. It also requires that the platform be moved back to vehicle floor level and then down until the inner roll stop starts to deploy. This maneuver helps to determine the edge where the wheel of the wheelchair test device must be placed. One front wheel of the wheelchair test device is placed on the edge of the inner roll stop and the platform is moved down until it automatically stops. If the inner roll stop deploys and raises the wheelchair test device wheel vertically more than 13 mm (0.5 in), the lift fails S6.10.2.7. If the wheel of the wheelchair test device prevents the inner roll stop from deploying and the platform travels beyond the full deployment location previously noted, then the lift fails S6.10.2.4. The lift passes both S6.10.2.4 and S6.10.2.7 if inner roll stop does not deploy, does not raise the wheel of the wheelchair test device vertically more than 13 mm (0.5 in) and the platform automatically stops before it travels beyond the previously noted location where the inner roll stop is designed to be fully deployed.

IV. November 3, 2005 Interpretation

On November 3, 2005, we issued an interpretation letter of S7.4 of FMVSS No. 403, addressed to Maxon. The November 3 interpretation clarified specific procedures that should be performed as part of the threshold warning signal test. Although the agency has decided against revising the language of S7.4, we include a discussion of the matter in this document to ensure wide-spread dissemination of the interpretation.

In asking about the threshold warning requirements, the incoming letter suggested that there was an apparent inconsistency between the requirement and the associated test procedure. The agency explained, as follows, that the specified test procedure for the threshold warning system is consistent with that requirement:

As part of FMVSS No. 403, the agency established a threshold warning signal

requirement for platform lifts in part to minimize the risk of a lift user backing off a vehicle before a lift is properly positioned. S6.1 of FMVSS No. 403 requires an appropriate threshold warning signal to be activated when any portion of a passenger’s body or mobility aid occupies the platform threshold area defined in S4 of that standard, and the platform is more than 25 mm (1 inch) below the vehicle floor reference plane. A platform lift must meet this requirement when tested in accordance with S7.4 of the standard.

In your letter you stated that it is possible to design a threshold warning system that “will pass a test that is performed as described in S7.4 and not completely fulfill the requirements of S6.1.3”. You described a threshold warning system designed with an optical sensor at the interior boundary of the platform threshold area. You stated that such a system would activate the warning signal only when a passenger is crossing the boundary of the threshold at the same time as the platform is lower than 25 mm from the vehicle floor. You further stated that such a system would not activate a signal if a passenger were completely within the threshold area when the platform reached the specified distance from the vehicle floor. Your letter indicated that you believe that such a system would “pass” the test procedure, but not comply fully with the requirement.

A system as you described would not comply with the requirements of S6.1.3 when tested as specified in S7.4. As stated above, S6.1 requires the appropriate warning signal to activate when tested in accordance with S7.4. S7.4.2 specifies that, with the platform lift at the vehicle floor loading position:

[P]lace one front wheel of the unloaded wheelchair test device [specified in S7.1.2] on any portion of the threshold area defined in S4. Move the platform down until the alarm is actuated. Remove the test wheelchair wheel from the threshold area to deactivate the alarm. Measure the vertical distance between the platform and the threshold area and determine whether that distance is greater than 25 mm (1 in).

Thus, S7.4.2 specifies placing the front wheel of the test device on any portion of the threshold area. As explained in 49 CFR § 571.4, the use of the term “any” in connection with a range of values or set of items means generally, “the totality of the items or values, any one of which may be selected by the [agency] for testing”. Accordingly, the procedure specified in S7.4.2 includes placement of the front wheel that could result in the entire test device being within the threshold area prior to the platform being lowered. This also includes placement that results in a portion of the test device being on the platform.

Given the discussion above, a system such as you described would not comply when tested under S7.4.2. As such, there is no discrepancy between the requirement of S6.1.3 and the test procedure specified in S7.4.

V. Proposed Compliance Date

The proposed amendments would be mandatory for purposes of compliance

180 days after publication of a final rule. Optional compliance would be permitted immediately upon publication of the final rule. We believe these dates would be appropriate given that the amendments would be for the purpose of clarifying the requirements of the standard and providing further flexibility in compliance.

VI. Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.⁶ We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- *Federal eRulemaking Portal*: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail*: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery or Courier*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

- *Fax*: (202) 493-2251.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.⁷

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://>

dmses.dot.gov/submit/DataQualityGuidelines.pdf.

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.⁸

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

VII. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document proposes amendments to FMVSS Nos. 403 and 404 to clarify the requirements of the standard and to provide further flexibility in compliance. The impacts of the proposed amendments are so minimal that a full regulatory evaluation is not required. Readers who are interested in the overall costs and benefits of the platform lift requirements are referred to the agency's Final Economic Assessment for the December 2002 final rule (Docket No. NHTSA-2002-13917-3). The amendments proposed by this document will not change the costs and benefits in a quantifiable manner.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this action on small entities. I hereby certify that this proposed rule would not have a significant impact on a substantial number of small entities. The NPRM does not propose to impose new requirements but instead proposes amendments to FMVSS Nos. 403 and 404 to clarify the requirements of the standards and to provide further flexibility in compliance.

Executive Order 13132

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have federalism implications because a final rule, if issued, would 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."

Further, no consultation is needed to discuss the preemptive effect of today's rulemaking. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under

⁶ See 49 CFR 553.21.

⁷ Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

⁸ See 49 CFR 512.

this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's standard and test regime. NHTSA may opine on such conflicts in the future, if warranted. See *id.* at 883–86.

National Environmental Policy Act

NHTSA has analyzed this NPRM for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This NPRM would not establish any new information collection requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

As discussed in the preamble to the December 2002 final rule, the

equipment standard was drafted to include or exceed all existing government (FTA, ADA) and voluntary industry (e.g., SAE) standards. 67 FR 79416, 79438; December 27, 2002. Readers who are interested in the source of the requirements in FMVSS No. 403 are referred to that document. The agency included a table showing the source of each requirement in FMVSS No. 403.

This document is not proposing to impose new requirements but is instead proposing amendments to FMVSS Nos. 403 and 404 to clarify the requirements of the standards and to provide further flexibility in compliance. As discussed earlier in this document, the proposal to amend S4.1.5 of FMVSS No. 404 to reduce the required platform illumination levels to those specified by the ADA and FTA is consistent with the NTTAA.

Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 more than \$100 million annually (adjusted for inflation with base year of 1995). This NPRM would not result in expenditures by State, local or tribal governments, in the aggregate, or by the

private sector in excess of \$100 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this

document to find this action in the Unified Agenda.

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>.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA is proposing to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.403 would be amended by revising S6.1.4, S6.1.6, S6.4.7.1, S6.4.8.3(a), S6.7.4, S6.7.6.2, S6.10.2.4, S6.10.2.5, S6.10.2.6, S6.10.2.7, S7, S7.4.2, S7.5, S7.5.1, S7.5.2, S7.5.3, S7.6, S7.6.1, S7.6.2, S7.6.3, S7.7.2.4, S7.7.2.5, S7.8.3, and Figure 2, and by adding new S7.5.1.1 and S7.5.1.2, to read as follows:

§ 571.403 Standard No. 403; Platform lift systems for motor vehicles.

* * * * *

S6.1.4 The visual warning required by S6.1.2 and S6.1.3 must be a flashing red beacon as defined in SAE J578, June 95, must have a minimum intensity of 20 candela, a frequency from 1 to 2 Hz, and must be located within the interior of the vehicle such that it is visible from a point 914 mm (3 ft) above the center of the threshold area (see Figure 2) wherever the lift is installed and with any configuration of the vehicle interior.

* * * * *

S6.1.6 The intensity of the audible warning and visibility of the visual warning required by S6.1.2 and S6.1.3 is measured/observed at a location 914 mm (3 ft) above the center of the platform threshold area. (See Figure 2).

* * * * *

S6.4.7.1 *Impact I.* Except for platform lifts designed so that platform loading takes place wholly over the vehicle floor, the lift must have a means of retaining the test device specified in

S7.1.2. After impact, the test device must remain supported by the platform surface with none of the axles of its wheels extending beyond the plane perpendicular to the platform reference plane (Figure 1) and which passes through the edge of the platform which is traversed when entering or exiting the platform from the ground level loading position throughout its range of passenger operation, except as provided in S6.4.7.4. The lift is tested in accordance with S7.7 to determine compliance with this section.

* * * * *

S6.4.8.3 * * *

(a) The front wheels of the test device specified in S7.1.2 from extending beyond the plane that is perpendicular to the platform reference plane (Figure 1) and which passes through the edge of the platform where the roll stop is located when the lift is at ground level loading position; and

* * * * *

S6.7.4 Except for the POWER function described in S6.7.2.1, the control system specified in S6.7.2 must prevent the simultaneous performance of more than one function. If an initial function is actuated, then one or more other functions are actuated while the initial function remains actuated, the platform must continue in the direction dictated by the initial function or stop. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8.

* * * * *

S6.7.6.2 *Public use lifts.* Public-use lift controls located within the portion of the passenger compartment specified in S5.3.4(a) of Standard No. 101 (§ 571.101), must have characters that are illuminated in accordance with S5.3 of Standard No.101, when the vehicle's headlights are illuminated. Public-use lift controls located outside the portion of the passenger compartment specified in S5.3.4(a) of Standard No. 101 (§ 571.101) must have means for illuminating the characters to make them visible under daylight and nighttime conditions.

* * * * *

S6.10.2.4 Movement of the platform up or down, throughout the range of passenger operation, unless the inner roll stop required to comply with S6.4.8 is deployed. When the platform reaches a level where the inner roll stop is designed to fully deploy, the platform must stop unless the inner roll stop has fully deployed. Verification with this requirement is made by performing the test procedure specified in S7.6.1.

S6.10.2.5 Movement of the platform up or down, throughout the range of

passenger operation, when the highest point of the platform surface at the outer most platform edge is above a horizontal plane 75 mm (3 in) above the ground level loading position, unless the wheelchair retention device required to comply with S6.4.7 is deployed throughout the range of passenger operations. Verification of compliance is made using the test procedure specified in S7.5.1.

S6.10.2.6 In the case of a platform lift that is equipped with an outer barrier, vertical deployment of the outer barrier when it is occupied by portions of the passenger's body or mobility aid throughout the lift operation. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in S7.5.1.

S6.10.2.7 Vertical deployment of the inner roll stop required to comply with S6.4.8 when it is occupied by portions of a passenger's body or mobility aid throughout the lift operations. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop or platform edge) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in S7.6.1.

* * * * *

S7 *Test conditions and procedures.* Each platform lift must be capable of meeting all of the tests specified in this standard, both separately, and in the sequence specified in this section. The tests specified in S7.4, S7.7.4 and S7.8 through S7.12 are performed on a single lift and vehicle combination. The tests specified in S7.2, S7.3, S7.5, S7.6, S7.7.1, S7.8 and S7.13 through S7.14 may be performed with the lift installed on a test jig rather than on a vehicle. Tests of requirements in S6.1 through S6.11 may be performed on a single lift and vehicle combination, except for the requirements of S6.5.3. Attachment hardware may be replaced if damaged by removal and reinstallation of the lift between a test jig and vehicle.

* * * * *

S7.4.2 During the threshold warning test, the wheelchair test device may be occupied by a human representative of a 5th percentile female meeting the requirements of FMVSS 208, S29.1(f) and S29.2. If present, the human subject

must be seated in the wheelchair test device and their feet supported by the wheelchair foot rests which are adjusted properly for length and in the down position (not elevated). The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different test option for the lift. Maneuver the lift platform to the vehicle floor level loading position. Using the wheelchair test device specified in S7.1.2, place one front wheel of the wheelchair test device on any portion of the threshold area defined in S4. Move the platform down until the alarm is actuated. Remove the test wheelchair wheel from the threshold area to deactivate the alarm. Measure the vertical distance between the platform and the threshold area and determine whether that distance is greater than 25 mm (1 in).

* * * * *

S7.5 Outer barrier non-deployment interlock and occupied outer barrier interlock test.

S7.5.1 Determine compliance with both S6.10.2.5 and S6.10.2.6 by using the following single test procedure.

S7.5.1.1 Place the test jig or vehicle on which the lift is installed on a flat, level, horizontal surface. Maneuver the platform to the ground level loading position. Using the lift control, move the lift upward until the point where the outer barrier fully deploys. Stop the platform at that point and measure the vertical distance between the highest point on the platform surface at the outer most edge and the ground to determine whether the distance is greater than 75 mm (3 in.). Reposition the platform in the ground level loading position. Locate the wheelchair test device specified in S7.1.2 on the platform. If other wheelchair retention devices (e.g., a belt retention device) prevent the front wheel of the wheelchair test device from accessing the outer barrier when on the platform, the wheelchair test device may be placed on the ground facing the entrance to the lift.

S7.5.1.2 Place one front wheel of the wheelchair test device on any portion of the outer barrier. If the platform is too small to maneuver one front wheel on the outer barrier, two front wheels may

be placed on the outer barrier. Note the distance between a horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) and the ground. Using the lift control, move the platform up until it stops. Measure the vertical distance between the highest point of the platform surface at the outer most edge and the ground to determine compliance with S6.10.2.5. Measure the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) to determine compliance with S6.10.2.6.

S7.6 Inner roll stop non-deployment interlock and occupied inner roll stop interlock test.

S7.6.1 Determine compliance with both S6.10.2.4 and S6.10.2.7 by using the single test procedure in S7.6.2 and S7.6.3.

S7.6.2 Maneuver the platform to the vehicle floor level loading position, and position the wheelchair test device specified in S7.1.2 on the platform with the front of the wheelchair test device facing the vehicle. Using the lift control, move the platform down until the inner roll stop fully deploys. Stop the lift and note that location.

S7.6.3 Reposition the platform at the vehicle floor level loading position. Place one front wheel of the wheelchair test device on the inner roll stop. If the platform is too small to maneuver one front wheel on the inner roll stop, two front wheels may be placed on the inner roll stop. Note the vertical distance between a horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop) and the ground. Using the lift control, move the platform down until it stops. Compare the location of the platform relative to the location noted in S7.6.2 to determine compliance with S6.10.2.4. Measure the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop) to determine compliance with S6.10.2.7.

* * * * *

S7.7.2.4 An optional 50 kg (110 pounds) of weight may be centered, evenly distributed and secured in the seat of the wheelchair test device to assist in stabilizing the wheelchair test device during testing. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different test option for the lift. Accelerate the test device onto the platform under its own power such that the test device impacts the wheelchair retention device at each speed and direction combination specified in S7.7.2.5. Terminate power to the wheelchair test device by means of the wheelchair controller after the initial impact of any portion of the wheelchair test device with the wheelchair retention device. Note the position of the wheelchair test device following each impact to determine compliance with S6.4.7. If necessary, after each impact, adjust or replace the footrests to restore them to their original condition.

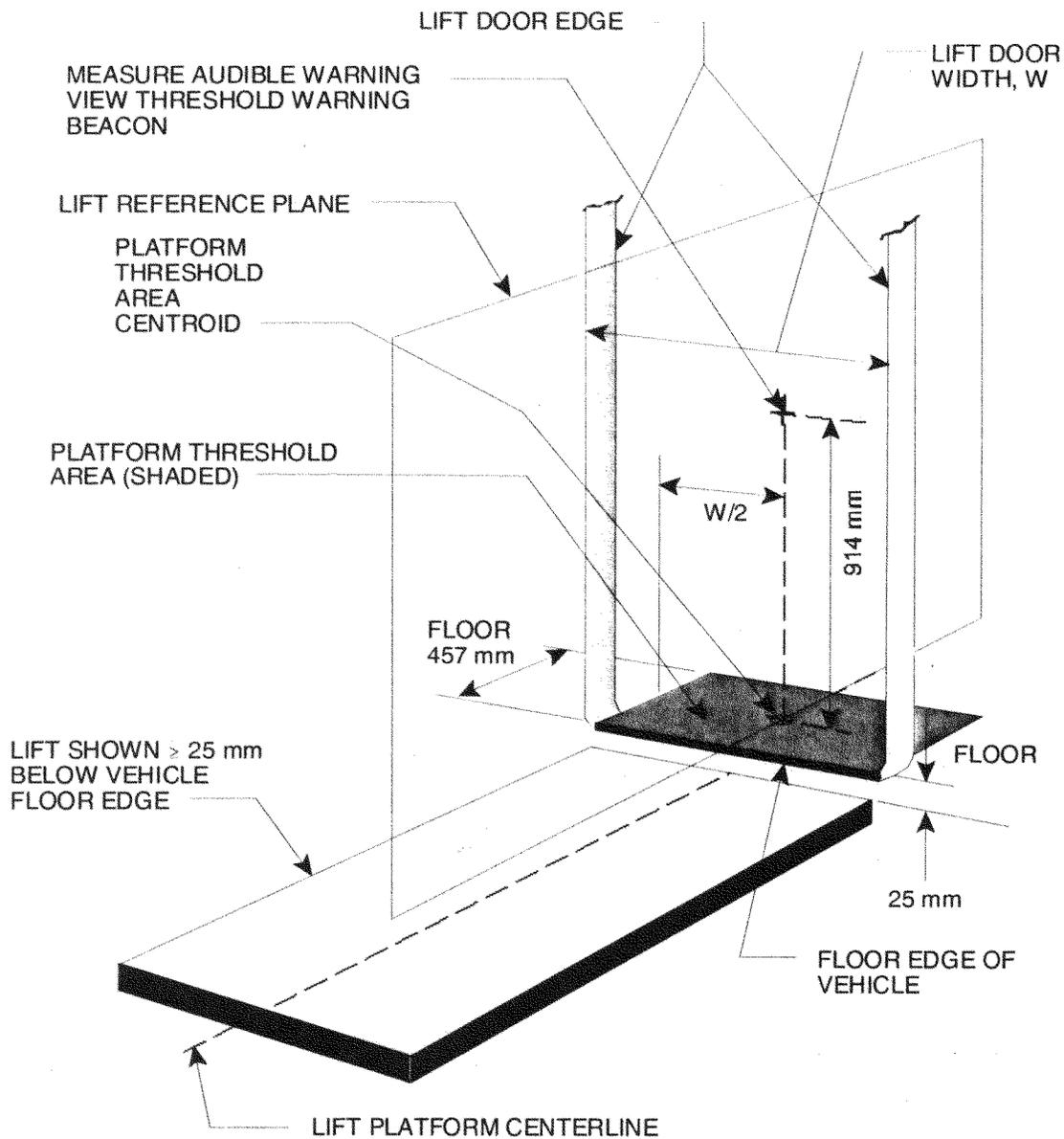
S7.7.2.5 The test device is operated at the following speeds, in the following directions—

- (a) At a speed of not less than 2.0 m/s (4.4 mph) and not more than 2.1 m/s (4.7 mph) in the forward direction.
- (b) At a speed of not less than 1.75 m/s (3.9 mph) and not more than 1.85 m/s (4.1 mph) in the rearward direction.

* * * * *

S7.8.3 An optional 50 kg (110 pounds) of weight may be centered, evenly distributed and secured in the seat of the wheelchair test device to assist in stabilizing the wheelchair test device during testing. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different test option for the lift. Accelerate the test device onto the platform such that it impacts the inner roll stop at a speed of not less than 1.5 m/s (3.4 mph) and not more than 1.6 m/s (3.6 mph). Terminate power to the wheelchair test device by means of the wheelchair controller after the initial impact of any portion of the wheelchair test device with the inner roll stop. Determine compliance with S6.4.8.3 (a).

* * * * *



PLATFORM THRESHOLD AREA AUDIBLE WARNING MEASUREMENT POINT

FIGURE 2

* * * * *

3. Section 571.404 would be amended by revising S4.1.5 to read as follows:

§ 571.404 Standard No. 404; Platform lift installations in motor vehicles.

* * * * *

S4.1.5 Platform Lighting on public use lifts. Public-use lifts must be provided with a light or set of lights that provide at least 22 lm/m² or 22 Lux (2 lm/ft² or 2 foot-candles) of illumination on all portions of the surface of the platform when the platform is at the

vehicle floor level. Additionally, a light or set of lights must provide at least 11 lm/m² or 11 Lux (1 lm/ft² or 1 foot-candle) of illumination on all portions of the surface of the platform and all portions of the surface of the passenger-unloading ramp at ground level. Illumination measurements are recorded with the vehicle engine not running, with the vehicle/lift in an environment where there is no apparent ambient light, with the sensor portion of the light meter within 50 mm (2 inches) of the

surface being measured and with a light meter that has a range comparable to a minimum of 0 to 100 Lux, in increments comparable to 1 Lux or less, an accuracy of ± 5 % of the actual reading and a sampling rate of at least 2 Hz.

* * * * *

Issued: December 14, 2007.

Stephen R. Kratzke,
Associate Administrator for Rulemaking.
[FR Doc. 07-6146 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 72, No. 244

Thursday, December 20, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285. Copies of submissions may be obtained by calling (202) 712-1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-0562.

Form Number: AID 1570-13.

Title: Narrative/Time-Line Report.

Type of Submission: Renewal of Information Collection.

Purpose: This collection is a management and monitoring report used by the Bureau for Democracy, Conflict and Humanitarian Assistance, Office of American Schools and Hospitals Abroad. The collection will ascertain that grant financed programs meet authorized objectives within the terms of agreements between its office and the recipients, which are United States Organizations that sponsor overseas institutions.

Annual Reporting Burden:

Respondents: 120.

Total annual responses: 480.

Total annual hours requested: 960 hours.

Dated: December 13, 2007.

Joanne Paskar,

Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.

[FR Doc. 07-6115 Filed 12-19-07; 8:45 am]

BILLING CODE 6116-01-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via E-mail to David_Rostker@omb.eop.gov or fax to 202-395-7285. Copies of submission may be obtained by calling (202) 712-1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-0563.

Form Number: AID 1570-14.

Title: Report on Commodities.

Type of Submission: Renewal of Information Collection.

Purpose: The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions and independent reviewers. ASHA needs to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant-making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden:

Respondents: 65.

Total annual responses: 260.

Total annual hours requested: 650 hours.

Dated: December 13, 2007.

Joanne Paskar,

Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.

[FR Doc. 07-6116 Filed 12-19-07; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 14, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Application for Inspection, Accreditation of Laboratories, and Exemptions.

OMB Control Number: 0583-0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has

been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are not adulterated, wholesome, and properly labeled and packaged. FSIS requires meat, poultry, and import establishments to apply for a grant of inspection before they can receive Federal inspection. FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. FSIS will collect information using several FSIS forms.

Need and Use of the Information: FSIS will collect information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from FSIS's inspection do not commingle inspected and non-inspected meat and poultry products, and to ensure that retail firms qualifying for a retail store exemption and who have violated the provision of the exemption are no longer in violation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 16,755.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 114,300.

Food Safety and Inspection Service

Title: Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

OMB Control Number: 0583-0092.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, et seq.). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. To control the manufacture of marking devices bearing official marks, FSIS requires that official meat and poultry establishments and the manufacturers of such marking devices complete FSIS form 5200-7,

Authorization Certificate and FSIS form 7234-1, Application for Approval of Labels, Marking or Device.

Need and Use of the Information: FSIS will collect information to ensure that meat, poultry, and egg products are accurately labeled. FSIS will also collect the following information: establishment number, company name and address, name of product, action requested of FSIS, size of label, product formulation, special processing procedures, and a signature on the form.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,536.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 85,508.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-24677 Filed 12-19-07; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Bitterroot National Forest, West Fork Ranger District; Montana; Lower West Fork Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, Bitterroot National Forest, will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of the proposed Lower West Fork project. The project area is located in Ravalli County, about 15 miles southwest of Darby, Montana. The project area encompasses about 38,400 acres between the Pierce and Wheeler Creek drainages on the west side of the West Fork Bitterroot River, and the Piquett, Violet, Pine, Applebury, Steep Creek drainages on the east side of the river. The proposed Lower West Fork project would manage vegetation to reduce fuel loads and crown fire hazard in the wildland urban interface, improve forest health and resilience to disturbances, and maintain or increase shade intolerant species such as ponderosa pine and aspen. Roads will be evaluated for opportunities to reduce sedimentation and restore aquatic passage. Terraced lands will be evaluated for opportunities to restore soils. Site-specific Bitterroot Forest Plan amendments may be proposed for downed wood, snags, soils, or elk habitat effectiveness. Approximately

5,100 acres of the project area are proposed for vegetation treatments.

DATES: Comments concerning the scope of the analysis must be received by January 22, 2008. The draft environmental impact statement is expected in June, 2008, and the final environmental impact statement is expected in December, 2008.

ADDRESSES: Send written, oral, or e-mail comments to Lower West Fork Project; Dave Campbell, District Ranger; West Fork Ranger Station; 6735 West Fork Road; Darby, Montana 59829; phone (406) 821-3269; e-mail comments-northern-bitterroot-west-fork@fs.fed.us. For further information, mail correspondence or contact Mike Jakober, Acting South Zone Interdisciplinary Team Leader; West Fork Ranger Station; 6735 West Fork Road; Darby, Montana 59829; phone (406) 821-3269; e-mail mjakober@fs.fed.us.

FOR FURTHER INFORMATION CONTACT:

Mike Jakober, Acting South Zone Interdisciplinary Team Leader; West Fork Ranger Station; 6735 West Fork Road; Darby, Montana 59829; phone (406) 821-3269; e-mail mjakober@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Lower West Fork project is proposed to respond to the goals and objectives of the Bitterroot Community Wildfire Protection Plan and the Bitterroot National Forest Land and Resource Management Plan. The purpose and need objectives of the Lower West Fork project are to: (1) Reduce fuel loads and crown fire risk in lower elevation ponderosa pine/Douglas fir forests; (2) improve forest health and resilience to natural disturbances, particularly the health and resilience of large ponderosa pine trees; (3) maintain or increase shade intolerant species such as ponderosa pine and aspen; and (4) improve soil, watershed, and fisheries conditions.

Proposed Action

The proposed action is designed to accomplish the project objectives with minimal environmental impacts. The types of vegetation treatments that may be implemented on the landscape to meet the objectives include, but are not limited to: Green tree removals such as commercial and non-commercial thinning; removal of individual dead, dying, and diseased trees; creating small openings to regenerate aspen; slashing of small, non-commercial understory trees; hand piling; and prescribed burning. The total proposed vegetation treatment acres are approximately 5,100.

The types of soil, watershed, and fisheries improvement treatments that may be implemented to meet objectives include, but are not limited to:

Realignment, storage, and decommissioning of existing roads; culvert removal and replacement for fish passage; installing fish screens on irrigation ditches; spot application of gravel at road stream crossings; and restoration of soils in terraced units. Approximately 10 miles of road are proposed for decommissioning (obliteration), and 19 miles are proposed to be put into long-term storage. Nine culverts are proposed for replacement or removal to improve fish passage.

Possible Alternatives

Preliminary alternatives which have been identified include the proposed action and the no action alternative.

Responsible Official

David T. Bull, Forest Supervisor; Bitterroot National Forest; 1801 N. First; Hamilton, Montana 59840-3114.

Nature of Decision To Be Made

The Responsible Official will determine whether or not to proceed with the proposed project activities.

Scoping Process

Comments will be accepted during the 30 day scoping period as described in this notice of intent. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and will be mailed out to interested parties. The Lower West Fork project was previously scoped in March, 2007. If you responded at that time and wish to use the same comments, there is no need to comment again. Comments received in spring, 2007 are included in the project file and will be considered in this analysis. If you did not receive a scoping letter in spring, 2007, but wish to receive one now, contact Dave Campbell, West Fork Ranger District, at the mailing address, phone number, or e-mail address previously listed in this notice of intent. At this time, there are no plans to schedule a public meeting. If needed, a meeting will be scheduled between the release of the draft and final environmental impact statements. The time and location of the meeting will be announced at that time.

Preliminary Issues

The scoping that was conducted in March, 2007 disclosed the following preliminary issues: (1) Impacts to air quality; (2) economic impacts; (3) funding realities; (4) utilization of small diameter trees; (5) impacts and costs of

obliterating roads; (6) methods and science used in the analysis; and (7) appropriate distances needed to treat fuels around homes.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519,533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing

the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 11, 2007.

Amber Lewis,

Acting Forest Supervisor.

[FR Doc. 07-6088 Filed 12-19-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 11, 2008 at the Sierra Nevada College, 999 Tahoe Boulevard, Incline Village, NV, 89451. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 11, 2008, beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at Sierra Nevada College, 999 Tahoe Boulevard, Incline Village, NV 89451.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543-2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Monitoring/Science Funding Outside the Lake Tahoe Basin; (2) Review of the Hazardous Fuels Projects; and (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake

Tahoe Basin Management Unit at the contact address stated above.

Dated: December 11, 2007.

Terri Marceron,

Forest Supervisor.

[FR Doc. 07-6114 Filed 12-19-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service USDA

Notice of Proposed New Fee Site on the Inyo National Forest

AGENCY: USDA Forest Service,

ACTION: Notice of Proposed New Fee Site.

SUMMARY: The Inyo National Forest, White Mountain Ranger District is proposing to implement fees at a complex of three group camp sites in the White Mountains east of Bishop, California. The proposed fee structure is based on the level of services and amenities provided, cost of operation and maintenance, market assessment and public comments. Fee monies would be used to provide maintenance services, trash hauling, restroom servicing (pumping and hauling of waste), road maintenance into the sites and other direct costs.

The group camp sites, known as the Cedar Flat Group Campgrounds, were constructed in 2005 as part of a special use permit condition for a large scientific research facility. They are used primarily by colleges, universities, and other educational groups for a "base facility" for their geology field camps, natural history studies and other academic pursuits. They are particularly well suited for this use as they are in close proximity to the geologic areas of

study. Additionally, they are in a terrain and vegetation type that allows for dispersed tent use but has a common area for (outdoor) meetings, eating and socializing.

Each group site contains a concrete pad under a shade ramada for picnic tables, a developed parking area, interpretive exhibits, and group working areas. Additionally, all the sites have new sealed vault type toilets, a fire ring and dumpster type trash bins. The sites are of varying sizes and have capacities of 50, 30 and 25 campers. The larger site also has room to park a limited number of recreational vehicles.

The fee for each of the sites is proposed to be set at \$25 per night. Traditional use of the old group campsites, removed in 2004, has been longer stays such as two and three weeks for field studies of geology or natural history as part of an academic field camp. No other group site opportunities are available in the vicinity. These sites also have the advantage of being isolated which facilitates group use, evening lighting and later night studying and data preparation by college students, the primary users of these facilities.

Funds derived from the fees would be used to provide regular maintenance services, contract trash hauling and toilet pumping.

DATES: The proposed fee would become effective June 15, 2008.

FOR FURTHER INFORMATION CONTACT: John Louth, Interpretive Specialist, White Mountain Ranger Station, 798 North Main Street, Bishop, CA 93514; (760) 873-2514.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directs the Secretary of Agriculture to publish

a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to inform the public of a new fee site. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: November 29, 2007.

Jim Upchurch,

Forest Supervisor, Inyo National Forest.

[FR Doc. 07-6045 Filed 12-19-07; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce

ACTION: Notice and Opportunity for Public Comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT [October 25, 2007 through November 30, 2007]

Firm	Address	Date accepted for filing	Products
Steel Ventures, LLC dba Ex-L- Tube.	811 Atlantic Street, N., Kansas City, MO 64116-4259.	10/25/2007	Steel tubing and standard pipe.
Cramer Wood Products, Inc	600 North Scientific Street, High Point, NC 27260.	10/29/2007	Manufactures and markets high quality wood veneer products. The firm processes veneers from exotic and domestic woods, providing architectural panels and cut-to-size splicing as well as more traditional veneer sheets.
Advent Tool & Mold, Inc.	999 Ridgeway Avenue, Roch- ester, NY 14615.	10/29/2007	Design and build custom injection molds and manufacture precision injection molded plastic parts and assemblies.
Martin's Chair, Inc.	124 King Court, New Holland, PA 17557.	11/1/2007	Furniture manufacturer, primarily chairs. Designs: 18th & 19th century: Pennsylvania, German, and Craftman.
Long Haul Products, Inc.	16869 Ward Creek Road, Cedaredge, Co 81413.	11/2/2007	Folding kayaks.
The Servicenter	7301 N.W. 50th St., Oklahoma City, OK 73132.	11/5/2007	Manufacturer of consumable and custom aircraft parts (specific to plane type & model). Includes detailed drawing illustration part dimensions and exact area for drilling rivet holes.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—
Continued

[October 25, 2007 through November 30, 2007]

Firm	Address	Date accepted for filing	Products
Cable Manufacturing & Assembly.	10896 Industrial Parkway, NW., Bolivar, OH 44612.	11/5/2007	Stranded cables, less than 3/8" in diameter, of steel and stainless steel.
Duraspec Electroplating, Inc	87-83 139th Street, Jamaica, NY 11435.	11/5/2007	Metal aircraft, dental, and X-Ray parts including screws, bolts, tubes, fittings, & mountings that are plated and polished with a variety of finishes.
Spring Team, Inc.	2851 Industrial Park Drive, Austintown, OH 44010.	11/7/2007	Springs and wire forms.
W.J. Die Mold, Inc.	915 Estes Court, Schaumburg, IL 60193-4427.	11/13/2007	Plastic injection, compression, insert and die cast molds.
Leighton Electronics, Inc	Frist and South Streets, Leighton, PA 18235.	11/13/2007	Instruments for measuring and control.
Fame Industries, Inc.	51100 Grand River Ave., Wixom, MI 48393.	11/14/2007	Conveyors and conveying equipment.
Machine Tool Automation Corp. dba Bayer.	5150 N. 24th Street, Phoenix, AZ 95016.	11/15/2007	Designs and manufactures machine tool accessories and workholding components. Products include automated and manual pallet switching systems, custom pallets and tooling designed to shorten setup time for vertical machining centers.
Wadsworth Control Systems, Inc.	5541 Marshall Street, Arvada, CO 80002.	11/15/2007	Process control systems and apparatus for temperature control in greenhouses.
Action Graphix, LLC	2623 Commerce Drive, Jonesboro, AR 72401.	11/19/2007	Dynamic motion signs.
S & K Electronics, Inc	56301 US Highway 93, Roman, MT 59864.	11/20/2007	Electronic components and parts, specializing in electronic circuits and assemblies for firms in areas such as telecommunications, aerospace, marine and government.
London Grove Industries, Inc ...	431 W. Baltimore Pike, West Grove, PA 19390.	11/20/2007	Household furniture and custom kitchen cabinets.
Tres Bonne, Inc	3841 First Avenue South, Seattle, WA 98134.	11/20/2007	Apparel including work wear, sports and outdoor wear, as well as children's wear. For example, women's and men's gloves, pants, and jackets. There is no resale.
Sound to Earth, LTD	5400 Frontage Road, Manhattan, MT 59741.	11/27/2007	Manufactures string instruments such as mandolins and guitars. It also manufactures accessories for these instruments.
Standley Brothers Machine	96 Park Street, P.O. Box 85, Beverly, MA 01915.	11/27/2007	Custom precision machining products are best suited for aluminum and stainless steel families of material. Additionally, they work with steel, different types of plastic, copper, lead, and titanium.
Wadsworth Control Systems, Inc.	5541 Marshall Street, Arvado, CO 80002.	11/28/2007	Process control systems and apparatus for temperature control in greenhouses.
Universal Forest Products (235)	26200 Nowell Road, Thornton, CA 95686.	11/29/2007	Lumber remanufacturer and distributor. Value added lumber products.
The Nugget Company, Inc	139 Kemper Street, San Antonio, TX 78207.	11/29/2007	Tanned and processed lambskin hides.
Davis Tool & Die Co., Inc	888 Bolger Court, Fenton, MO 63026.	11/30/2007	Moulds for metal parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are

submitted is 11.313, Trade Adjustment Assistance.

Dated: December 14, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. 07-6119 Filed 12-19-07; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0134]

Submission for OMB Review; Environmentally Sound Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning environmentally sound products. A request for public comments was published in the **Federal Register** at 72 FR 56991, October 5, 2007. No comments were received.

DATES: Submit comments on or before January 22, 2008.

FOR FURTHER INFORMATION CONTACT Mr. William Clark, Contract Policy Division, GSA (202) 219-1813.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-0134, Environmentally Sound Products, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum: (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are grouped into eight categories: (1) construction products, (2)

landscaping products, (3) nonpaper office products, (4) paper and paper products, (5) park and recreation products, (6) transportation products, (7) vehicular products, and (8) miscellaneous products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. There are presently no known agency designated items.

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds \$10,000 or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was \$10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Respondents: 64,350.

Responses Per Respondent: 1.

Annual Responses: 64,350.

Hours Per Response: .325.

Total Burden Hours: 20,914.

OBTAINING COPIES OF

PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB control No. 9000-0134, Environmentally Sound Products, in all correspondence.

Dated: December 10, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E7-24721 Filed 12-19-07; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Meeting

AGENCY: Department of the Air Force, U.S. Air Force Academy Board of Visitors.

ACTION: Notice of meeting.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA)

Board of Visitors (BoV) will meet in Harmon Hall, 2304 Cadet Drive, Suite 3300, United States Air Force Academy, Colorado Springs, Colorado, on 10-11 January 2008. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to USAFA. Meeting sessions will begin at 9:00 a.m. on 10 January 2008, in Harmon Hall, USAFA, Colorado Springs, Colorado.

Pursuant to 5 U.S.C. 52b, as amended, and 41 CFR 102-3.155, the Department of Defense has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that one portion of this meeting will be closed to the public because it will involve matters covered by subsection (c) (6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-serve basis up to the reasonable and safe capacity of the meeting room. To enter the Academy Installation all that's required is a valid driver's license. To enter the Cadet Area requires an escort; therefore, all personnel interested in attending the meeting must call the USAFA Communications Office, at (719) 333-7714, to coordinate escort and arrival requirements. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials

presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific people to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102-3.140(c), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issues for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION: Or to attend this BoV meeting, contact Mr. Scotty Ashley, USAFA Programs Manager, Directorate of Airman Development and Sustainment, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC 20330-1040, (703) 695-3594.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7-24695 Filed 12-19-07; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy, Office of Civil Rights and Diversity.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before February 19, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Stan Branch, Employee Concerns Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, M.S. A1-61, Richland, WA 99352, or by fax at (509) 372-0998, or by e-mail at *stanley_o_branch@rl.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William A. Lewis, Jr., Deputy Director, U.S. Department of Energy, Office of Civil Rights and Diversity, 1000 Independence Ave., SW., Washington, DC, or by fax at (202) 586-0888, or by e-mail at *bill.lewis@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* {enter "New"} (2) *Information Collection Request Title:* Employee Concerns Program Federal/ Contractor Survey; (3) *Type of Review:* Regular pursuant to 5 CFR 1320.10; (4) *Purpose:* Prepare and perform an agency-wide Employee Concern Program survey measuring perceptions of DOE and contractor employees about the Employee Concern Program, as well as measure the effectiveness of the Employee Concern Program as experienced by clients; (5) *Respondents:* 40,000; (6) *Estimated Number of Burden Hours:* 10,000.

STATUTORY AUTHORITY: DOE ECP Order 442.1A, section 4(F). This order implements an Employee Concerns Program. DOE, federal and contractor employees, including supervisors and managers at any level in an organization, may report employee concerns related to the environment, safety, health, and management of DOE and National Nuclear Security Administration programs and facilities to Headquarters or field elements' Employee Concerns Programs. This independent, objective survey will help determine if employees feel free to express concerns to management.

Issued in Washington, DC on December 13, 2007.

Poli A. Marmolejos,

Director, Office of Civil Rights and Diversity.

[FR Doc. E7-24711 Filed 12-19-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF08-72-000]

Jewish Home and Hospital Life Care System, Bronx Division; Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

December 13, 2007.

Take notice that on November 21, 2007, Jewish Home and Hospital Life Care System, Bronx Division, 2545 University Ave., Bronx, NY 10468, filed with the Federal Energy Regulatory Commission a notice of self-certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(a) of the Commission's regulations.

The facility will be a 300 kW facility comprised of three 100 kW Tecogen cogeneration units (topping) located in the mechanical room of Greenwall Pavilion at 2545 University Ave., Bronx, New York. The energy source will be natural gas.

The facility will interconnect with Con Edison for stand-by service but will not export power to the grid.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(1)(iii), with the appropriate filing fee.¹

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

¹ See *Hydro Investors, Inc. v. Trafalgar Power Inc.*, 94 FERC ¶ 61,207, reh'g denied, 95 FERC ¶ 61,120 (2001).

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-24667 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID-3110-001]

Louder, Stephen R.; Notice of Filing

December 13, 2007.

Take notice that on December 12, 2007, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2006), Part 45 of the Commission's Rules of Practice and Procedure, 18 CFR part 45 (2006), and Order No. 664, *Commission Authorization to Hold Interlocking Positions*, 112 FERC ¶ 61,298 (2005); *order on reh'g*, 114 FERC ¶ 61,142 (2006), Stephen R. Louder filed a revised page 1 and page 7 of his application for authorization to hold interlocking positions. The revision on page 1 deletes the word "Director" in the second line of the first paragraph under Introductions and replaces that language with "Secretary/Treasurer" to correct an inadvertent typographical error. The revision on page 7 eliminates language relating to the confidential nature of Mr. Louder's estimated 2007 compensation from Golden Spread and inserts in lieu thereof the estimated value for that compensation.

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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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 December 26, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-24668 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID-3113-001]

McClendon, Stan; Notice of Filing

December 13, 2007.

Take notice that on December 12, 2007, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2006), Part 45 of the Commission's Rules of Practice and Procedure, 18 CFR part 45 (2006), and Order No. 664, *Commission Authorization to Hold Interlocking Positions*, 112 FERC ¶61,298 (2005); *order on reh'g*, 114 FERC ¶61,142 (2006), Stan McClendon filed a revised page 7 of his application for authorization to hold interlocking positions. The revision reflected on this page eliminates language relating to the confidential nature of Mr. McClendon's estimated 2007 compensation from Golden Spread and inserts in lieu thereof the estimated value for that compensation.

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 party to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

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 December 26, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-24659 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL07-2-000]

Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity; Notice of Extension of Time To File Comments and Rescheduling of Technical Conference

December 13, 2007.

On November 15, 2007, the Commission issued a notice requesting additional comments in the captioned proceeding solely on the issue of master limited partnership growth rates by December 14, 2007.¹ The November 15 notice also scheduled a technical conference for further consideration of that one issue for January 8, 2008, and provided for post-technical conference comments to be filed by January 25, 2008. On December 12, 2007, the National Association of Publicly Traded Partnerships filed a motion requesting that the deadline for the initial comments be extended from December 14, 2007 to December 21, 2007.

¹ *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 121 FERC ¶ 61,165 (2007).

Notice is hereby given that the requested extension of time for filing the initial comments until December 21, 2007 is granted. In light of this extension, notice is also given that the technical conference is rescheduled from January 8, 2008 to January 23, 2008. The deadline for the filing of the post-conference comments is extended to February 11, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-24665 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12769-000—MA]

Ice House Partners, Inc.; Notice of Availability of Environmental Assessment

December 13, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for exemption from licensing for the Ice House Power Project, to be located on the Nashua River, in the Town of Ayer, Middlesex County, Massachusetts, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of the project and conclude that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1-A, Washington, DC 20426. Please affix "Ice House Power Project No. 12769" to all comments. Comments

may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact Tom Dean at (202) 502-6041.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-24660 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13040-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 13, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13040-000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Olmstead Locks and Dam Hydroelectric Project.

f. *Location:* Ohio River in Ballard County, Kentucky. It would use the U.S. Army Corps of Engineers' proposed Olmstead Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. *FERC Contact:* Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-

13040-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' proposed Olmstead Dam and operated in a run-of-river mode would consist of: (1) A new 250-foot long, 200-foot wide, 50-foot high concrete powerhouse; (2) a new intake channel and tailrace channel on the left (Kentucky) bank of the river; (3) three turbine/generator units with a combined installed capacity of 63 megawatts; (4) a new 52,783-foot long above ground transmission line extending from the switchyard near the powerhouse southeast to an existing substation east of the town of Bartlow, Kentucky; and (5) appurtenant facilities. The proposed Olmstead Locks and Dam Project would have an average annual generation of 300 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@FERC.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a

competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-24661 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13041-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 13, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13041-000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Ross Barnett Hydroelectric Project.

f. *Location:* Pearl River in Rankin County, Mississippi. It would use the Pearl River Valley Water Supply District's Ross Barnett Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Ausser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. *FERC Contact:* Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-13041-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project using the Pearl River Valley Water Supply District's Ross Barnett Dam and operated in a run-of-river mode would consist of: (1) a new 100-foot long, 125-foot wide, 50-foot high concrete powerhouse; (2) three 400-foot-long, 12-foot-diameter steel penstocks; (3) a new intake east of the spillway and a new tailrace on the east bank of the existing stilling basin; (4) three turbine/generator units with a combined installed capacity of 24 megawatts; (5) a new 2.2-mile long above ground transmission line extending northwest from the switchyard near the powerhouse to the existing Church Street substation owned by Mississippi Power & Light; and (6) appurtenant facilities. The proposed Ross Barnett Project would have an average annual generation of 54 gigawatt-hours.

1. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-24662 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13043-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 13, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 13043-000.

c. *Date Filed*: September 28, 2007.

d. *Applicant*: BPUS Generation Development, LLC.

e. *Name of Project*: New Savannah Bluff Lock and Dam Hydroelectric Project.

f. *Location*: Savannah River in Richmond County, Georgia, and Aiken County, South Carolina. It would use the U.S. Army Corps of Engineers' New Savannah Bluff Lock and Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. *FERC Contact*: Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-13043-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army Corps of Engineers' New Savannah Bluff Lock and Dam and operated in a run-of-river mode would consist of: (1) A new 30-foot long, 30-foot wide, 30-foot high concrete powerhouse; (2) an intake channel and tailrace channel on the South Carolina side of the river, opposite the existing lock; (3) two turbine/generator units with a combined installed capacity of 7 megawatts; (4) a new 10,981-foot long above ground transmission line extending from the switchyard near the powerhouse south

to an interconnection point with an existing transmission line owned by South Carolina Electric and Gas Company; and (5) appurtenant facilities. The proposed New Savannah Bluff Lock and Dam Project would have an average annual generation of 57 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-24663 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08-59-000]

Columbia Gas Transmission Corporation; Notice of Technical Conference

December 13, 2007.

The Commission's December 5, 2007 order in the above captioned proceeding¹ directed that a technical conference be held to address the issues raised by Columbia Gas Transmission Corporation's (Columbia Gas) November 7, 2007 filing proposing to modify its existing SIT Rate Schedule.

Take notice that the Commission will convene a technical conference on Thursday, January 31, 2008, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commission Staff and parties will have the opportunity to discuss all of the issues raised by Columbia Gas' proposals to modify its SIT Rate Schedule. Specifically, Columbia Gas should be prepared to address all the concerns raised in the protests, and if necessary, to provide additional technical, engineering, and operational support for its proposals. Any party proposing alternatives to Columbia Gas's proposals should also be prepared to similarly support its position.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to accessibility@ferc.gov or call toll free (866) 208-3372 (voice) or 202-502-8659 (TTY), or send a fax to 202-208-2106 with the required accommodations.

All interested persons are permitted to attend. For further information, please contact Eugene Kim at (202) 502-6858 or e-mail Eugene.Kim@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-24658 Filed 12-19-07; 8:45 am]

BILLING CODE 6717-01-P

¹ Columbia Gas Transmission Corp., 121 FERC ¶ 61,232 (2007).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 199–205]

South Carolina Public Service Authority; Santee Cooper Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

December 13, 2007.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.¹ The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the South Carolina State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 199.

The programmatic agreement, when executed by the Commission and the SHPO, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the Santee Cooper Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

South Carolina Public Service Authority, as licensee for Project No. 199, is invited to participate in consultations to develop the Programmatic Agreement and to sign as

a concurring party to the Programmatic Agreement.

For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 199–205 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004

Dr. Rodger E. Stroup, SHPO, or Representative, Department of Archives & History, 8301 Parklane Road, Columbia, SC 29223–4905

Dr. James T. Kardatzke, Bureau of Indian Affairs, Eastern Regional Office, 545 Marriott Drive, Suite 700, Nashville, TN 37214

Russell Townsend or Representative, Tribal Historic Preservation Officer, Eastern Band of Cherokee Indians, Cultural Resources Department, Qualla Boundary P.O. Box 455, Cherokee, NC 28719

Dr. Wenonah G. Haire, or Representative, Tribal Historic Preservation Officer, Catawba Indian Nation, Catawba Cultural Preservation Project, P.O. Box 750, Rock Hill, SC 29731

Charles D. Enyart, Chief, or Representative, Eastern Shawnee Tribe of Oklahoma, P.O. Box 350, Seneca, MO 64804

Emman Spain or Representative, Tribal Historic Preservation Officer, Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, OK 74884

John C. Dulude, P.E., Manager, FERC Relicensing, South Carolina Public Service Authority, One Riverwood Drive, P.O. Box 2946101, Moncks Corner, SC 29461–6101

Richard H. Kimmel, Archaeologist, Environmental Resources Section, US Army Corps of Engineers, PO Box 1890, Wilmington, NC 28402

Amanda Hill, U.S. Fish & Wildlife Service, Charleston Field Office, 176 Croghan Spur Road, Suite 200, Charleston, SC 29407

Robert Morgan, Heritage Program Manager, Francis Marion & Sumter National Forests, 2421 Witherbee Road, Cordesville, SC 29434

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Kimberly D. Bose,
Secretary.

[FR Doc. E7–24664 Filed 12–19–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–1156; FRL–8509–1]

Draft Cruise Ship Discharge Assessment Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for public comments.

SUMMARY: EPA announces the availability of the Draft Cruise Ship Discharge Assessment Report (Draft Report), which assesses five cruise ship waste streams, specifically, sewage, graywater, bilge water, solid waste, and hazardous waste. EPA prepared the Draft Cruise Ship Discharge Assessment Report as part of its response to a petition submitted by the Bluewater Network on behalf of a number of environmental advocacy organizations. EPA invites public comment on its assessment, as well as input on options, alternatives, and recommendations on whether and how to better control and regulate these waste streams. EPA intends to use this public input to help identify a range of alternatives for these waste streams when it completes the Cruise Ship Discharge Assessment Report.

DATES: Comments must be received on or before February 4, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2007–1156, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* OW-Docket@epa.gov.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2007–1156. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

¹ 18 cfr 385.2010.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2007-1156. 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. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.
Docket: All documents in the docket are listed in the 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 Water Docket, EPA/DC, EPA West,

Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:40 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kim, Oceans and Coastal Protection Division, Office of Wetlands, Oceans, and Watersheds, (4504T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-1270; fax number: (202) 566-1546; e-mail address: kim.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those who are interested in or addressing cruise ship waste streams. Categories and entities interested in today's notice include:

Category	Examples of interested entities
Federal Government	U.S. Coast Guard, National Oceanic and Atmospheric Administration, U.S. Department of Justice.
State/Local/Tribal Government	Governments interested in or addressing cruise ship waste streams.
Industry and General Public	Cruise industry, environmental interest groups.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Document Electronic Access.* To obtain a copy of the Draft Report entitled *Draft Cruise Ship Discharge Assessment Report*, please access our Web site at: http://www.epa.gov/owow/oceans/cruise_ships/disch_assess.html.

2. *Federal Register Docket.* EPA has established a public docket for this notice under Docket ID No. EPA-HQ-OW-2007-1156. The public docket consists of the documents specifically referenced in this notice and other information related to this notice. The public docket does not include information claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either

electronically through www.regulations.gov or in hard copy at the Water Docket in the EPA Docket Center.

3. *Federal Register 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/>.

C. How and to Whom Do I Submit My Comments?

Direct your comments to Docket ID No. EPA-HQ-OW-2007-1156. 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. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2007-1156, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- *E-mail:* OW-Docket@epa.gov.

- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OW-2007-1156. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find these suggestions helpful for preparing your comments:

1. Explain your comments as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your comments.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your comments by the time period deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

EPA specifically requests comment and public input on the following:

1. *Sewage Discharges.* Should sewage discharges from cruise ships be better controlled and regulated? If so, why? If such discharges should be better controlled and/or regulated, please recommend one or more such options (and identify your preferred recommendation), as well as any option or options relating to sampling, monitoring, and reporting of sewage discharges.

2. *Graywater Discharges.* Should graywater discharges from cruise ships be better controlled and regulated? If so, why? If such discharges should be better controlled and/or regulated, please recommend one or more such options and identify your preferred recommendation. Should EPA more narrowly define graywater? If so, why? If the term should be more narrowly defined, please recommend an option or options, and identify your preferred recommendation.

3. *Hazardous Wastes.* Should hazardous wastes generated on cruise ships be better managed and regulated? If so, why? If such discharges should be better managed and/or regulated, please

recommend one or more such options, and identify your preferred recommendation.

4. *Solid Wastes.* Should solid wastes generated on cruise ships be better managed and regulated? If so, why? If such discharges should be better controlled and/or regulated, please recommend one or more such options, and identify your preferred recommendation. With regard to the incineration of some solid wastes generated on cruise ships, EPA invites specific comment regarding the sampling and/or testing of incinerator ash.

5. *Oily Bilge Water.* Should oily bilge water generated on and discharged from cruise ships be better controlled and regulated? If so, why? If such discharges should be better controlled and/or regulated, please recommend one or more such options, and identify your preferred recommendation.

II. Background

Cruise ships operate in every ocean worldwide, often in pristine coastal waters and sensitive marine ecosystems. Cruise ship operators provide amenities to their passengers that are similar to those of luxury resort hotels, including pools, hair salons, restaurants, and dry cleaners. As a result, cruise ships have the potential to generate wastes similar in volume and character to those generated by hotels.

In March 2000, an environmental advocacy group called the Bluewater Network, representing 53 environmental organizations, submitted a petition to the U.S. Environmental Protection Agency (EPA) requesting that EPA identify and take regulatory action on measures to address pollution by cruise ships. Specifically, the petition requested an in-depth assessment of the volumes and characteristics of cruise ship waste streams; analysis of their potential impact on water quality, the marine environment, and human health; examination of existing federal regulations governing cruise ship waste streams; and formulation of recommendations on how to better control and regulate these waste streams. The petition included specific requests related to sewage, graywater, oily bilge water, solid wastes, and hazardous wastes, as well as monitoring, recordkeeping, and reporting. In addition, the petition requested that EPA prepare a report of its investigations and findings.

This Draft Cruise Ship Discharge Assessment Report responds in part to the petition from Bluewater Network. The Draft Report assesses five primary cruise ship waste streams, specifically,

sewage, graywater, bilge water, solid waste, and hazardous waste. For each waste stream, the Draft Report discusses (1) the nature and volume of the waste stream generated; (2) existing federal regulations applicable to the waste stream; (3) environmental management, including treatment, of the waste stream; (4) potential adverse environmental impacts of the waste stream; and (5) actions by the federal government to address the waste stream.

III. This Action

EPA invites and requests comments on all aspects of the Draft Report. In addition, EPA invites and requests public input on options, alternatives, and recommendations on whether and how to better control and regulate these waste streams (see section I.C. for information regarding how to submit comments). When EPA completes the Cruise Ship Discharge Assessment Report after consideration of public comment, EPA plans to identify a range of options and alternatives to address these waste streams. EPA anticipates issuance of the completed Report by the end of 2008 and would publish a notice of availability of the Report at that time.

Dated: December 14, 2007.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E7-24737 Filed 12-19-07; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to the Office of Management and Budget, Comment Requested

December 12, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 19, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395-5887, or via fax at 202-395-5167 or via Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith-B.Herman@fcc.gov, Federal Communications Commission, or an e-mail to PRA@fcc.gov. If you would like to obtain or view a copy of this information collection after the 60-day comment period, you may do so by visiting OMB's Web page at: <http://www.reginfo.gov/public/do/PRAMain>.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0850.
Title: Quick-Form Application for Authorization in the Ship, Aircraft, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No.: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents: 175,000 respondents; 175,000 responses.

Estimated Time Per Response: .44 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement; and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 77,000 hours.

Total Annual Cost: \$2,537,500.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for

confidentiality. On a case-by-case basis, the Commission may be required to withhold from disclosure certain information about the individual such as date of birth or telephone number.

Needs and Uses: FCC Form 605 is in a 60-day comment period because the form is being revised. The Commission is revising FCC Form 605 by correcting the eligibility on Schedule D (removing "within the past 2 years") according to 47 CFR 97.21(b). There is no change in reporting requirements and/or third party disclosure requirements or to the estimated average burden (hours and annual costs) or the number of respondents/responses.

The FCC Form 605 application is a consolidated application form for Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services and is used to collect licensing data for the Universal Licensing System (ULS).

The data collected on this form includes the date of birth for commercial operator licensees, however, this information will be redacted from public view.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-24476 Filed 12-19-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 3, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments February 19, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395-5887, or via fax at 202-395-5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith-B.Herman@fcc.gov, Federal Communications Commission (FCC). To submit your comments by email send them to: PRA@fcc.gov. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the OMB ROCIS Web site at: <http://www.reginfo.gov/public/PRAMain>.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to PRA@fcc.gov or contact Judith B. Herman at 202-418-0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-1079.

Title: Section 15.240, Radio Frequency Identification Equipment.
Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit, business or other for-profit, and state, local or tribal government.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 200 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60 day comment period to Office of Management and

Budget (OMB) in order to obtain the full three year clearance. Section 15.240 requires each grantee of certification for Radio Frequency Identification (RFID) equipment to register the location of the equipment/devices it markets with the Commission. The information that the grantee must supply to the Commission when registering the devices shall include the name, address and other pertinent contact information of users, the geographic coordinates of the operating location, and the FCC identification number(s) of the equipment. The improved RFID equipment could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing a determination of whether tampering with their contents has occurred during shipping.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-24479 Filed 12-19-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 12, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law No. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before February 19, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418-2918 or send an e-mail to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0404.

Title: Application for an FM Translator or FM Booster Station License.

Form Number: FCC Form 350.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 1,000.

Frequency of Response: On occasion reporting requirement.

Estimated Time per Response: 1 hour.

Total Annual Burden: 1,000 hours.

Total Annual Cost: \$75,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Licensees and permittees of FM Translator or FM Booster stations are required to file FCC Form 350 to obtain a new or modified station license. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is extracted from FCC Form 350 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-24507 Filed 12-19-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

December 10, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 22, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to Nicholas_A._Fraser@omb.eop.gov or via fax at 202-395-5167, and to the Federal Communications Commission via e-mail to PRA@fcc.gov or by U.S. mail to Leslie F. Smith, Federal Communications Commission, Room 1-C216, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at PRA@fcc.gov or at (202) 418-0217. Instructions for viewing a copy of the Commission's complete clearance request to OMB for 3060-0971 are available at: <http://www.fcc.gov/omd/pracollections-review.html>.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0971.

Title: Section 52.15, Requests for "For Cause" Audits and State Commissions' Access to Numbering Resource Application Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; state, local or tribal government.

Number of Respondents: 2,100 respondents; 63,015 responses.

Estimated Time per Response: 10 minutes to 3.0 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 10,515 hours.

Total Annual Cost: \$0.00.

Privacy Impact Assessment: No impacts.

Nature and Extent of confidentiality: The Commission requires state commissions to treat carriers' applications for initial or growth numbering resources as well as their forecast and utilization data as confidential. In those instances where a state "open records" statute prevents the state from providing confidential protection for such sensitive carrier information the Commission will work with the state commission to enable it to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the carrier's sensitive information.

Needs and Uses: To ensure that the numbering resources of the North American Numbering Plan are used efficiently, the Commission authorized "for cause" audits as part of its comprehensive audit plan to verify carrier compliance with Federal rules, under 47 CFR 52.15, and orders and industry guidelines. It also provided state commissions with access to copies of carriers' applications for numbering resources. To request a "for cause" audit, the North American Numbering Plan Administrator (NANPA), the Pooling Administrator or a state commission must draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation. Requests for copies of carriers' applications for numbering resources are made directly to the carriers by the state commissions. The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of carrier data and to assist state commissions in

carrying out their numbering responsibilities, such as area code relief.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-24509 Filed 12-19-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**Public Information Collections Approved by Office of Management and Budget**

December 10, 2007.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT:

Thomas Butler, Federal Communications Commission, (202) 418-1492 or via the Internet at Thomas.butler@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0166.

OMB Approval Date: 11/28/2007.

Expiration Date: 11/30/2010.

Title: Part 42—Preservation of Records of Communications Common Carriers.

Form Number: N/A.

Estimated Annual Burdens: 56 responses; 112 total annual hours; 2 hours per response.

Needs and Uses: Part 42 prescribes the regulations governing the preservation of records of communications common carriers that are fully subject to the jurisdiction of the FCC. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

OMB Control Number: 3060-0715.

OMB Approval Date: 12/06/2007.

Expiration Date: 06/30/2008.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96-115.

Form Number: N/A.

Estimated Annual Burdens: 6,017 respondents; 350,704 hours; 58.29 hours per response.

Needs and Uses: On January 12, 2007, President George W. Bush signed into law the "Telephone Records and Privacy Protection Act of 2006," which

responded to the problem of "pretexting," or seeking to obtain unauthorized access to telephone records, by making it a criminal offense subject to fines and imprisonment. In particular, pretexting is the practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records. The Telephone Records and Privacy Protection Act of 2006 Act found that such unauthorized disclosure of telephone records is a problem that "not only assaults individual privacy but, in some instances, may further acts of domestic violence or stalking, compromise the personal safety of law enforcement officers, their families, victims of crime, witnesses, or confidential informants, and undermine the integrity of law enforcement investigations."

On April 2, 2007, the Commission released the Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services, CC Docket No. 96-115, WC Docket No. 04-36, FCC 07-22, which responded to the practice of pretexting by strengthening its rules to protect the privacy of customer proprietary network information (CPNI) that is collected and held by providers of communications services. Section 222 of the Communications Act requires telecommunications carriers to take specific steps to ensure that CPNI is adequately protected from unauthorized disclosure. Pursuant to section 222, the Commission adopted new rules focused on the efforts of providers of communications services to prevent pretexting. These rules require providers of communications services to adopt additional privacy safeguards that, the Commission believes, will sharply limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-24510 Filed 12-19-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 14, 2008.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *South Central Bancorp, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Kimmunity, both of Kimmunity, Illinois.

Board of Governors of the Federal Reserve System, December 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-24706 Filed 12-19-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

[File No. 061 0090]

Multiple Listing Service, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 14, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Multiple Listing Service, File No. 061 0090,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: Patrick J. Roach (202) 326-2793, Bureau of Competition, Room NJ-6245, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 12, 2007), on the World Wide Web, at <http://www.ftc.gov/os/2007/12/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement containing consent order with Multiple Listing Service, Inc. (“MLS, Inc.” or “Respondent”). Respondent operates a multiple listing service (“MLS”) that is designed to facilitate real estate transactions by sharing and publicizing information on properties for sale by customers of real estate brokers. The agreement settles charges that MLS, Inc. violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, through particular acts

and practices of the MLS. The proposed consent order has been placed on the public record for thirty (30) days to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed consent order. This analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify its terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by proposed Respondent that it violated the law or that the facts alleged in the complaint against the Respondent (other than jurisdictional facts) are true.

I. The Respondent

MLS, Inc. is a Wisconsin corporation that provides multiple listing services to each of the local associations of real estate professionals based in the Milwaukee metropolitan area and surrounding counties. It is owned by several realtor boards and associations, and has more than 6500 members. Respondent serves the great majority of the residential real estate brokers in its service area, and is the sole MLS serving that area. MLS, Inc. also owns and operates a web site, *wihomes.com*, that provides listing information directly to consumers over the internet.

II. The Conduct Addressed by the Proposed Consent Order

In general, the conduct at issue in this matter is largely the same as the conduct addressed by the Commission in six other consent orders involving MLS restrictions in the past year.² A general discussion of industry background and the Commission's reasoning is contained in the Analysis to Aid Public Comment issued in connection with five of those consent orders in the "real estate sweep" announced in October 2006.³

²Information and Real Estate Services, LLC, FTC File No. 061-0087; Northern New England Real Estate Network, Inc., FTC File No. 051-0065; Williamsburg Area Ass'n of Realtors, Inc., FTC File No. 061-0268; Realtors Ass'n of Northeast Wisconsin, Inc., FTC File No. 061-0267; Monmouth County Ass'n of Realtors, Inc., FTC File No. 051-0217; Austin Bd. of Realtors, FTC File No. 051-0219. See generally <http://www.ftc.gov/opa/2006/10/realestatesweep.shtm>.

³See <http://www.ftc.gov/os/caselist/0610268/0610268consentanalysis.pdf>.

A. The Respondent Has Market Power

MLS, Inc. serves residential real estate brokers in the Milwaukee metropolitan area and surrounding counties in Wisconsin. These professionals compete with one another to provide residential real estate brokerage services to consumers. Membership in MLS, Inc. is necessary for a broker to provide effective residential real estate brokerage services to sellers and buyers of real property in this area.⁴ By virtue of broad industry participation and control over a key input, MLS, Inc. has market power in the provision of residential real estate brokerage services to sellers and buyers of real property in southeast Wisconsin.

B. Respondent's Conduct

The complaint accompanying the proposed consent order alleges that Respondent has violated the FTC Act by adopting rules and policies that limit the publication and marketing of certain sellers' properties, but not others, based solely on the terms of their respective listing contracts. Listing contracts are the agreements by which property sellers obtain services from their chosen real estate brokers. The restrictions challenged in the complaint accompanying the proposed order state that information about properties will not be made available on popular real estate web sites unless the listing contracts follow the traditional format approved by the MLS. When implemented, these restrictions prevent properties with non-traditional listing contracts from being displayed on a broad range of public web sites, including the "Realtor.com" web site operated by the National Association of Realtors, the local web site "wihomes.com" operated by MLS, Inc., and web sites operated by brokers or brokerage firms that are MLS members. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS and from public web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along.

As was the case with the other MLSs that agreed to consent orders with the Commission, the contract favored by

⁴As noted, the MLS provides valuable services for a broker assisting a seller as a listing broker, by offering a means of publicizing the property to other brokers and the public. For a broker assisting a buyer, it also offers unique and valuable services, including detailed information that is not shown on public web sites, which can help with house showings and otherwise facilitate home selections.

Respondent here is known as an "Exclusive Right to Sell Listing," and is the kind of listing agreement traditionally used by listing brokers to provide the full range of residential real estate brokerage services. Among the contracts disfavored by the Respondent is the kind known as an "Exclusive Agency Listing," which brokers can use to offer limited brokerage services to home sellers in exchange for set fees or reduced commissions.

Respondent adopted the challenged rules and policies in May 2001. In October 2006, prior to agreeing to the proposed consent order and prior to the Commission's acceptance of the consent order and proposed complaint for public comment, the Board of Directors of MLS, Inc. voted to rescind the restriction. The members of the MLS affected by these rules were notified in November 2006 of the Board's intention to change its rules.

C. Competitive Effects of the Respondent's Rules and Policies

MLS, Inc.'s rules and policies have discouraged its members from offering or accepting Exclusive Agency Listings. Thus, the restrictions impede the provision of unbundled brokerage services, and may make it more difficult and costly for home sellers to market their homes. Furthermore, the rules and policies have caused home sellers to switch away from Exclusive Agency Listings to other forms of listing agreements. By prohibiting Exclusive Agency Listings from being transmitted to popular real estate web sites, the MLS, Inc. restrictions have adverse effects on home sellers and home buyers. When home sellers switch to full-service listing agreements from Exclusive Agency Listings that often offer lower-cost real estate services to consumers, the sellers may purchase services that they would not otherwise buy. This, in turn, may increase the commission costs to consumers of real estate brokerage services. In particular, the rules deny home sellers choices for marketing their homes and deny home buyers the chance to use the internet easily to see all of the houses listed by real estate brokers in the area, making their search less efficient.

D. There is No Competitive Efficiency Associated with the Web Site Policy

The Respondent's rules at issue here advance no legitimate procompetitive purpose. As a theoretical matter, if buyers and sellers could avail themselves of an MLS system and carry out real estate transactions without compensating any of its broker members, an MLS might be concerned

that those buyers and sellers were free-riding on the investment that brokers have made in the MLS and adopt rules to address that free-riding. But this theoretical concern does not justify the restrictions adopted by the Respondent here. Exclusive Agency Listings are not a credible means for home buyers or sellers to bypass the use of the brokerage services that the MLS was created to promote, because a listing broker is always involved in an Exclusive Agency Listing, and other provisions in MLS, Inc.'s rules ensure that a cooperating broker—a broker who finds a buyer for the property—is compensated for the brokerage service he or she provides.

Under existing MLS rules that apply to any form of listing agreement, the listing broker must ensure that the home seller pays compensation to the cooperating selling broker (if there is one), and the listing broker may be liable himself for a lost commission if the home seller fails to pay a selling broker who was the procuring cause of a completed property sale. The possibility of sellers or buyers using the MLS but bypassing brokerage services is already addressed effectively by the Respondent's existing rules that do not distinguish between forms of listing contracts, and does not justify the series of exclusionary rules and policies adopted by MLS, Inc. It is possible, of course, that a buyer of an Exclusive Agency Listing may make the purchase without using a selling broker, but this is true for traditional Exclusive Right to Sell Listings as well.

III. The Proposed Consent Order

Despite the recent decision by Respondent's Board of Directors to remove the challenged restrictions, it is appropriate for the Commission to require the prospective relief in the proposed consent order. Such relief ensures that MLS, Inc. cannot revert to the old rules or policies, or engage in future variations of the challenged conduct. The conduct at issue in the current case is itself a variation of practices that have been the subject of past Commission orders; in the 1980s and 1990s, the Commission condemned the practices of several local MLS boards that had banned Exclusive Agency Listings entirely, and several consent orders were imposed.⁵

⁵ See, e.g., *In the Matter of Port Washington Real Estate Bd., Inc.*, 120 F.T.C. 882 (1995); *In the Matter of United Real Estate Brokers of Rockland, Ltd.*, 116 F.T.C. 972 (1993); *In the Matter of Am. Indus. Real Estate Assoc.*, Docket No. C-3449, 1993 WL 11303 (30)09648 (F.T.C. Jul. 6, 1993); *In the Matter of Puget Sound Multiple Listing Serv.*, Docket No. C-3390 (F.T.C. Aug. 2, 1990); *In the Matter of Bellingham-Whatcom County Multiple Listing*

The proposed order is designed to ensure that Respondent does not misuse its market power, while preserving the procompetitive incentives of members to contribute to the joint venture operated by MLS, Inc. The proposed order prohibits Respondent from adopting or enforcing any rules or policies that deny or limit the ability of MLS participants to enter into Exclusive Agency Listings, or any other lawful listing agreements, with sellers of properties. The proposed order includes examples of such practices, but the conduct it enjoins is not limited to those five enumerated examples. In addition, the proposed order states that, within thirty days after it becomes final, Respondent shall have conformed its rules to the substantive provisions of the order. MLS, Inc. is further required to notify its participants of the order through its usual business communications and its web site. The proposed order requires notification to the Commission of changes in the Respondent's structure, and periodic filings of written reports concerning compliance.

The proposed order applies to Respondent and entities it owns or controls, including MetroMLS and any affiliated web site it operates. The order does not prohibit participants in the MLS, or other independent persons or entities that receive listing information from Respondent, from making independent decisions concerning the use or display of such listing information on participant or third-party web sites, consistent with any contractual obligations to Respondent.

The proposed order will expire in 10 years.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E7-24686 Filed 12-19-07; 8:45 am]

[Billing Code: 6750-01-S]

Bureau, Docket No. C-3299 (F.T.C. Aug. 2, 1990); *In the Matter of Metro MLS, Inc.*, Docket No. C-3286, 1990 WL 10012611 (F.T.C. Apr. 18, 1990); *In the Matter of Multiple Listing Serv. of the Greater Michigan City Area, Inc.*, 106 F.T.C. 95 (1985); *In the Matter of Orange County Bd. of Realtors, Inc.*, 106 F.T.C. 88 (1985).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-08-07AB]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Measuring the Psychological Impact on Communities Affected by Landmines—New—Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a republication of the 60-Day Federal Register Notice on this project published 12/13/2006. Comments were received concerning urgent needs relating to landmines and unexploded ordnance. CDC has considered the comments and appreciates the concerns expressed. While our study is relatively small by design, we judge that there will be sufficient statistical power for this empirical population-based study to demonstrate what the social economic

and psychological benefits of de-mining will be for affected populations.

The purpose of this project is to conduct focus groups and an observational baseline survey that assesses the effectiveness of Humanitarian Mine Action (landmine and unexploded ordnance clearance, also known as de-mining) upon the economic, social and mental well being of impacted communities. This work will be conducted by the Harvard Humanitarian Initiative, a center of Harvard University, under a cooperative agreement with CDC. The general theory to be examined is that individuals and communities in these locations suffer when living in an area with landmines and unexploded ordnance (UXO) since they cannot use all land resources and suffer the trauma of injured or killed family members.

This research on the impact of demining is necessary because landmines and UXO continue to negatively impact civilian populations. For example, it has been estimated that each year landmines and unexploded ordnance lead to the injury and death of 24,000 persons worldwide, predominately civilians. At the same time, it is estimated that civilians account for 35% to 65% of war-related deaths and injuries. The use of landmines and UXO is ongoing, and therefore this issue merits continued attention.

Up to this point, however, little if any of the international response to landmines has studied the economic, social, and mental impact upon a community. Instead the focus has been their physical impact in terms of numbers of injured and killed. There are no statistics nor is there research that can accurately capture these alternative measures of impact. There now exists an opportunity for further research that will benefit the general public as well as the organizations and governments working with persons impacted by landmines and UXO.

The proposed work will allow CDC to continue its commitment to reduce the negative health impact posed by landmines and unexploded ordnance, both for U.S. and non-U.S.-based populations. Specific activities for this project include:

a. Identify and incorporate public health principles into the planning of a pilot study for assessing the impact of landmine and unexploded ordnance (UXO) abatement (also known as demining) on the economic, social and mental health of contaminated communities. This initial research in three or more locations will lay the groundwork for further study in additional sites around the world.

b. Develop the survey instrument and design a study that will assess the economic, social and mental health consequences of living in areas where

landmines and UXO are present and the impact if they are cleared.

c. Collect and analyze data in order to draw conclusions and describe key findings that can be presented to the mine action community, which consists of United Nations (UN), governmental and non-governmental organizations (NGOs) focused on reducing the negative impact of mines and unexploded ordnance.

d. Develop materials and strategies for the wide dissemination of findings from the study. Organizations making up the mine action community will benefit from the ability to incorporate results (such as what practices alleviate negative social impacts on a community) of the research into their current practices.

e. Identify and understand all critical aspects of the demining or abatement process, which includes the proper procedures and techniques for demining, the distinction between humanitarian and military demining, a thorough understanding of international standards for demining, and the ability to critically evaluate the quality of demining programs and their work.

f. The work will be conducted in one country per year for a total of five years, depending upon available funding. The likely countries are: Angola, Bosnia, Colombia, and Lebanon.

There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS:

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden response (in hours)
Urban household heads	800	1	1.5	1200
Rural household heads	400	1	1.5	600
Totals	1200	.....	.....	1800

Type of respondents	Number of respondents	Number of responses per respondent	Average burden time per response	Total burden response (in hours)
Urban focus group participants	30	1	2	60
Rural focus group participants	20	1	2	40
Totals	50	.....	.....	100

Dated: December 12, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-24701 Filed 12-19-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-08-0672]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Indicators of the Performance of Local and State and Education Agencies in HIV-prevention and Coordinated School Health Program Activities for Adolescent and School Health Programs—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Adolescent and School Health (DASH), CDC, supports HIV prevention activities and coordinated school health program (CSHP) activities conducted by local education agencies (LEA) and state and territorial education agencies (SEA and TEA). DASH has previously collected information on these activities under OMB control number 0920-0672, which is scheduled to expire in February 2008. Because there is currently no other standardized annual reporting process for HIV prevention activities or CSHP activities, DASH seeks OMB approval to reinstate the previously fielded web-based questionnaires. In addition, DASH proposes to add a new questionnaire to assess asthma management activities to be conducted by LEAs and SEAs.

Four Web-based questionnaires will be used that correspond to specific funding sources within the Division of Adolescent and School Health. Two questionnaires pertain to HIV-prevention program activities among LEAs and SEAs/TEAs. The third questionnaire pertains to asthma management activities among LEAs. The fourth questionnaire pertains to CSHP activities among SEAs.

The two HIV questionnaires will include questions on:

- Distribution of, professional development and individualized technical assistance on school policies.
- Distribution of, professional development and individualized technical assistance on education curricula and instruction.
- Distribution of, professional development and individualized technical assistance assessment on student standards.
- Collaboration with external partners.
- Targeting priority populations.
- Planning and improving projects.
- Information about additional program activities.

The asthma questionnaire will ask the questions above, but will focus on asthma management activities.

The CSHP questionnaire will also ask the questions above, but will focus on physical activity, nutrition, and tobacco-use prevention activities (PANT). It will include additional questions on:

- Joint activities of the State Education Agency and State Health Agency (SHA).
- Activities of the CSHP state-wide coalition.
- Health promotion programs and environmental approaches to PANT.

Information gathered from the questionnaires will: (1) Provide standardized information about how HIV prevention, asthma management, and CSHP funds are used by LEAs and SEAs; (2) assess the extent to which programmatic adjustments are indicated; (3) provide descriptive and process information about program activities; and (4) provide greater accountability for use of public funds.

Each Web-based questionnaire will be completed annually. There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden response (in hours)
Local Education Agency Officials	Indicators for School Health Programs: HIV Prevention (LEA).	18	1	7	126
	Asthma Management Education Questionnaire.	10	1	7	70
State and Territorial Education Agency Officials.	Indicators for School Health Programs: HIV Prevention (SEA).	55	1	7	385
State Education Agency Officials	Indicators for School Health Programs: Coordinated School Health Programs.	23	1	10	230
Total .....	.....	.....	.....	.....	811

Dated: December 12, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-24704 Filed 12-19-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Information Comparison with Insurance Data.

OMB No.: New Collection.

Description: The Deficit Reduction Act of 2005 amended section 452 of the Social Security Act (the Act) to authorize the Secretary of Health and Human Services, through the Federal Parent Locator Service (FPLS), to

conduct comparisons of information concerning individuals owing past-due child support with information maintained by insurance companies (or their agents) concerning insurance claims, settlements, awards, and payments. The Federal Office of Child Support Enforcement (OCSE) operates the FPLS in accordance with section 453(a)(1) of the Act. The Federal Case Registry of Child Support Orders (FCR) is maintained in the FPLS in accordance with section 453(h)(1) of the Act.

At the option of an insurer, the comparison may be accomplished by either of the following methods: under the first method, an insurer or the insurer's agent will submit to OCSE information concerning claims, settlements, awards, and payments. OCSE will then compare that information with information pertaining to individuals owing past-due support; under the second method, OCSE will furnish to the insurer or the insurer's

agent a file containing information pertaining to individuals owing past-due support. The insurer or the insurer's agent will then compare that information with information pertaining to claims, settlements, awards, and payments. The insurer will furnish the information resulting from the comparison to OCSE.

On a daily basis, OCSE will furnish the results of a comparison to the State agencies responsible for collecting child support from the individuals by transmitting the Insurance Match Response Record. The results of the comparison will be used by the State agencies to collect from the insurance proceeds past-due child support owed by the individuals.

Respondents: Insurance companies or their agents, including the U.S. Department of Labor and State agencies administering workers' compensation programs.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Insurance Match Agreement	15	1	.5	8*
Insurance Match File	15	52	.5	390
Estimated Total Annual Burden Hours				398*

* Figures have been rounded up.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 11, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07-6089 Filed 12-19-07; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: January 24, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: 1. Approval of Minutes; 2. Reports from Dr. John E. Niederhuber, NCI Director; 3. Report from Shannon Bell, OAR Director; 4. Discussion of Recommendations at DCLG October in-person meetings; 5. Reports from DCLG members of NCI Committee Assignments; 6. Public Comment; 7. Action Items and Conclusion.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Barbara Guest, Executive Secretary, Office of Advocacy Relations, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 2202, Bethesda, MD 20892-8324, (301) 496-0307, guestb@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/dclg/dclg.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and

Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 13, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6104 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 22-23, 2008.

Open: January 22, 2008, 1 p.m. to Adjournment.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conf. 6C, Room 10, Bethesda, MD 20892.

Closed: January 23, 2008, 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conf. 6C, Room 10, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, PhD, Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B-05, Bethesda, MD 20892-2178, (301) 496-8230, kerrme@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: http://www.nih.gov/ninr/a_advisory.html, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6080 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: January 6-8, 2008.

Time: January 6, 2008, 5 p.m. to 9:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Room 117, Bethesda, MD 20892.

Time: January 7, 2008, 8 a.m. to 6:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Room 117, Bethesda, MD 20892.

Time: January 8, 2008, 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Room 117, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, Assistant to the Director, NIH-NIDCR, 31 Center Drive, Bldg. 31, Room 5B55, Bethesda, MD 20892, 301-594-2089, NORMAN.BRAVEMAN@NIH.GOV.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about/CouncilCommittees.asp>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6082 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "B-cell P01 applications".

Date: January 10, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 451-2666, qvoss@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6083 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Host Response to Pathogens".

Date: January 10, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National

Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-402-3938, lr228v@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6084 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Advisory Council on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 5-6, 2008.

Closed: February 5, 2008, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: February 6, 2008, 9 a.m. to 1 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 443-2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.drugabuse.gov/NACDA/NACDAHome.html>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6085 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Design and Synthesis of Treatment Agents for Drug Abuse.

Date: December 18, 2007.

Time: 10:20 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 435-1439, lf33c@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6086 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, MIDARP.

Date: January 10, 2008.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on

Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-402-2105, rogersn2@nida.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 11, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6087 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office Of The Director, National Institutes Of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: January 14, 2008.

Time: 3 p.m. to 4 p.m.

Agenda: Recombinant DNA Advisory Committee teleconference will meet to discuss the follow-up of a Serious Adverse Event on a Human Gene Transfer Trial (OBA Protocol #0504-705) Using an Adeno-Associated Viral Vector: Analysis of Its Scientific and Safety Implications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Sixth Floor, C Wing, Room 6, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892-7985, 301-496-9838, lewalla@od.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license,

or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www4.od.nih.gov/oba/>, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 12, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-6081 Filed 12-19-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1732-DR]

Indiana; 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 Indiana (FEMA-

1732-DR), dated November 30, 2007 and related determinations.

DATES: *Effective Date:* November 30, 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 November 30, 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 Indiana resulting from severe storms and flooding during the period of August 15-27, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Indiana.

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 warranted, Federal funds provided under that program also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. 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, Donald Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Indiana have been designated as

adversely affected by this declared major disaster:

Lake County for Individual Assistance. All counties within the State of Indiana 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. E7-24681 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3280-EM]

Oklahoma; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Oklahoma (FEMA-3280-EM), dated December 10, 2007, and related determinations.

DATES: *Effective Date:* December 10, 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 December 10, 2007, the President declared an emergency declaration 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 emergency conditions in the State of Oklahoma resulting from severe winter storms beginning on December 8, 2007, and continuing, are of sufficient severity and magnitude to warrant an emergency 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 an emergency exists in the State of Oklahoma.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

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 emergency assistance and administrative expenses.

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, Department of Homeland Security, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared emergency:

All 77 counties in the State of Oklahoma for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance 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. E7-24682 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

[FEMA-1733-DR]

Oregon; 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 Oregon (FEMA-1733-DR), dated December 8, 2007, and related determinations.**DATES:** *Effective Date:* December 10, 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 Oregon 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 December 8, 2007.

Clatsop County for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance 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. E7-24685 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[FEMA-1733-DR]

Oregon; 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 Oregon (FEMA-1733-DR), dated December 8, 2007, and related determinations.**DATES:** *Effective Date:* December 9, 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 Oregon is hereby amended to include the Individual Assistance program for 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 December 8, 2007.

Columbia and Tillamook Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance 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. E7-24688 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[FEMA-1733-DR]

Oregon; 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 Oregon (FEMA-1733-DR), dated December 8, 2007, and related determinations.**DATES:** *Effective Date:* December 8, 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 December 8, 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 Oregon resulting from severe storms, flooding, landslides, and mudslides beginning on December 1, 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 Oregon.

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 assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate, subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for

any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

If Other Needs Assistance is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Glen R. Sachtleben, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Oregon have been designated as adversely affected by this declared major disaster:

Clatsop, Columbia, Lincoln, Tillamook, and Yamhill Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All counties within the State of Oregon 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. E7-24689 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1734-DR]

Washington; 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 Washington (FEMA-1734-DR),

dated December 8, 2007, and related determinations.

DATES: *Effective Date:* December 9, 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 Washington is hereby amended to include the Individual Assistance program for 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 December 8, 2007.

Grays Harbor and Lewis Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance 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. E7-24684 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1734-DR]

Washington; 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 Washington (FEMA-1734-DR), dated December 8, 2007, and related determinations.

DATES: *Effective Date:* December 8, 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 December 8, 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 Washington resulting from severe storms, flooding, landslides, and mudslides beginning on December 1, 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 Washington.

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 assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate, subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program also 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas P. Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Washington have been designated as

adversely affected by this declared major disaster:

Grays Harbor, Kitsap, Lewis, Mason, Pacific, and Thurston Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All counties within the State of Washington 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. E7-24687 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3276-EM]

Federated States of Micronesia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Federated States of Micronesia (FEMA-3276-EM), dated July 31, 2007, and related determinations.

DATES: Effective Date: November 2, 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 emergency is closed effective November 2, 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. E7-24690 Filed 12-19-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-923-1310-FI; NVN-75674, NVN-75675, NVN-75676, NVN-75677 and NVN-75678; 8-08807; TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas leases NVN-75674, NVN-75675, NVN-75676, NVN-75677 and NVN-75678 for lands in Elko County, Nevada, was timely filed and was accompanied by all the required rentals accruing from May 1, 2006, the date of termination. No valid lease has been issued affecting the lands. The lessee, Cedar Strat Corp. has agreed to new lease terms for rentals and royalties at rates of \$5 per acre or fraction thereof and 16-2/3 percent, respectively. Cedar Strat Corp. has paid the required \$500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. Cedar Strat Corp. has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective May 1, 2006, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Chris Pulliam, BLM Nevada State Office, 775-861-6506.

(Authority: 43 CFR 3108.2-3(a))

Dated: December 12, 2007.

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. E7-24696 Filed 12-19-07; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-130-08-1610-DU]

Notice of Intent To Amend the Grand Junction Resource Management Plan for the Gateway Area, Mesa and Montrose Counties, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Grand Junction Resource Management Plan for the Gateway Special Recreation Management Area.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Grand Junction Field Office, is proposing to amend the Grand Junction Resource Management Plan (1987) to develop and design a recreation management plan and travel system for the Gateway Special Recreation Management Area. The planning area includes 198,000 acres of public land located near the community of Gateway, Colorado. The Gateway planning process was initiated in December of 2007. It has been determined that a plan amendment would be needed to consider the input of interested publics, user groups, and other agencies and to alter RMP allocations.

DATES: This notice initiates the public scoping process. The public is invited to submit comments throughout the development of the Draft Amendment/EA. All future public meetings will be announced through the local news media, newsletters, and other media at least 15 days prior to the event. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment upon the issuance of the BLM Draft Amendment/EA.

ADDRESSES: Written comments should be sent to Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Comments be also be electronically submitted to *GJFO_webmail@blm.gov*. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public

review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Ken Straley, Supervisory Outdoor Recreation Planner, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506; (970) 244-3031; kenneth_straley@blm.gov.

SUPPLEMENTARY INFORMATION: The Grand Junction Field Office has and will continue to consult, communicate and cooperate with local landowners, recreationists, the Northwest Colorado Resource Advisory Committee, the community of Gateway, and other affected interest groups and individuals to develop and design a recreation management plan for the Gateway Area. BLM will use an interdisciplinary approach to develop the plan amendment and environmental assessment in order to consider all identified resource issues and concerns. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, transportation planning, range conservation, wildlife, fisheries, law enforcement, minerals, soils, and hazardous materials.

Dated: December 11, 2007.

Catherine Robertson,

Grand Junction Field Manager.

[FR Doc. E7-24363 Filed 12-19-07; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/Environmental Impact Report; Creek and Wetland Restoration at Big Lagoon, Muir Beach, Golden Gate National Recreation Area, Marin County, CA, Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement

and Final Environmental Impact Report (Final EIS/EIR) for the Wetland and Creek Restoration at Big Lagoon. The National Park Service (NPS) and Marin County have prepared the Final EIS/EIR in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The Final EIS/EIR analyzes multiple alternatives for ecological restoration, public access improvements, bridge replacement, and fill disposal locations; an "environmentally preferred" alternative is identified.

Background: The project at Big Lagoon would restore a functional, self-sustaining ecosystem, including wetland, riparian, and aquatic components. This restoration project would re-create habitat for sustainable populations of special-status species, reduce flooding on Pacific Way, and provide a compatible visitor experience. This project is needed to address the extensive loss of natural function for channel conveyance, sediment transport, channel stability, and diminished habitat for federally endangered coho and federally threatened steelhead; the increased flooding on Pacific Way; and the critical need for sustainable habitat for the California red-legged frog. With many of the impacts resulting from facilities necessary to accommodate public and residential access, access is needed in a manner that is compatible with ecosystem function. A successful project would meet the following goals:

- Restore a functional, self-sustaining ecosystem, including wetland, aquatic and riparian components.
- Develop a restoration design that (1) functions in the context of the watershed and other pertinent regional boundaries, and (2) identifies and, to the extent possible, mitigates factors that reduce the site's full restoration potential.
- Consistent with restoring a functional ecosystem, re-create and maintain habitat adequate to support sustainable populations of special status species.
- Reduce flooding on Pacific Way and in the Muir Beach community caused by human modifications to the ecosystem, and work with Marin County to ensure that vehicle access is provided to the Muir Beach community.
- Provide a visitor experience, public access, links to key locations, and resource interpretation that are compatible with the ecosystem restoration and historic preservation.
- Work with the Federated Indians of Graton Rancheria to incorporate cultural values and indigenous archaeological

sites resources into the restoration design, visitor experience, and site stewardship.

- Provide opportunities for public education and community-based restoration, including engaging local and broader communities in restoration planning and site stewardship.
- Coordinate with local transportation planning efforts to identify project features that are compatible with transportation improvements and consistent with the ecosystem restoration.

Range of Alternatives Considered: The Final EIS/EIR evaluates three alternatives for ecological restoration, six alternatives for public access, and four alternatives for a new Pacific Way Bridge and road. The "agency preferred" alternative consists of the Creek Restoration Alternative, 175 Cars Rotated Parallel to Pacific Way Public Access Alternative, and the 250 foot-long Bridge with Highest Road Bridge Alternative. Below is a topical summary of the alternatives under consideration:

Ecological Restoration alternatives include: The No Action alternative would leave Redwood Creek in its current alignment and would not propose any large-scale physical modifications to the site. The Creek Restoration alternative would involve relocating approximately 2,000 linear feet of Redwood Creek to the topographically lowest portion of the valley, while maintaining a habitat mix similar to current conditions; the Creek and Small Lagoon Restoration alternative would combine riparian restoration components with restoration of open water and wetland habitats by creating two open-water lagoons, one on either side of the new channel; and the Large Lagoon Restoration alternative would create a periodically brackish open-water habitat similar to historic (1853) conditions, modified to reflect existing constraints of Pacific Way and private property by creating a large lagoon with fringing wetlands extending to the valley's edge just landward of Muir Beach.

Public Access alternatives include: The No Action alternative would retain the 175 Cars at Beach in its current configuration. The 50 Cars at Beach alternative would construct a 50-space parking lot at the beach at the site of the existing parking lot; the 145 Cars at Beach alternative would retain the same footprint as the existing parking lot, but the lower 90 feet would be removed to accommodate a maximum of 145 vehicles; 175 Cars at Beach alternative would accommodate a maximum of 175 vehicles, the same number as the existing parking lot. The lot would be

about the same size as the existing parking lot, but it would be pulled back from the creek further than the minimum 90 feet to create a minimum distance of about 180 feet from the creek. It would also expand further northward into existing riparian habitat; the 175 Cars Rotated Parallel to Pacific Way alternative would have the same 175-car capacity but rotate the parking lot parallel to Pacific Way; the 200 Cars at Beach alternative proposes the largest parking lot of all the alternatives with a maximum of 200 vehicle spaces located in the same area as the existing parking lot; and the 118 Cars at Alder Grove alternative would designate most parking away from the beach in an area known as the Alder Grove but would provide 14 Disabled-Accessible Parking Spaces and a drop-off turnaround at the beach.

Bridge alternatives include: The No Action alternative would not change Pacific Way Road or the bridge. The 50 foot-long Bridge with a Raised Road alternative would free-span the 35 foot-wide channel and have a deck at 16.5 feet NGVD and be raised on the north and south approaches; the 50 foot-long Bridge with a Low Road alternative would free-span the 35 foot-wide channel and have a deck height at approximately 15 feet NGVD but would not be raised on the north and south approaches; the 150 foot-long Bridge with Raised Road alternative would span both the new 35 foot-wide channel and areas of riparian habitat and floodplain on either side of the channel and would be supported by 2 foot-wide piers, placed at approximately 40-foot intervals; and the 250 foot-long Bridge with Highest Road alternative would span the entire available riparian zone and floodplain from the Pelican Inn on the north to the existing bridge on the south and would have the highest deck of all the alternatives, between 16.25 and 18 feet NGVD and be supported by two foot-wide piers, placed at approximately 40-foot intervals.

Scoping And Public Review: Between December 2002 and December 2004, 17 public meetings were held, as well as a variety of site visits and meetings with representatives of various agencies. On December 3, 2002, a Notice of Intent to prepare an EIS was published in the **Federal Register** beginning the formal scoping phase and identifying goals for the project. Three public scoping meetings were held on October 22, October 29, and November 2, 2002, with a site visit for the public held on November 9, 2002, to solicit input on the project and its potential impacts. Following these meetings, a Big Lagoon Working Group consisting of interested

individuals, agencies, and organizations was formed to help develop project alternatives. The working group convened regularly in meetings that were open to the public. In addition, two alternatives workshops were held for the public on September 30 and October 4, 2003. The results of those workshops, as well as a more detailed summary of the scoping process, were distributed in the Alternative Public Workshops Report (2004). Finally, Marin County circulated a Notice of Preparation of an Environmental Impact Report on April 27, 2004, soliciting comments on the specific issues to be included in the scope of CEQA environmental review. All of these activities informed the alternatives formulation process. The Notice of Availability for the Draft EIS/EIR was published December 18, 2006 in the **Federal Register** and the document was made available for a 75-day public review and comment period. Following release of the Draft EIS/EIR, NPS and Marin County held two public meetings to present the project to interested parties and to answer questions about the project. These meetings were held on January 18 and 31, 2007. NPS and Marin County also conducted a public hearing at the Marin County Planning Commission in San Rafael, California, on February 26, 2007, to receive comments on the draft document.

FOR FURTHER INFORMATION CONTACT:

Copies of the Final EIS/EIR will be sent to affected Federal, Tribal, State and local government agencies, to interested parties, and those requesting copies. Paper and digital copies (compact disc) of the Final EIS/EIR will be available at both lead agency offices and at local libraries during normal business hours. The complete document will be available in area libraries, and also posted on the GGNRA's project Web site (<http://www.nps.gov/goga>) and on NPS's Planning, Environment and Public Comment Web site (<http://www.parkplanning.nps.gov/goga>). New requests may be sent to: Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123 (Attn: Creek and Wetland Restoration at Big Lagoon). After release of the Final EIS/EIR, a public meeting will be scheduled (date and other details will be posted on the project Web site). For further information about the project's conservation planning process or logistics of the public meeting, contact Steve Ortega or Carolyn Shoulders, Building 201 Fort Mason, San Francisco, CA 94123, Phone: (415) 561-4841.

Decision Process: The NPS will prepare a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency of their notice of filing of the Final EIS in the **Federal Register**. As a delegated EIS, the official responsible for final approval is the Pacific West Regional Director, and subsequently the official responsible for project implementation is the General Superintendent, Golden Gate National Recreation Area.

Dated: November 2, 2007.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 07-6103 Filed 12-19-07; 8:45 am]

BILLING CODE 4312-FN-M

DEPARTMENT OF THE INTERIOR

National Park Service

Ecological Restoration Plan, Final Environmental Impact Statement, Bandelier National Monument, New Mexico

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the Ecological Restoration Plan, Bandelier National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Ecological Restoration Plan for Bandelier National Monument, New Mexico. On September 18, 2007, the Regional Director, Intermountain Region, approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on August 17, 2007. Alternative B was selected as the Park's preferred alternative; it maximizes work efficiency and minimizes resource impacts by implementing restoration treatments in the most systematic and timely fashion possible given available funding. This course of action, the no-action alternative, and one action alternative were analyzed in the Draft and Final Environmental Impact Statements. Alternative C focused on treating sub-basins containing the highest priority cultural resource sites within piñon-juniper woodland. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified. The Record of Decision includes a statement of the decision

made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: John Mack, Chief of Resource Management, Bandelier National Monument, 15 Entrance Road, Los Alamos, New Mexico, 87544, 505-672-3861, extension 540, john_mack@nps.gov.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at <http://parkplanning.nps.gov>.

Dated: September 18, 2007.

Michael D. Snyder,

*Regional Director, Intermountain Region,
National Park Service.*

[FR Doc. 07-6102 Filed 12-19-07; 8:45 am]

BILLING CODE 4312-EW-M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; General Management Plan/ Comprehensive River Management Plans; Sequoia-Kings Canyon National Parks; Fresno and Tulare Counties, CA; Notice of Approval Of Decision.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has released a Final Environmental Impact Statement (EIS) for the General Management Plan (GMP). The Regional Director, Pacific West Region has approved the Record of Decision for the GMP and supporting Comprehensive River Management Plans which together will guide management, research and operations at Sequoia and Kings Canyon National Parks over the next 10-15 years. The formal no-action period was officially initiated November 17, 2006, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

Decision: As soon as practicable the Parks will begin to implement a comprehensive range of activities and programs planned so as to enhance the park's ability to carry out its mission while limiting the amount of new environmental impacts from development and use—the selected plan

was identified and analyzed as *Preferred* in the Final EIS. The new plan maximizes ecological restoration where possible, while the basic character of park activities and the rustic architecture of facilities is retained. River protection measures safeguard the existing and eligible and suitable wild and scenic rivers. A modest increase in day use is accommodated through alternative transportation systems and redesign of some roads and parking. Visitors are offered more diverse opportunities to experience the parks. A Wilderness Stewardship and Stock Use Plan will be developed, with formal opportunities for public involvement in the planning as well as review. The parks will refine the visitor carrying capacity framework so as to preserve park resources and ensure a quality visitor experience. As documented in the Final EIS, this course of action was deemed to be “environmentally preferred”.

The preferred plan and four alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in May, 2004). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft EIS, numerous public meetings were hosted in Three Rivers, Grant Grove, Visalia, Clovis, Fresno, Sacramento, San Francisco, Bishop, Los Angeles and elsewhere. As a result of the extensive scoping outreach of GMP mailing list of about 3,700 entries was developed. Approximately 400 oral and written comments were received in response to the Draft EIS. Key consultations or other contacts which aided in preparing the Draft and Final EIS involved (but were not limited to) the State Historic Preservation Office, the U.S. Fish and Wildlife Service and California Department of Fish and Game, the Bureau of Land Management, the U.S. Forest Service, and Tribal representatives. Local communities, county and city officials, and interested groups and organizations were contacted extensively during initial scoping and throughout the conservation planning and environmental impact analysis process.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Sequoia-Kings Canyon National Parks, Three Rivers, CA 93271; or via telephone request at (559) 565-3341.

Dated: September 14, 2007.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 07-6101 Filed 12-19-07; 8:45 am]

BILLING CODE 4310-X2-M

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Flight 93 Advisory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: Notice is given that a meeting of the Flight 93 Advisory Commission (the Commission) will be held on Saturday, February 2, 2008 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force. The joint meeting will be held at the Somerset County Courthouse, Courtroom #1; 2nd floor; 111 East Union Street, Somerset, Pennsylvania 155501.

The agenda of the meeting will include review and approval of Commission minutes from October 7, 2007; reports from Flight 93 Memorial Task Force and National Park Service; old business; and new business.

The meeting will be open to the public. Comments from the public will be taken at the end of the meeting. Any person may file with a Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting, or who want further information concerning the meeting may contact Superintendent Joanne Hanley at 814.443.4557. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

DATES: February 2, 2008 at 10 a.m.

ADDRESSES: Somerset County Courthouse, Courtroom #1 2nd floor; 111 East Union Street, Somerset, Pennsylvania 15501.

FOR FURTHER INFORMATION CONTACT: Superintendent Joanne M. Hanley, 814.443.4557.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 107-226 to advise the Secretary of the Interior on the planning, design, construction and long-term management of a permanent memorial at the crash site of Flight 93.

Dated: December 14, 2007.

Joanne M. Hanley,
Superintendent, *Flight 93 National Memorial*.
[FR Doc. 07-6117 Filed 12-19-07; 8:45 am]
BILLING CODE 4312-25-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 8, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by January 4, 2008.

J. Paul Loether,
Chief, *National Register of Historic Places/
National Historic Landmarks Program*.

ALABAMA

Elmore County

Hagerty, Abel, House, 4690 Jasmine Hill Rd.,
Wetumpka, 07001389

Lee County

Jenkins Farmhouse,
1190 Co. Rd. 38, Dupree, 07001390

CALIFORNIA

Marin County

Muir Woods National Monument, Muir
Woods Rd., Mill Valley, 07001396

San Francisco County

San Francisco State Teacher's College, 55
Laguna St., San Francisco, 07001391

COLORADO

Bent County

Las Animas Post Office, (New Deal Resources
on Colorado's Eastern Plains MPS) 513 6th
St., Las Animas, 07001392

El Paso County

Maytag Aircraft Building, 701 S. Cascade
Ave., Colorado Springs, 07001393

Otero County

Rocky Ford Post Office, (New Deal Resources
on Colorado's Eastern Plains MPS) 401 9th
St., Rocky Ford, 07001394

Park County

Fairplay Hotel, 500 Main St., Fairplay,
07001395

Washington County

Akron Gymnasium, (New Deal Resources on
Colorado's Eastern Plains MPS) W. 4th St.
& Custer Ave., Akron, 07001397

GEORGIA

Wilcox County

Rochelle Historic District, Centered on 1st
Ave and Ashley St., Rochelle, 07001398

MASSACHUSETTS

Middlesex County

Pinkham, Richard, House, 24 Brooks Park,
Medford, 07001399

Plymouth County

North Rochester Congregational Church, 289
North Ave., Rochester, 07001400

NEW JERSEY

Bergen County

Edgewater Borough Hall, 916 River Rd.,
Edgewater, 07001401

Camden County

Marshall, Robert, House, 510 Almonesson
Rd. (Gloucester Township), Blenheim,
07001402

Hunterdon County

Vought, Christoffel, Farmstead, E. of Grey
Rock Rd., 600 ft. N. of jct. with NJ 31.
(Clinton Township), Clinton, 07001403

Mercer County

Broad Street National Bank, 143 E. State St.,
Trenton, 07001404

Morris County

Madison Masonic Lodge, 170 Main St.,
Madison, 07001405

Union County

Nitschke, Oswald J., 49 S. 21 St., Kenilworth,
07001406

NORTH CAROLINA

Moore County

Leslie—Taylor House, 270 Carthage Rd.,
Vass, 07001407

Polk County

Bank of Tryon Building, 16 N. Trade St.,
Tryon, 07001408

Richmond County

Liberty Hill School, 234 Covington Comm.
Rd., Ellerbe, 07001409
Powell—Brookshire—Parker Farm, 1881 E.
NC 73, Ellerbe, 07001410

Robeson County

Rowland, Alfred, House, 1111 Carthage Rd.,
Lumberton, 07001411

Wake County

Fayetteville Street Historic District, Roughly
100-400 blks. of Fayetteville, 00-100 blks.
of W. Hargett, 00 blk. of W. Martin, 100-
400 S. Salisbury Sts., Raleigh 07001412

WEST VIRGINIA

Berkeley County

West Martinsburg Historic District, (Historic
Residential Suburbs in the United States,
1830-1960 MPS) Portions of N. & S.
Tennessee, N. & S. Georgia, N. & S.
Louisiana, N. & S. Delaware, Memorial
Park Aves * * *, Martinsburg, 07001414

Greenbrier County

Homeplace, US 219 N., Frankford, 07001415

Jefferson County

Rock Spring, 2000 Ridge Rd.,
Shepherdstown, 07001416

Monroe County

Old Sweet Springs Historic District
(Boundary Increase), 50 Jefferson Ln.,
Sweet Springs, 07001417

Ohio County

Mount Saint Joseph, 137 Mt. Saint Joseph
Rd., Wheeling, 07001418
North Wheeling Historic District (Boundary
Increase), Roughly bound by 6th, Main, &
Market Sts., & Main St. Terr., Wheeling,
07001419

WISCONSIN

Door County

Sturgeon Bay Bridge, Michigan St., Sturgeon
Bay, 07001420.

[FR Doc. 07-6091 Filed 12-19-07; 8:45 am]

BILLING CODE 4312-51-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Federal Debt Collections Procedures Act

Notice is hereby given that on
December 7, 2007, a proposed Consent
Decree in *United States v. Daniel Green*,
et. al., Civil Action No. 1:00-cv-637
was lodged with the United States
District Court for the Southern District
of Ohio.

In this action the United States sought
reimbursement of response costs
incurred for response actions taken at or
in connection with the release or
threatened release of hazardous
substances at the Green Industries Site
in Sharonville, Ohio ("the Site")
pursuant to Section 107(a) of the
Comprehensive Environmental
Response, Compensation and Liability
Act ("CERLA"), 42 U.S.C. 9607(a).
Additionally, the United States sought
to void the transfer of certain real
property from defendant LWG Co., Inc.
("LWG") to Omni Industrial Properties
Inc. ("OMNI") as a fraudulent transfer
under Section 3304(b) of the Federal
Debt Collection Procedures Act

("FDCPA"), 28 U.S.C. 3304(b), to provide partial satisfaction of response costs owed by LWG under CERCLA. The Consent Decree resolves the United States' claims against defendant LWG on an inability to pay basis. Resolution of claims against LWG terminates the need for inclusion of Omni in this matter as a Rule 19 defendant. Although, LWG is currently dissolved and without assets available to satisfy its CERCLA liability, under the proposed Consent Decree Omni will pay \$218,250, approximately one-half of the available equity in the subject property, on behalf of LWG.

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. Daniel Green, et. al.*, D.J. Ref. 90-11-2-06906.

The Consent Decree may be examined at the Office of the United States Attorney, 221 East Fourth Street, Suite 400, Cincinnati, Ohio and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois. 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 \$3.75 (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.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-6105 Filed 12-19-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Commscope, Inc. and Andrew Corporation;

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. CommScope, Inc. and Andrew Corporation*, Civil Action No. 07-02200. On December 6, 2007, the United States filed a Complaint alleging that the proposed acquisition by CommScope, Inc. ("CommScope") of Andrew Corporation ("Andrew") would violate section 7 and section 8 of the Clayton Act, 15 U.S.C. 18, 19 by substantially lessening competition in the United States market for drop cable and creating interlocking directorates between competing companies. The proposed Final Judgment, filed the same time as the Complaint, requires the divestiture of: (a) Andrew's entire stock ownership in Andes Industries, Inc. ("Andes"); (b) all notes of indebtedness in favor of Andrew by Andes; (c) all warrants to acquire additional stock of Andes; and (d) intellectual property relating to the "Z-Wire" product sold by Andes' subsidiary PCT International, Inc. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Suite 215, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>. and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments

should be directed to Nancy Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (telephone: 202-514-5621).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, *Plaintiff*, v. CommScope, Inc., 1100 CommScope Place, SE., Hickory, North Carolina 28603 and Andrew Corporation, 3 Westbrook Corporate Center, Suite 900, Westchester, IL 60154, *Defendants*.

Case No.1 :07-cv-02200.

Assigned To: Lamberth, Royce C. Assign

Date: 12/6/2007.

Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition of Andrew Corporation ("Andrew") by CommScope, Inc. ("CommScope") and alleges as follows:

1. CommScope is a large manufacturer of wire and cable products used by, among others, telecommunications companies. CommScope is the leading manufacturer of drop cable in the United States, with a market share of approximately 60 to 70 percent. "Drop cable" is coaxial cable used by cable television providers to connect their transmission systems to their customers' premises and equipment inside the customers' premises. Drop cable sales average approximately \$500 million a year in the United States.

2. Andrew is a global designer, manufacturer and supplier of communications equipment and systems. Andrew was a manufacturer of drop cable until it sold this business in March 2007 to Andes Industries, Inc. ("Andes"). Andes' subsidiary, PCT International, Inc. ("PCT"), is a manufacturer of broadband hardware products used with drop cable installations. PCT and another Andes subsidiary, PCT Broadband Communications (Yantai) Co. Ltd. ("PCTY"), manufacture and sell drop cable. As a result of two transactions between Andrew and Andes, Andrew holds thirty (30) percent of Andes' equity and voting shares, a warrant that could allow it to increase its share holdings, and several Andes' notes of indebtedness. Andrew also has certain

governance rights, including the right to appoint one of Andes' three board members.

3. On June 26, 2007, defendants CommScope and Andrew entered into an Agreement and Plan of Merger, pursuant to which CommScope will acquire Andrew in an all-stock transaction valued at approximately \$2.6 billion.

4. As a result of the proposed acquisition, CommScope will obtain a 30 percent ownership interest in, and the right to appoint members to the board of directors of, one of its most significant competitors in the development, manufacture, and sale of drop cable. In addition, given its ownership of shares, warrants and debt instruments, and its governance rights, it will be able to exert substantial control over Andes. Therefore, CommScope's acquisition of Andrew would violate section 7 and section 8 of the Clayton Act because it would substantially lessen competition in the market for drop cable and would create interlocking directorates between competing companies.

I. Jurisdiction and Venue

5. This action is filed by the United States under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the violation by defendants of section 7 and section 8 of the Clayton Act, 15 U.S.C. 18, 19.

6. Defendant CommScope and defendant Andrew both manufacture and sell telecommunications products throughout the United States. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. This Court has jurisdiction over this action and the defendants pursuant to section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

7. Defendants transact business and are found within the District of Columbia. Venue is proper in the district under 15 U.S.C. 22, and 28 U.S.C. 1391(c). Defendants acknowledge personal jurisdiction in the District of Columbia and consent to venue.

II. Defendants

8. Defendant CommScope, with its headquarters in Hickory, North Carolina, is a corporation organized and existing under the laws of the state of Delaware. CommScope is a major manufacturer and provider of wire and cable products. For fiscal year 2006, it reported total revenues in excess of \$1.6 billion, with \$550 million coming from its broadband business segment, which supplies cable and hardware products to

cable television and telecommunications companies.

9. Defendant Andrew, with its headquarters in Westchester, Illinois, is a corporation organized and existing under the laws of the state of Delaware. Andrew is a major manufacturer and supplier of antenna and cable products and products for wireless communication systems. For fiscal year 2006, it reported total sales in excess of \$2.1 billion, with approximately \$1.3 billion coming from its antenna and cable business segment.

10. Andrew holds extensive interests in, and the means to exercise effective control over, Andes and its subsidiaries, PCT and PCTY. Andrew owns shares of Andes equal to 30 percent of Andes' equity. It holds a warrant to purchase up to ten percent more of Andes' equity. It holds three notes of indebtedness issued by Andes and Andes' subsidiaries, in a total amount of almost \$16 million. Andrew currently designates one member of Andes' three-member board of directors. After CommScope acquires Andrew, the combined firm will have the right to designate two members and, jointly with another Andes' shareholder, to select two more members of Andes' board, which will then consist of seven members. Andes and Andrew also have entered into an Amended and Restated Investor Rights Agreement (the "IRA") which effectively requires, and will continue to require, Andrew's approval for a wide range of Andes' corporate actions.

III. Violation of Section 7 of the Clayton Act: Acquisition Substantially Lessening Competition

A. Relevant Product Market

11. Drop cable is 75 ohm coaxial cable used by cable television companies to connect their transmission systems with their customers' premises and equipment inside the customers' premises. Drop cable consists of a plastic jacket, metal braid and foil shielding, a dielectric layer, and a center conductor. Drop cable is used by cable television companies in three different kinds of locations: (1) In the air between outside poles and the exteriors of the customers' premises; (2) underground between buried transmission systems and the exteriors of the customers' premises; and (3) inside the customers' premises to connect the exterior cables with customer-premises devices. Drop cable strung between outside poles and the exteriors of the customers' premises typically contains an ultraviolet ("UV") protectant in the jacket and a steel wire, called a "messenger," inside the cable to reduce flexing; much of this aerial cable

also incorporates anti-corrosion protection for the metal shielding. Drop cable used underground typically is "flooded" with a gel compound in order to prevent water ingress and corrosion.

12. No matter how it is used, all drop cable purchased by cable television companies is distinguished from other 75 ohm coaxial cable, which is usually called "commodity" cable. Drop cable must meet Society of Cable Television Engineers ("SCTE") and other cable television industry standards. Those standards address, inter alia, durability, uniformity, electrical conduction and signal shielding. Signal shielding standards address the ability of the cable to prevent signal leakage outside the cable, as well as leakage into the cable of extraneous outside signals. Compliance with SCTE and other industry standards assures cable television companies that the drop cable they buy will not require frequent replacement, will fit with the other components of their systems, can readily be handled by a cable system's installers and technicians, and, most importantly, will deliver a strong and interference-free signal. Because it must meet SCTE and other industry standards, drop cable is substantially more difficult to manufacture than commodity cable.

13. A small but significant increase in the price of drop cable would not cause cable television companies to substitute commodity cable so as to make such a price increase unprofitable. Cable television companies could not use commodity cable without: Substantially increasing the cost and difficulty of installing and servicing the cable in their systems, and seriously jeopardizing their relationships with their own customers because of poor signal quality. In addition, commodity cable typically lacks the UV and anti-corrosion protection, and interior messengers, usually required for aerial drop cable, and the flooded gel compounds typically required for underground drop cable.

14. Accordingly, the development, manufacture, and sale of drop cable is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

B. Geographic Market

15. The United States is a distinct geographic market for the sale of drop cable. SCTE and cable television industry standards are designed to meet the needs of cable television companies operating in the United States. Although PCTY and CommScope manufacture drop cable in China for sale in the United States, no foreign companies

make drop cable that conforms to SCTE and United States cable television industry standards, and no foreign companies sell drop cable to cable television companies in the United States. In addition, cable television companies in the United States require their suppliers to have a substantial presence within the United States, including distribution facilities and service infrastructures. No foreign company maintains such a presence for drop cable in the United States. Therefore, a small but significant increase in the price of drop cable would not cause cable television companies in the United States to substitute purchases from companies who operate outside the United States in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects

16. The proposed transaction, including CommScope's acquisition of Andrew's interests in Andes, would substantially lessen competition in the market for drop cable in the United States. The market for drop cable is already highly concentrated. There are only four companies that provide drop cable to cable television companies in the United States. CommScope is the leading manufacturer, with a market share of between 60 and 70 percent. PCT is the third largest manufacturer with about a four percent market share. PCT is having a significant impact in the market because of its low pricing and ability to offer drop cable with dry anti-corrosion protection.

17. The full product lines offered by CommScope and PCT make them each other's closest competitors for many customers. Of the four manufacturers, only CommScope and PCT offer aerial drop cable in which a dry chemical coating is applied to the cable's braided metal shield to prevent corrosion of the metal. The processes by which both firms make products in this category—called Brightwire by CommScope and Z-Wire by PCT—are protected by patent. Many cable television firms need or prefer the dry anti-corrosion protection offered by Brightwire or Z-Wire. This is especially true for firms whose cable television systems are located in areas prone to metal oxidation, such as areas near sea coasts.

18. Competition between PCT and CommScope in the sale of drop cable has benefitted consumers. The competition by PCT and its predecessor Andrew in the drop cable market has

constrained CommScope's pricing. The prices charged by Andrew and PCT generally have been five to ten percent lower than those charged by CommScope and other competitors. Andrew's and later, PCT's, market share has been increasing as a greater number of cable television firms have approved their products for purchase.

19. PCT and CommScope also compete with each other in product innovation. CommScope developed the first dry anti-corrosion protected drop cable product, Brightwire. Andrew developed Z-Wire specifically to compete for sales that would otherwise have gone to Brightwire. PCT and CommScope have continued to develop new technology in drop cable.

20. Through the proposed acquisition of Andrew by CommScope, CommScope will acquire a substantial interest in, as well as substantial control over, one of its most significant drop cable competitors. In addition to holding a 30 percent interest in Andes, Andrew holds significant rights under the IRA to control core business decisions and to obtain critical confidential competitive information from Andes and PCT. Through the acquisition, CommScope would gain, among other rights, the rights to appoint Andes' board members and to veto important business decisions by Andes, such as issuing capital stock, changing executive compensation, and making certain acquisitions of other corporations. Post-merger, CommScope would likely have the ability and incentive to coordinate the activities of CommScope and PCT, and/or undermine PCT's ability to compete against CommScope on price and innovation. Such activity would likely result in a significant lessening of competition. This loss of competition would likely result in higher prices, reduced innovation, and fewer choices for customers.

D. Entry

21. Successful entry into the drop cable market would not be timely, likely or sufficient to deter the anti-competitive effects resulting from this transaction. The drop cable industry has been characterized by firms exiting and failed entry attempts. Andrew itself began the process of entering the market in 1997, and only now, ten years later, has its successor, PCT, achieved a four percent market share.

22. Timely entry sufficient to replace the market impact of PCT would be difficult for several reasons. Any new manufacturer would have to develop a product line and set up a manufacturing facility, submit sample products for the extensive laboratory and field tests

required by all substantial cable television firms, and then undergo the lengthy process of attempting to sell the products to those companies. PCT's success is due in part to its ability to offer a full line of drop cable products. A new entrant could not duplicate that success unless it could offer drop cable with dry anti-corrosion protection. The Brightwire and Z-Wire products are both protected by patent. Development of a new process which does not infringe on those patents would likely be time-consuming and difficult.

IV. Violation of Section 8 of the Clayton Act: Interlocking Directorates

23. CommScope is a corporation engaged in commerce. It manufactures, among other things, drop cable and, through a wholly-owned subsidiary, hardware products associated with drop cable installations. Andes, through its wholly-owned subsidiaries, PCT and PCTY, is engaged in commerce. PCT and PCTY manufacture drop cable and hardware products associated with drop cable installations. Both CommScope and PCT sell drop cable and associated hardware products throughout the United States. With respect to those products, CommScope and PCT are, by virtue of their businesses and locations of operations, competitors, and the elimination of competition by agreement between them would constitute a violation of the antitrust laws.

24. Both CommScope and Andes have capital, surplus and undivided profits in excess of \$24,001,000. Both CommScope and Andes had sales in their last fiscal years of products in competition with products of the other exceeding \$2,400,100. Each firm's annual competitive sales of these products exceeded two percent of its total sales. The annual competitive sales of these products by each firm also exceeded four percent of its total sales.

25. Section 6 of the IRA now conveys to Andrew a right to appoint one member of Andes' three-member board of directors. When CommScope completes its acquisition of Andrew, Section 6 requires Andes' board of directors to be reconstituted as a new board of seven members. At that time section 6 will convey to Andrew, and by extension to CommScope, the right to designate two of the seven members of Andes' board of directors. In addition, Andrew, and by extension CommScope, will have the right to select, jointly with another Andes shareholder, two more members of Andes' board of directors.

26. CommScope is a person within the meaning of section 8 of the Clayton Act, 15 U.S.C. 19. CommScope

nominates the members of its own board of directors. Its nominees, designees and selectees for the Andes' board stand or will stand in its stead for the purposes of section 8. CommScope will thus, when it completes its acquisition of Andrew, participate through its representatives both on its own board of directors and on the Andes' board of directors.

V. Violations Alleged

Count One

(Violation of Section 7 of the Clayton Act)

27. Each and every allegation in paragraphs 1 through 26 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

28. CommScope and Andrew are hereby named as defendants on Count One of this complaint.

29. The effect of the proposed acquisition by CommScope of Andrew may be to lessen competition substantially in the development, manufacture, and sale of drop cable in the United States, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

30. Unless restrained, the proposed acquisition by CommScope of Andrew likely will have the substantial anti-competitive effects set forth in 16–20 above, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

Count Two *(Violation of Section 8 of the Clayton Act)*

31. Each and every allegation in paragraphs 1 through 26 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

32. CommScope and Andrew are hereby named as defendants on Count Two of this Complaint.

33. The proposed acquisition by CommScope of Andrew, by conveying to CommScope rights to designate members of the board of directors of Andes will create interlocking directorates between competing corporations, in violation of section 8 of the Clayton Act, 15 U.S.C. 19.

VI. Requested Relief

34. Plaintiff requests:

a. That the proposed acquisition be adjudged to violate Section 7 and Section 8 of the Clayton Act, 15 U.S.C. 18, 19;

b. that the defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated June 26, 2007, or from entering into or carrying out any agreement,

understanding, or plan by which CommScope would merge with or acquire Andrew, and that includes any ownership interests or governance rights in Andes;

c. that defendants and all persons acting on their behalf be enjoined and restrained from violating Section 8 of the Clayton Act, 15 U.S.C. 19.

d. that the United States be awarded the costs of this action;

e. that the United States be granted such other and further relief as the Court may deem just and proper.

Dated:

Respectfully Submitted,

For Plaintiff United States of America:

/s/

Thomas O. Barnett (D.C. Bar No. 426840)
Assistant Attorney General
Antitrust Division

/s/

J. Robert Kramer II
Director of Operations
Antitrust Division

/s/

Nancy M. Goodman (D.C. Bar No. 251694)
Chief, Telecommunications & Media
Enforcement Section
Antitrust Division

/s/

Laury Bobbish
Assistant Chief, Telecommunications &
Media Enforcement Section
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/s/

Alvin H. Chu
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United States District Court District of Columbia

United States of America, Plaintiff, v.
CommScope, Inc., and Andrew Corporation,
Defendants.

Case No: 1:07-cv-02200.
Filed: 12/6/2007.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on December 6, 2007, the United States and defendants, CommScope, Inc. (“CommScope”) and Andrew Corporation (“Andrew”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or

admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Andrew and CommScope to assure that competition is not substantially lessened;

And whereas, the United States requires Andrew and CommScope to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under section 7 and section 8 of the Clayton Act, as amended (15 U.S.C. 18,19).

II. Definitions

As used in this Final Judgment:

A. “CommScope” means defendant CommScope, Inc., a Delaware corporation with its headquarters in Hickory, North Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Andrew” means defendant Andrew Corporation, a Delaware corporation with its headquarters in Westchester, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Acquirer” means the entity or person to whom defendants divest their interests in the Andes Holdings.

D. “Andes” means Andes Industries, Inc., a Nevada corporation with its headquarters in Gilbert, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and their directors, officers, managers, agents, and employees.

E. "PCT" means PCT International, Inc., a wholly-owned subsidiary of Andes.

F. "Yantai Factory" means the factory in Yantai City, China formerly operated by Andrew Broadband Telecommunications (Yantai) Co., Ltd., now operated by PCT Broadband Communications (Yantai) Co. Ltd., a subsidiary of Andes located in Yantai City, China, and used to manufacture, inter alia, coaxial cable.

G. "IRA" means the Amended and Restated Investor Rights Agreement dated March 30, 2007 between Andes and Andrew.

H. "Andes Holdings" means stock representing Andrew's entire ownership interest in Andes, the Z-Wire IP, as well as all notes of indebtedness in favor of Andrew by Andes, and warrants to acquire additional stock of Andes, including but not limited to:

1. Senior Note dated April 2, 2007 issued in favor of Andrew for the amount of \$9,035,000;

2. Senior Note dated March 30, 2007 issued in favor of Andrew Corporation Mauritius for the amount of \$5,592,000;

3. Promissory Note, dated September 29, 2006, issued in favor of Andrew for the amount of \$1,016,000; and

4. Warrant to Acquire Common Stock of Andes dated April 2, 2007, held by Andrew and Andrew Corporation Mauritius.

I. "Youtsey" means Steve Youtsey, Chief Executive Officer of and stockholder in Andes.

J. "Drop Cable" means 75 ohm coaxial cable used by cable television companies to connect their transmission systems with their customers' premises and equipment inside the customers' premises.

K. "Z-Wire IP" means all intellectual property concerning the "Z-Wire" product now made and sold by PCT and PCT Broadband Communications (Yantai) Co. Ltd. This intellectual property shall include, but not be limited to, the "Z-Wire" Trademark, Serial No. 78,658,023 and the patent, U.S. Patent No. 7,084,343 B1, dated August 1, 2006, concerning the Z-Wire product.

III. Applicability

A. This Final Judgment applies to CommScope and Andrew, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with sections IV and V of this Final Judgment,

defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Andes Holdings, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 90 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Andes Holdings in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. Divestiture of all the Andes Holdings shall be made to one Acquirer. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed 60 calendar days in total, and shall notify the Court in such circumstances. If within the initial period for divestiture, plus any extensions, an agreement with a prospective Acquirer has been reached and the prospective Acquirer, and the terms of the acquisition agreement, have been approved by the United States, and the defendants have provided the written notice of intent to sell required by section 4.1(b) of the IRA ("IRA 4.1(b)"), the time for completing the divestiture shall automatically be extended, in order to allow defendants to comply with the right of first refusal provision in IRA 4.1(b). The period of this extension shall not exceed five (5) days past the date on which both Andes and Youtsey have failed to timely (a) deliver a Right of First Refusal ("ROFR") Notice accompanied by a Reasonable Assurances Letter pursuant to IRA 4.1(b); or (b) consummate the purchase of Andrew's ownership interest in Andes pursuant to IRA 4.1(b). Defendants agree to use their best efforts to divest the Andes Holdings as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Andes Holdings. Defendants shall inform any person making inquiry regarding a possible purchase of the Andes Holdings that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective acquirers, subject to customary confidentiality assurances, all information and documents that are

available to them relating to the Andes Holdings or to Andes, to the extent permitted by sections IV(C) and VIII(B) below or by sections V(A) and V(B) of the Hold Separate and Stipulation Order, and customarily provided in a due diligence process, except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall, at the option of Andes, continue to provide the services now provided pursuant to the Transition Services Agreement dated March 30, 2007, according to the terms of that Agreement, until the end of February 2008. At the end of the period in which defendants provide transition services, defendants shall, at the option of Andes, provide a copy in a format acceptable to Andes from the relevant Andrew servers of all historic data concerning operation of the Yantai Factory. In any event, defendants shall maintain the operations software and the data on the servers for a period of two months after completion of the transition services period, and, during those two months, shall make available to Andes any information on the servers that is requested by Andes, except the licensed software itself. At the end of those two months, defendants shall erase from the servers all data relating to the operations of the Yantai Factory, but they may keep one copy of that data, which copy they shall place in the custody of their outside counsel. Defendants shall not access or use the Andes data on the servers or the copy for any purpose; provided, however, that, pursuant to a protective order issued by the Court, outside counsel and employees whose participation is necessary may access the Andes data to the extent necessary for the defense of a lawsuit or in connection with a regulatory or tax proceeding of which the defendants are, or one of them is, the subject.

D. To the extent that Andrew now provides services, materials or building space to Andes, defendants shall, at the option of Andes, continue to provide those services, materials and building space on the existing terms until the end of the period in which defendants provide transition services pursuant to section IV(C) above. During the period in which defendants continue to provide services to Andes, they may not reduce the quality or timeliness of those services, including services under both this and section IV(C) above.

E. Defendants shall divest to the Acquirer, as part of the Andes Holdings, the Z-Wire IP. The Acquirer shall acquire this intellectual property subject to Andrew's rights and obligations under the Technology Licensing Agreement dated March 30, 2007, between Andrew and PCT Broadband Communications (Yantai) Co. Ltd. Andrew shall assign its part in that agreement to the Acquirer, the Acquirer shall assume Andrew's position as licensor under the agreement, and PCT Broadband Communications (Yantai) Co. Ltd. shall remain the licensee. As part of the divestiture of the Z-Wire IP, the Acquirer shall offer defendants a non-exclusive, royalty-free license to use U.S. Patent No. 7,084,343 B1, provided that the license does not permit defendants to use the Z-Wire IP to develop, make, use or sell Drop Cable products and provided that the license does not directly or indirectly affect Andes' ability to use the Z-Wire IP. Prior to the divestiture of the Z-Wire IP, defendants shall, at the option of Andes, grant Andes and PCT a perpetual, worldwide and royalty-free license to use the "Z-Wire" trademark, Serial No. 78,658,023, and the Z-Wire trademark, Serial No. 78,658,023 shall be divested to the Acquirer subject to that license.

F. Defendants shall not take any action that will jeopardize, delay or impede in any way the divestiture of the Andes Holdings.

G. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Andes Holdings, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Andes will remain a viable competitor in the market for Drop Cable, and that the divestiture will remedy the competitive harm alleged in the Complaint resulting from CommScope's acquisition of Andrew. In addition, the divestiture, whether pursuant to section IV or section V of this Final Judgment, shall be made to an Acquirer that in the United States' sole judgment has the intent and capability of investing in Andes in such a manner as to support the continued competitive operations of its Drop Cable business and shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants unreasonably raises Andes' costs, lowers Andes' efficiency, or otherwise interferes in the ability of Andes to compete effectively.

H. Upon completion of the divestiture to the Acquirer, neither the defendants

nor the trustee shall have any rights under the IRA.

I. Nothing in this Final Judgment shall prohibit defendants from seeking payment of the notes within the Andes Holdings or for services or products supplied under the terms of any agreement with Andes, and taking action to collect any amounts past due under those agreements, including institution of legal proceedings to collect those overdue amounts; provided, however, that defendants may not undertake legal actions that would jeopardize the divestiture required by this Final Judgment or Andes' continuing viability, including, but not limited to, seeking accelerated payment of principal or other amounts not currently overdue or seeking to place Andes in involuntary bankruptcy; nor may defendants exercise any right under the Warrant to acquire additional Andes stock.

V. Appointment of Trustee

A. If defendants have not divested the Andes Holdings within the time period specified in section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Andes Holdings.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Andes Holdings. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs

and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to CommScope (or to Andrew if Andrew has not been acquired by CommScope at that time) and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Andes Holdings and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to Andrew's personnel responsible for its Andes investment and to documents and information concerning Andes in Andrew's possession, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, the Andes Holdings, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Andes Holdings.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain

information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Andes Holdings, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided with the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by

the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by defendants under section V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

A. Until the divestiture required by this Final Judgment has been accomplished, the defendants shall be bound by, and shall take all steps necessary to comply with, the Hold Separate Stipulation and Order entered by this Court. The Hold Separate Stipulation and Order shall survive entry of this Final Judgment until the divestiture has been completed.

B. Defendants shall not access or use any written confidential information provided to defendants by Andes about Andes' business operations, or access or use any written confidential information still possessed by Andrew about its former Drop Cable business and the Yantai Factory. Outside counsel for defendants and employees whose participation is necessary, may, however, access such information to the extent necessary to meet legal or regulatory requirements or to conduct a defense of a lawsuit, but only subject to a protective order by the Court. Defendants may also designate a third party agent approved by the United States to access on their behalf such confidential business information to which defendants are otherwise entitled for the purpose of sharing that information with bona fide prospective acquirers of the Andes Holdings. The agent shall identify to Andes in advance all prospective acquirers with whom confidential information will be shared, and shall, at Andes' request, require those prospective acquirers to execute confidentiality agreements binding them to keep the information confidential and to use it for no purpose other than to evaluate the prospective acquisition. The agent may not in any circumstances share any Andes confidential information with defendants.

C. Defendants shall take no action that would diminish the value of the Andes Holdings.

IX. Survival of Agreements

The Trademark License Agreement dated March 30, 2007 among Andrew, PCT and Andes, shall remain in force according to its terms. CommScope

shall comply with Andrew's obligations under that agreement. Defendants shall not unreasonably interfere with the rights of Andes and PCT to use the subject intellectual property licensed under that agreement. Prior to the divestiture, the Trademark License Agreement shall, with respect to the "Z-Wire" trademark, Serial No. 78,658,023, be superseded by the new Z-Wire trademark license described in section IV(E) above.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit with respect to section IV shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Andes Holdings, and shall describe in detail each contact with any such person during that period. Each such affidavit with respect to section IV shall also include a description of the efforts defendants have taken to solicit buyers for the Andes Holdings, and to provide required information to prospective acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Andes Holdings until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States

shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Restrictions on Acquisition

Defendants may not reacquire all or any part of Andes or the Andes Holdings within the term of this Final Judgment, unless: (1) Defendants have, not earlier than the date three years after the Andes Holdings are divested, filed a Notification and Report required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and all applicable waiting periods under that Act have expired, *or*; (2) if no such Notification and Report is required, defendants have, not earlier than the date three years after the Andes Holdings are divested, provided written notice to the United States containing information equivalent to that required in a Hart-Scott-Rodino Notification and Report, and either thirty days thereafter the United States has not issued a request for further information and documents, or, if the United States has issued such a further request, thirty days have expired since the date on which defendants certify that they have substantially complied with that further request, *and*; (3) in either or both of the preceding cases, the United States has not objected in writing to the reacquisition. Provided, further, that the Andes Holdings are deemed to include any license defendants might acquire to use any part of the Z-Wire IP for Drop Cable. Nothing in this Final Judgment affects any ability defendants may otherwise have to acquire any parts of Andes' business that solely concern products other than Drop Cable.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact

Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

In the United States District Court for the District of Columbia

United States Of America, *Plaintiff*, v. *Commscope, Inc. and Andrew Corporation, Defendants.*

Case No. 1:07-cv-02200.

Assigned To: Lamberth, Royce C.

Assign Date: 12/6/2007.

Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated June 26, 2007, pursuant to which CommScope, Inc. ("CommScope") will acquire Andrew Corporation ("Andrew"). As a result of the transaction, CommScope will acquire Andrew's interests, including stock ownership, notes of indebtedness and management rights, in Andes Industries, Inc. ("Andes"). Plaintiff filed a civil antitrust Complaint on December __, 2007 seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition by CommScope of Andrew's holdings in Andes may substantially lessen competition in the market for drop cable and will create interlocking directorates, in violation of Section 7 and Section 8 of the Clayton Act, 15 U.S.C. 18, 19. This loss of competition would likely result in higher prices, reduced innovation, and fewer choices for customers.

At the same time the Complaint was filed, plaintiff also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate both the anti competitive effects of the acquisition and the interlocking directorates. Under the proposed Final Judgment, which is explained more fully below, defendants

are required to divest (a) Andrew's entire ownership in Andes; (b) all notes of indebtedness in favor of Andrew by Andes; (c) all warrants to acquire additional stock of Andes; and (d) intellectual property relating to the "Z-Wire" product (collectively the "Andes Holdings"). At the same time as the required divestiture, defendants will relinquish Andrew's governance rights over Andes, including rights to appoint members of Andes' board of directors. Under the Hold Separate Stipulation and Order, defendants will take certain steps to ensure (a) that defendants do not exercise any of Andrew's management rights in Andes, except in certain narrowly defined circumstances; (b) that Andrew's current member on the Andes' board of directors will resign within two business days after CommScope acquires Andrew and Andrew will not exercise its right to appoint members to Andes' board; (c) that Andes will remain independent of and uninfluenced by defendants during the pendency of the ordered divestiture; and (d) that competition is maintained during the pendency of the ordered divestiture.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APP A. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants and the Proposed Transaction

Defendant CommScope is a Delaware corporation with headquarters in Hickory, North Carolina. It is a major manufacturer and provider of wire and cable products. It manufactures, among other things, drop cable and, through a wholly-owned subsidiary, hardware products used in drop cable installations. For fiscal year 2006, CommScope reported total revenues in excess of \$1.6 billion, with \$550 million coming from its broadband business segment, which includes cable and hardware products sold to cable television and telecommunications companies.

Defendant Andrew is a Delaware corporation with headquarters in Westchester, Illinois. Andrew is a major manufacturer and supplier of antenna and cable products and products for wireless communication systems. For

fiscal year 2006, it reported total sales in excess of \$2.1 billion, with approximately \$1.3 billion coming from its antenna and cable business segment.

Andrew was a manufacturer of drop cable until it sold this business in March 2007 to Andes and Andes' subsidiaries, PCT International, Inc. and PCT Broadband Communications (Yantai) Co. Ltd. (collectively "Andes"). As a result of two transactions between Andrew and Andes, Andrew holds 30 percent of Andes' equity, a warrant to acquire additional stock of Andes, and several Andes' notes of indebtedness. Andrew also holds, under a March 30, 2007, Amended and Restated Investor Rights Agreement (the "IRA"), numerous governance rights over Andes, including rights to designate members of Andes' board of directors. When it sold its drop cable business to Andes, Andrew licensed Andes to use the intellectual property associated with Z-Wire, a dry anti-corrosion protected drop cable.

Pursuant to an Agreement and Plan of Merger dated June 26, 2007, CommScope proposes to acquire Andrew in an all-stock transaction valued at approximately \$2.6 billion. As a result of the proposed acquisition, CommScope would obtain rights to appoint members to the board of directors of Andes, a significant competitor in the development, manufacture and sale of drop cable. In addition, it would be able to exert substantial control over Andes, given its ownership of shares, warrants and debt instruments, and its governance rights. CommScope's acquisition of Andrew would thus substantially lessen competition in the market for drop cable, and would create interlocking directorates between competing companies. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiff.

B. Substantial Lessening of Competition

CommScope's acquisition of Andrew's holdings in Andes would violate section 7 of the Clayton Act because the acquisition's effect may be substantially to lessen competition in the market for drop cable in the United States.

1. Relevant Product and Geographic Markets

a. Drop Cable Product Market

Drop cable is 75 ohm coaxial cable used by cable television companies to connect their transmission systems with their customers' premises and equipment inside the customers' premises. It consists of a plastic jacket,

metal braid and foil shielding, a dielectric layer, and a center conductor. Cable television companies typically use drop cable in three kinds of locations: (1) In the air between outside poles and the exteriors of the customers' premises; (2) underground between buried transmission systems and the exteriors of the customers' premises; and (3) inside the customers' premises to connect the exterior cables with customer-premises devices. Drop cable strung between outside poles and the exteriors of the customers' premises typically contains an ultraviolet ("UV") protectant in the jacket and a steel wire, called a "messenger," inside the cable to reduce flexing; much of this aerial cable also incorporates anti-corrosion protection for the metal shielding. Drop cable used underground typically is "flooded" with a gel compound to prevent water ingress and corrosion.

No matter how it is used, all drop cable purchased by cable television companies is distinguished from other 75 ohm coaxial cable, which is usually called "commodity" cable. Drop cable must meet stringent Society of Cable Television Engineers ("SCTE") and other cable television industry standards. Those standards address, inter alia, durability, uniformity, electrical conduction and signal shielding. Signal shielding standards address the ability of the cable to prevent signal leakage outside the cable, as well as leakage into the cable of extraneous outside signals. Compliance with SCTE and other industry standards assures cable television companies that the drop cable they buy will not require frequent replacement, will fit with the other components of their systems, can readily be handled by a cable system's installers and technicians, and, most importantly, will deliver a strong and interference-free signal.

In addition to the above requirements, some cable television customers require that dry anti-corrosion protection be incorporated into much of the drop cable they buy. Anti-corrosion protection protects the cable's shielding from oxidation, which can result in interference and diminished signal strength. Two types of anti-corrosion coatings are used, gel and dry. Gel coated cables are used for almost all underground installations. A few cable television companies also use them for aerial installations. Many cable television companies require dry-coated cable for all aerial installations. They impose this requirement because dry cable is easier to work with, does not drip from cables onto hardware or customers' property, and costs less. The demand for dry anti-corrosion is

especially strong among cable television companies that operate near the ocean or in other areas prone to metal oxidation.

Drop cable is the relevant product market, or "line of commerce," within the meaning of section 7 of the Clayton Act. Cable television companies, who are the purchasers of drop cable, could not use other types of coaxial cable. Those alternatives do not meet industry standards and could fail to provide the strong and interference-free signal that consumers expect. Because other types of coaxial cable would degrade the performance of their networks, causing cable subscriber dissatisfaction, cable television companies would not switch from drop cable to other types of cable even if faced with a significant price increase.

b. The United States Geographic Market

The United States is a distinct geographic market for the sale of drop cable. SCTE and cable television industry standards are designed to meet the common needs of cable television companies operating in the United States. Although Andes and CommScope manufacture drop cable in China for sale in the United States, no foreign companies make drop cable that conforms to SCTE and United States cable television industry standards, and no foreign companies sell drop cable to cable television companies in the United States.

In addition, cable television companies in the United States require their suppliers to have a substantial presence within the United States, including distribution facilities and service infrastructures. No foreign company maintains such a presence for drop cable in the United States. Therefore, a small but significant increase in the price of drop cable would not cause cable television companies in the United States to substitute purchases from companies who operate outside the United States in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of section 7 of the Clayton Act.

2. Competitive Effects of the Transaction

a. Anticompetitive Effects

CommScope's acquisition of Andrew's interests in Andes would substantially lessen competition in the market for drop cable in the United States. The market for drop cable is already highly concentrated. Only four companies provide drop cable to cable television companies in the United

States. CommScope is the leading manufacturer by a large margin, with a market share of between 60 and 70 percent. Andes is the third largest manufacturer, with about a four percent market share. Andes is having a significant impact in the market because of its lower pricing and ability to offer drop cable with dry anti-corrosion protection.

The full line of products offered by CommScope and Andes make them each other's closest competitors for many customers. Of the four manufacturers, only CommScope and Andes offer drop cable with dry anti-corrosion protection. The processes by which both firms apply the dry chemical coating to the cable's shielding are protected by patent. Many cable television firms need or prefer the dry anti-corrosion protection offered by products in this category, CommScope's Brightwire or Andes' Z-Wire.

Competition between Andes and CommScope in the sale of drop cable has benefited consumers. The prices charged by Andrew and Andes generally have been five to ten percent lower than those charged by CommScope and the other manufacturers. Those lower prices have served as constraints on CommScope's own pricing. Since Andrew's first significant sales several years ago, its market share, and later Andes' market share, have steadily increased, as a greater number of cable television firms have approved their products for purchase.

Andes and CommScope also compete with each other in product innovation. CommScope developed the first dry anti-corrosion protected drop cable product, Brightwire. Andrew developed Z-Wire specifically to compete for sales that would otherwise have gone to Brightwire. Andes and CommScope have continued to engage in efforts to develop new technology.

If CommScope were allowed to acquire Andrew's holdings in Andes, Andes would no longer be an independent drop cable competitor. CommScope's substantial ownership in Andes would reduce its incentive to compete with Andes. In addition, under the IRA, CommScope would obtain substantial governance rights over Andes. Once CommScope completes its acquisition of Andrew, Andes' board of directors will have seven members. CommScope will then have rights to appoint two members of that board, and jointly with another Andes' shareholder, to appoint two more. In addition, CommScope's consent will be required under the IRA for a range of corporate actions by Andes, and CommScope will

hold extensive rights to access Andes' confidential business information. These governance rights, combined with its 30 percent ownership stake and other interests in Andes, would give CommScope both the incentive and the ability to coordinate its activities with those of Andes, and/or to undermine Andes' ability to compete on price and innovation.

b. Entry

Successful entry into the drop cable market would not be timely, likely or sufficient to offset the anti competitive effects resulting from this transaction. The drop cable industry has been characterized by firms exiting and failed entry attempts. Andrew itself began the process of entering the market in 1997, and only now, ten years later, has its successor, Andes, achieved a four percent market share.

Timely entry sufficient to replace the market impact of Andes would be difficult for several reasons. Any new manufacturer would have to develop a product line and set up a manufacturing facility, submit sample products for the extensive laboratory and field tests required by all substantial cable television firms, and then undergo the lengthy process of attempting to sell the products to those companies. Andes' success is due in part to its ability to offer a full line of drop cable products. A new entrant could not duplicate that success unless it could offer drop cable with dry anti-corrosion protection. The Brightwire and Z-Wire products are both protected by patent. Development of a new process which does not infringe on those patents would likely be time-consuming and difficult.

C. Interlocking Directorates

CommScope and Andes compete in the manufacture and sale of both drop cable and hardware products used in drop cable installations. Each company and each company's sales of competing products meet all the threshold tests of section 8 of the Clayton Act. Following the acquisition, as initially structured, CommScope would have the right under the IRA to appoint two members of Andes' seven member board of directors, who would act as its agents on the Andes board. In addition, CommScope would have the right to select, jointly with another Andes shareholder, two more members of the Andes board. CommScope, a person within the meaning of section 8, also nominates the members of its own board of directors. Thus, CommScope's participation through its representatives on both its own board of directors and Andes' board of directors would create

interlocking directorates in violation of section 8.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate both the anticompetitive effects that would result from CommScope's acquisition of Andrew's holdings in Andes, and CommScope's ability to appoint members of Andes' board of directors. With respect to section 7, the proposed Final Judgment requires defendants, within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Andes Holdings, including Andrew's entire ownership interest in Andes, the intellectual property concerning the Z-Wire product, as well as all notes of indebtedness in favor of Andrew by Andes and warrants to acquire additional stock of Andes. These holdings must be divested to an acquirer that in the United States' sole judgment has the intent and capability of investing in Andes in such a manner as to support the continued competitive operations of its drop cable business. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective acquirers. With respect to section 8, defendants, under the proposed Final Judgment, would no longer have any rights under the IRA, including the rights to appoint members of Andes' board.

Although Andes holds a license from Andrew for the Z-Wire intellectual property, the proposed Final Judgment requires the defendants to divest that intellectual property, subject to Andes' continuing license, to the acquirer. This divestiture will ensure that CommScope does not gain control over a technology that is vital to Andes' ability to compete.

A. Timing of Divestiture

In antitrust cases involving mergers or joint ventures in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in section IV(A), divestiture of the Andes Holdings within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff in its sole discretion may extend the time period for divestiture by up to 60 days.

In this matter the proposed Final Judgment also provides for an additional extension in certain

circumstances. This extension will preserve the abilities of Andes and another Andes shareholder to exercise their rights of first refusal under the IRA. If the defendants find an acquirer approved by plaintiff within the initial period for divestiture, and an agreement with the acquirer has been reached and approved by the plaintiff, and defendants have given written notice of their intent to sell as required by the IRA, the time for completing the divestiture will automatically be extended in order to allow defendants to comply with the IRA's right of first refusal provision. The period of this extension may not exceed five days past the last date on which the right of first refusal provision continues to be applicable.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestiture are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestiture consistent with their obligations under the IRA. Even if the Andes Holdings have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Hold Separate Stipulation and Order.

B. Use of a Trustee

In the event that the defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff to effect the divestiture. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control of Andes Holdings.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the trustee, and the responsibilities of the trustee in connection with the divestiture. The trustee will have the sole responsibility, under section V(B), for the divestiture of the Andes Holdings. The trustee has the authority to accomplish the divestiture at the earliest possible time and "at such price and on such terms as are then obtainable upon reasonable effort by the trustee."

The proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured, under section V(D) of the proposed Final Judgment, so as to provide an

incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and plaintiff setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and plaintiff will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the trustee's appointment.

C. The Hold Separate Stipulation and Order

The Hold Separate Stipulation and Order, filed at the same time as the Complaint, ensures that, pending divestiture of the Andes Holdings, defendants will take no steps to limit Andes' ability to operate as a competitively independent, economically viable, and ongoing business concern, that defendants do not influence Andes' business, and that competition is maintained. The Hold Separate Stipulation and Order bars the defendants from:

1. Voting or permitting to be voted any Andes shares that defendants own, or using or attempting to use any ownership interest in Andes to exert any influence over Andes, except as necessary to carry out defendants' obligations under the Hold Separate Stipulation and Order and the Final Judgment;
2. Electing, nominating, appointing or otherwise designating or participating as officers or directors;
3. Participating in any meetings or committees of the Andes Board of Directors;
4. Communicating to or receiving from any officer, director, manager, employee, or agent of Andes any nonpublic information regarding any aspect of Andes' business, except the information specified in sections V(A) and V(B) of the Hold Separate Stipulation and Order and sections IV(C) and VIII(B) of the proposed Final Judgment; and
5. Exercising certain governance rights under the IRA except as specified in section V(B) of the Hold Separate Stipulation and Order.

In addition, the Hold Separate Stipulation and Order requires Andrew's current representative on Andes' board to resign and bars defendants from acquiring any additional shares of Andes except as specified in section V(D) of the Hold

Separate Stipulation and Order. It also requires defendants to continue to provide Andes certain support services until the end of February 2008.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement; whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the

parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against CommScope's acquisition of Andrew. Plaintiff is satisfied, however, that the divestiture of the Andes Holdings described in the proposed Final Judgment will eliminate the possibility of interlocking directorates and preserve competition in the development, manufacture and sale of drop cable in the relevant market identified in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v.*

Microsoft Corp., 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).¹

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).² In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not

¹ The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

² *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; see also *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the

practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.³

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: December 6, 2007

Respectfully submitted,

/s/

Alvin H. Chu

Michael Hirrel (DC Bar No. 940353)

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(202) 514-5621

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[FR Doc. 07-6125 Filed 12-19-07; 8:45 am]

BILLING CODE 4410-11-M

³ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized."); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.").

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 2004-06

Notice is hereby given that, on September 4, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 2004-06 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ExxonMobil Research and Engineering Company, Fairfax, VA; and Shell Global Solutions (US) Inc., Houston, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF Project No. 2004-06 intends to file additional written notifications disclosing all change in membership.

On March 15, 2007, PERF Project No. 2004-06 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62867).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07-6122 Filed 12-19-07; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on October 29, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, AIM—USA, LLC, Omaha, NE has been added as a party to this venture. Also, Data Design Corporation, Gaithersburg, MD has withdrawn as a party to this venture. In addition, ASCOR has changes its name to Gigatronics, Fremont, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on August 7, 2007. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 7, 2007 (72 FR 62867).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–6124 Filed 12–19–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on November 6, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kennan Yilmaz, Redmond, WA has been added as a party to this venture. Also, Mark Roos (individual member), Santa Clara, CA; Kevin Fetterly (individual member), Rollingbay, WA; AZ Electronic APPS,

LLC, Chandler, AZ; Taiwan Semiconductor Mfg. Co., Hsinchu, TAIWAN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on August 22, 2007. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 7, 2007 (72 FR 62868).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–6120 Filed 12–19–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Testing of Methods for Measuring Hydrocarbon Dew Points in Natural Gas Streams

Notice is hereby given that, on October 30, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (“the Act”), SwRI: Testing of Methods for Measuring Hydrocarbon Dew Point in Natural Gas Streams has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, nature and objective. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Union Gas Limited, Chatham, Ontario, Canada has been added as a party to this venture. The changes in its nature and objectives are: The period of performance has been extended to December 27, 2007; the hydrocarbon dew point analyzers will be tested to determine their ability to accurately measure hydrocarbon dew points when water vapor or methanol is present in

the gas stream; and the recovery time of the instruments after being cooled to hydrocarbon dew point temperatures during operation will also be verified. These tests will provide new information on analyzer performance under adverse conditions.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notifications disclosing all changes in membership.

On March 20, 2007, SwRI: Testing of Methods for Measuring Hydrocarbon Dew Point in Natural Gas Streams filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2007 (72 FR 19023).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–6121 Filed 12–19–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on August 10, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* (“the Act”), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, UMC, Hsinchu City, TAIWAN; and Intel, Santa Clara, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notifications disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section

6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 30, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62870).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07-6123 Filed 12-19-07; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Examinations & Testing of Electrical Equipment Including Exam, Testing, and Maintenance of High Voltage Longwalls

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before February 19, 2008.

ADDRESSES: Send comments to, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209-3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to Ferraro.Debbie@DOL.GOV. Ms. Ferraro can be reached at (202) 693-9821 (voice), or (202) 693-9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

It has long been known that inadequate maintenance of electric equipment is a major cause of serious

electrical accidents in the coal mining industry. Improperly maintained electric equipment has also been responsible for many disastrous mine fires and explosions. The regulations also contain recordkeeping requirements which may in some instances help operators in implementing an effective maintenance program. The subject records of tests and examinations are examined by coal miners, coal mine officials, and MSHA inspectors. MSHA inspectors examine the records to determine if the required tests and examinations have been conducted, to identify units of electric equipment that may pose a potential safety hazard, to determine the probable cause of accidents during accidents investigations, and to evaluate the effectiveness of the coal mine operator's electrical maintenance programs. By comparing the records with the actual condition of electric equipment, MSHA inspectors may in some cases be able to identify weaknesses in the coal mine operator's electrical maintenance programs and require that the weaknesses be corrected.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to Records of Tests and Examinations of Personnel Hoisting Equipment. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice viewed on the Internet by accessing the MSHA home page (<http://www.msha.gov/>) and selecting "Rules and Regs", then selecting "Fed Reg Docs."

III. Current Actions

The subject regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition if electrocutions, mine fires, and mine explosions are to be prevented. Because of fire, electrocution and explosion hazards in coal mines, mine operators are required to comply with these paperwork provisions. Reduction of these requirements could result in increased hazards to miners. A reduction in the frequency of examinations and tests could allow existing unsafe conditions to develop, jeopardizing the safety of miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Examinations & Testing of Electrical Equipment Including Exam, Testing, and Maintenance of High Voltage Longwalls—30 CFR 75.351, 75.512, 75.703, 75.800-4, 75.820, 75.821, 75.900-4, 75.1001-1, 77.502, 77.800-2, and 77.900-2.

OMB Number: 1219-0116.

Frequency: Annually; Monthly; Weekly; On occasion.

Affected Public: Business or other for-profit.

Respondents: 917.

Responses: 691,430.

Total Burden Hours: 760,553.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 14th day of December, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7-24692 Filed 12-19-07; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Correction notice.

SUMMARY: This is a correction to a petition for modification notice that was published in the **Federal Register** on December 3, 2007 (72 FR 67970), for Affirmative Decisions on Petitions for Modification. In the notice we inadvertently listed the petition for modification, docket number M–2005–079–C, RS&W Coal Company, RS&W Drift Mine, MSHA I.D. No. 36–01818, as a granted petition. This petition for modification has not been granted.

Dated: December 12, 2007.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 07–6094 Filed 12–19–07; 8:45 am]

BILLING CODE 4510–43–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice to Extend the Request for Comment on Draft Convening Report Regarding Negotiated Rulemaking and Bureau of Indian Affairs Funded School Facilities Repair, Renovation & Construction

AGENCY: United States Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice to extend the public comment period for the Draft Convening Report Regarding Negotiated Rulemaking and Bureau of Indian Affairs Funded School Facilities Repair, Renovation, & Construction.

SUMMARY: The U.S. Institute for Environmental Conflict Resolution gives notice that the comment period announced in the October 22, 2007 (72 FR 59556) on the draft convening report regarding Department of the Interior's (DOI) Bureau of Indian Affairs (BIA)-funded school facilities construction as identified in the No Child Left Behind Act of 2001 (NCLB Act) will be extended to February 1, 2008. The draft report was prepared at the request of the DOI, BIA, and Bureau of Indian Education (BIE). Such a convening report is described generally in the Negotiated Rulemaking Act of 1996, Public Law 104–320, Section 563(b).

As a neutral, independent federal program, the U.S. Institute and its impartial contractor team, Consensus Building Institute (CBI) conducted two-hundred (200) interviews of people with an interest in BIA-funded school facilities construction. The purpose of the interviews was to explore the opportunities for, and barriers to, using negotiated rulemaking to develop

regulations implementing the requirements of the NCLB Act related to BIA-funded school facilities. The draft report covers school facility topics identified from the NCLB Act:

- Methods to catalog school facilities;
- Determining formulas for priority and funding for school replacement construction and new construction;
- Determining formulas for priority and funding for school renovation and repair;
- Facilities standards for home living (dormitory) situations.

In the draft report, CBI identified several key themes from its interviews:

- There is a strong willingness to go forward with a negotiated rulemaking, as it is required by statute.
- Interviewees were supportive of negotiating to improve the fairness, efficiency and transparency of the funding formulas for all aspects of school facilities funding.
- There is a need to integrate the formal negotiation with less formal methods of consulting with the tribes who will not have seats at the table. CBI suggests a national workshop for all tribes with school facilities as part of the preparation for the negotiation process. This workshop could help identify options for the negotiating committee to work with.
- Representation of the tribes on the negotiating committee is required by the NCLB Act to be roughly proportional to the percent of students each tribe has in the system. For the majority of tribes (i.e. beyond the top eleven for student population), there will need to be a process for sharing seats or otherwise developing representation structures.

The draft convening report may be accessed at: <http://www.cbuiding.org> and at: <http://www.ecr.gov>. This notice invites interested individuals, organizations and governments to review and offer comments that focus on the findings and recommendations presented draft convening report.

DATES: Please submit comments on or before February 1, 2008.

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

- *Email:* bie@cbuiding.org.
- *Fax:* 1–617–492–1919.
- *Mail:* Consensus Building Institute; Attn: BIE Convening Draft Report Comment, 238 Main Street, Suite 400, Cambridge, MA 02142.

FOR FURTHER INFORMATION CONTACT:

Patrick Field, Consensus Building Institute, 238 Main Street, Suite 400, Cambridge, MA 02142, (617) 492–1414 x118, pfield@cbuiding.org; Sarah Palmer, Senior Program Manager, U.S. Institute for Environmental Conflict

Resolution, 130 S. Scott Avenue, Tucson, AZ 85701, phone (520) 901–8556, fax (520) 901–8557, palmer@ecr.gov; Michele F. Singer, Director, Office of Regulatory Management, Office of the Assistant Secretary, Indian Affairs, 1001 Indian School Road, NW., Albuquerque, NM 87104, phone (505) 563–5415, fax (505) 563–3811, michele_f_singer@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

Background

The No Child Left Behind Act (NCLB Act) requires the Department of the Interior to use procedures set out in the Negotiated Rulemaking Act of 1996, Pub. L. 104–320, Section 563 when developing regulations to implement the NCLB Act's provisions regarding schools operated or funded by the BIA. BIA has used negotiated rulemaking to address six (6) of the seven (7) regulations required under the NCLB Act. DOI and BIA want to assess the feasibility of using the negotiated rulemaking process to develop the final rule, dealing with school construction and repair.

In the fall of 2006 DOI sought assistance with this effort from the U.S. Institute, an independent impartial government entity with expertise in convening, assessment and alternative dispute resolution processes. In accordance with its statutory authority, the 1998 Environmental Policy and Conflict Resolution Act (Pub. L. 105–156, codified at 20 U.S.C. 5601, *et seq.*), the U.S. Institute conducted a convening assessment. For more information on the U.S. Institute, please visit <http://www.ecr.gov>.

The U.S. Institute contracted with an independent, impartial convening team, the Consensus Building Institute (CBI), to carry out interviews and prepare a draft convening report. The scope of the draft convening report includes views on school facility topics identified from the NCLB Act and the opportunities of and barriers to negotiated rulemaking. To understand the range of perspectives on or interests in these topics, the convening team conducted 200 confidential interviews with tribal officials or their designees, representative of BIA-funded or grant-funded tribal schools, and others with an interest in Bureau-funded school facilities construction on the following:

- Interviewees' views on the substantive issues listed above;
- Suggestions for how diverse geographic, size, and tribal interests can best be represented on a Negotiated Rulemaking Committee;

- Any concerns or barriers to the establishment of and successful execution of a Negotiated Rulemaking Committee on these topics; and
- Consultative activities and potential approaches to consultation that the Bureau might undertake regarding these issues.

The draft convening report reflects CBI findings and preliminary recommendations to DOI, BIA, and BIE based on these interviews. The draft report will be made available to all interviewees for comment. Upon receipt of comments, CBI and the U.S. Institute will consider all comments and prepare a final report for the Department of the Interior, Bureau of Indian Affairs and Bureau of Indian Education. All comments received on the draft will be made available to DOI, BIA, and BIE. The final report will also be made available to the interviewees, all interested tribes, and the general public via a Web site link.

Authority: 20 U.S.C. 5601, *et seq.*

Dated: December 13, 2007.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation.

[FR Doc. 07-6090 Filed 12-19-07; 8:45 am]

BILLING CODE 6820-FN-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before January 22, 2008 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm

at telephone number 301-713-1694 or fax number 301-713-7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on October 9, 2007 (72 FR 57351). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Statistical Research in Archival Records Containing Personal Information.

OMB number: 3095-0002.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals.

Estimated number of respondents: 1.

Estimated time per response: 7 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 7 hours.

Abstract: The information collection is prescribed by 36 CFR 1256.28 and 36 CFR 1256.56. Respondents are researchers who wish to do biomedical statistical research in archival records containing highly personal information. NARA needs the information to evaluate requests for access to ensure that the requester meets the criteria in 36 CFR 1256.28 and that the proper safeguards will be made to protect the information.

2. *Title:* Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095-0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.
Estimated total annual burden hours: 333 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.94. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.94 and to schedule the date.

3. *Title:* Request to use personal paper-to-paper copiers at the National Archives at the College Park facility.

OMB number: 3095-0035.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 5.

Estimated time per response: 3 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.86. Respondents are organizations that want to make paper-to-paper copies of archival holdings with their personal copiers. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.86 and to schedule the limited space available.

Dated: December 13, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7-24744 Filed 12-19-07; 8:45 am]

BILLING CODE 7515-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar Containing Products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. As described below, the level of a country's trade surplus in these goods relates to the quantity of sugar

and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) the United States—Chile Free Trade Agreement (Chile FTA), in the case of Chile; (ii) the United States—Morocco Free Trade Agreement (Morocco FTA), in the case of Morocco; and (iii) the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR), in the case of the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.

DATES: *Effective Date:* December 20, 2007.

ADDRESSES: Inquiries may be mailed or delivered to Leslie O'Connor, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: *Chile:* Pursuant to section 201 of the United States—Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the Chile FTA.

U.S. Note 12(a) to subchapter XI of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

U.S. Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in an amount equal to the lesser of Chile's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XI of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.10 through 9911.17.85 in an amount equal to the amount by which Chile's trade surplus

exceeds the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2006, the most recent year for which data is available, Chile's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 260,423 metric tons according to data published by its customs authority, the *Servicio Nacional de Aduana*. Based on this data, USTR determines that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 or at preferential tariff rates under subheading 9911.17.10 through 9911.17.85 in CY2008.

Morocco: Pursuant to section 201 of the United States—Morocco Free Trade Agreement Implementation Act (Pub. Law 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the Morocco FTA.

U.S. Note 12(a) to subchapter XII of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

U.S. Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During CY2006, the most recent year for which data is available, Morocco's imports of the sugar and syrup goods and sugar-containing products

described above exceeded its exports of those goods by 658,890 metric tons according to data published by its customs authority, the *Office des Changes*. Based on this data, USTR determines that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY2008.

CAFTA–DR: Pursuant to section 201 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), and Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025) implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff and rules of origin treatment provided for in the CAFTA–DR.

U.S. Note 25(b)(i) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 and its imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that calendar year.

During CY2006, the most recent year for which data is available, the Dominican Republic's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 102,649 metric tons according to data

published by the *Instituto Azucarero Dominicano*. Based on this data, USTR determines that the Dominican Republic's trade surplus is negative. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, goods of the Dominican Republic are not eligible to enter the United States duty-free under subheading 9822.05.20 in CY2008).

During CY2006, the most recent year for which data is available, El Salvador's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 224,867 metric tons according to data published by the Salvadoran Central Bank. Based on this data, USTR determines that El Salvador's trade surplus is 224,867 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY2008 is 24,960 metric tons (i.e., the amount set out in that note for El Salvador for 2008).

During CY2006, the most recent year for which data is available, Guatemala's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 1,023,416 metric tons according to data published by the World Trade Atlas. Based on this data, USTR determines that Guatemala's trade surplus is 1,023,416 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY2008 is 33,280 metric tons (i.e., the amount set out in that note for Guatemala for 2008).

During CY2006, the most recent year for which data is available, Honduras' exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 31,449 metric tons according to data published by the Central Bank of Honduras. Based on this data, USTR determines that Honduras' trade surplus is 31,449 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY2008 is 8,320 metric tons (i.e., the amount set out in that note for Honduras for 2008).

During CY2006, the most recent year for which data is available, Nicaragua's exports of the sugar and syrup goods and sugar-containing products

described above exceeded its imports of those goods by 58,575 metric tons according to data published by the World Trade Atlas. Based on this data, USTR determines that Nicaragua's trade surplus is 58,575 metric tons. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY2008 is 22,880 metric tons (i.e., the amount set out in that note for Nicaragua for 2008).

James Murphy,

Assistant United States Trade Representative.
[FR Doc. E7-24735 Filed 12-19-07; 8:45 am]

BILLING CODE 3190-W8-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of Revised Information Collection: RI 38-31

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38-31, Request for Information About Your Missing Payment, is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. This form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 8,000 reports of missing payments are processed each year. Of these, we estimate that 7,800 are reports of missing checks. Approximately 200 reports of missing checks are reported using RI 38-31 and

7,600 are reported by telephone. A response time of ten minutes per form reporting a missing check is estimated; the same amount of time is needed to report the missing checks or electronic funds transfer (EFT) payments using the telephone. The annual burden for reporting missing checks is 1,300 hours. The remaining 200 reports relate to EFT payments. No missing EFT payments are reported using RI 38-31. The annual burden for reporting missing EFT payments is 33 hours. The total burden is 1,333 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415-3500.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7-24705 Filed 12-19-07; 8:45 am]

BILLING CODE 6325-38-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review, Comment Request for Revision of a Currently Approved Collection: OPM Form 1496A

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for revision of a currently approved collection. OPM Form 1496A, Application for Deferred Retirement (Separations on or after October 1, 1956) is used by eligible former Federal employees to apply for a deferred Civil Service annuity. Form

OPM 1496 and OPM 1496A were needed for many years because there was a major revision in the law effective October 1, 1956; this affected the general information provided with both forms. However, we will no longer maintain a clearance of the OPM 1496, because the waning population affected by this form is fewer than ten respondents a year. We are requesting clearance of the revised OPM 1496A.

Approximately 2,800 OPM Forms 1496A will be completed annually. We estimate it takes approximately 1 hour to complete this form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415-3500; and
Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7-24708 Filed 12-19-07; 8:45 am]

BILLING CODE 6325-38-P

**OFFICE OF PERSONNEL
MANAGEMENT**

**Submission for OMB Review;
Comment Request for Review of a
Revised Information Collection: RI 92-
19**

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice

announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 92-19, Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Approximately 1,693 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,693 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415-3540;
and
Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7-24712 Filed 12-19-07; 8:45 am]

BILLING CODE 6325-38-P

POSTAL REGULATORY COMMISSION

[Docket No. PI2008-1; Order Nos. 48 and 49]

**Administrative Practice and Procedure,
Postal Service**

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that the Commission is seeking comments on proposed service standard

measurement and reporting systems for market dominant products. The proposal responds to provisions in a law enacted this year which require consultation between the Commission and the Postal Service on the establishment of service standards. The law also requires the use of an objective external measurement, unless the Commission approves an internal measurement system. Comments will assist the Commission in carrying out its legal obligations. This document identifies revised comment deadlines and reflects minor changes, reformatting, and footnote numbering.

DATES: Initial comments due January 18, 2008; reply comments due February 1, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 72 FR 34424 (June 22, 2007).

I. Background

Section 301 of the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3218, requires the Postal Service, in consultation with the Postal Regulatory Commission (Commission), to establish by regulation a set of modern service standards for market dominant products by December 20, 2007.¹ By statute, the service standards must be measured by an objective external performance measurement system, unless the Commission approves the use of an internal measurement system. 39 U.S.C. 3691(b)(1)(D) and (b)(2).

The Commission and Postal Service have held a series of meetings to discuss service performance measurement issues.² In response to those meetings, the Postal Service has submitted a formal proposal to the Commission setting forth several proposed systems for measuring the service performance of market dominant products.³ The

¹ Section 301 of the PAEA is codified at 39 U.S.C. 3691. The Postal Service published its proposed service standards October 17, 2007. See 72 FR 58946.

² During the course of developing service standards, the Postal Service has also discussed service performance measurement systems with workgroups of the Mailers Technical Advisory Committee.

³ See USPS Service Performance Measurement Proposal, received November 29, 2007 (Proposal), which is reproduced below. The Proposal is also available on the Commission's Web site, <http://www.prc.gov>.

Proposal describes the measurement approaches the Postal Service seeks to use to measure the service performance of its various market dominant mail products. These approaches include, for example, the External First-Class (EXFC) measurement system to measure single-piece First-Class Mail, Delivery Confirmation for parcel-shaped mail, and a hybrid system for presort letters and flats that relies on Intelligent Mail Barcode (IMB) scans and independent, third-party reporters. In addition, the Proposal sets forth by product (or class of mail) the manner in which and the frequency with which the Postal Service proposes to report the service performance data. Lastly, because not all the proposed service performance measurement systems are fully operational, the Postal Service provides an adoption timeline and interim measurement solutions pending development and adoption of longer term measures.

Measurements from existing systems, e.g., EXFC and Delivery Confirmation, will be utilized to report service performance in FY 2008.⁴ Beginning in January 2009, when the use of IMBs will be a prerequisite for certain rate discounts, the Postal Service anticipates being able to report service performance data for all products, except for Within County Periodicals.

The Postal Service seeks approval to move forward with the development of the proposed measurement systems “with the understanding that the approval is for the conceptual approach [discussed in the Proposal] and is subject to review of the implemented systems.” *Id.* at 7. More specifically, it requests that the Commission:

1. Approve the EXFC measurement system for service performance measurement of First-Class Mail single-piece letters and flats, and as a proxy for First-Class Mail presort flats. *Id.* at 7; *see also id.* at 8, 17, and 22;⁵

2. Approve Delivery Confirmation service for service performance measurement of parcel-shaped market dominant mail. *Id.* at 7; *see also id.* at 22–23, 39, 52, and 53;

3. Approve a hybrid measurement system based on IMB scans and independent, third-party stop-the-clock scans for service performance measurement of presort letters and flats, i.e., First-Class presort letters, Standard Mail letters and flats, and Periodicals

letters and flats. *Id.* at 7; *see also id.* at 9, 20, 33, 35–36, and 43–44;⁶

4. Approve the use of Red Tag and DelTrak as interim service performance measurements for Periodicals until adoption of IMBs is sufficient to permit use of a hybrid internal and external measurement system. *Id.* at 7; *see also id.* at 43–44;

5. Approve the International Mail Measurement System (IMMS) for service performance measurement of First-Class Mail International letters, EXFC measurement of domestic single-piece First-Class Mail flats as a proxy for single-piece First-Class Mail International flats, and the measurement of single-piece First-Class Mail parcels as a proxy for First-Class Mail International parcels. *Id.* at 6–7; *see also id.* at 27–30;

6. Approve the use of internal data for service performance measurement of certain Special Services. *Id.* at 7; *see also id.* at 56–59; and

7. Approve the various service performance measurement reporting proposals specified in the Proposal. *Id.* at 7; *see also id.* at 25, 30, 40, 46, 54, and 60.

The Commission’s role under section 3691 of title 39 is to consult with the Postal Service concerning the establishment of service standards for market dominant products. The service standards are required to be measured by an objective external performance measurement system, unless the Commission approves the use of an internal measurement system. Section 3691(b)(1)(D) and (b)(2). Given its obligations under the PAEA and the Postal Service’s Proposal, which characterizes the various measurement approaches as either external or internal, the Commission is initiating this docket to solicit public comment on the Postal Service’s proposed service performance measurement systems. Interested persons are invited to comment on any or all aspects of the proposed service performance measurement and reporting systems. Comments are due January 18, 2008.⁷ Reply comments may be filed no later than February 1, 2008.⁸ The Commission intends to evaluate the comments received and use those suggestions to help carry out its

⁶ Presort Package Services flats will be measured using the same approach as Presort Standard flats and be reported on a consolidated basis. *Id.* at 6, n.8, and 35. The Postal Service proposes not to measure single-piece Package Services flats due to the relatively small quantities of such mail. *Id.* at 6, n.9.

⁷ Changed from January 7, 2008 (per Order No. 48) by Order No. 49.

⁸ Changed from January 18, 2008 (per Order No. 48) by Order No. 49.

performance measurement responsibilities under the PAEA. All comments will be available for review on the Commission’s Web site, <http://www.prc.gov>.

[III.] United States Postal Service Service Performance Measurement

[A.] Notices

CONFIRM[®], Express Mail[®], First-Class Mail[®], Intelligent Mail[®], Planet Code[®], *PostalOne!*[®], Priority Mail[®], Standard Mail[®], *usps.com*[®], U.S. Postal Service[®], ZIP+4[®], Certified Mail[™], Delivery Confirmation[™], Onecode ACS[™], Post Office[™], Postal Service[™], P.O. Box[™], Signature Confirmation[™], and ZIP Code[™] are among the many trademarks owned by the United States Postal Service[®].⁹

[B.] Glossary of Terms

The description of the proposed approach for service performance measurement includes references to certain postal terminology. For clarification, the following brief definitions and descriptions are provided.

A *service standard* is defined as “a stated goal for service achievement for each mail class.” *See* Publication 32, Glossary of Postal Terms (May 1997, updated with Postal Bulletin revisions through July 5, 2007). The service standard for each market-dominant mail service incorporates the days-to-deliver for each 3-digit ZIP Code origin-destination pair within the Postal Service network. The standards serve as the benchmark for measuring service performance.

The *critical entry time* (CET) is the latest time mail can be received at designated induction points in the postal network in order for it to be processed and dispatched in time to meet service standards.

The *start-the-clock* is the date/time when the mail piece enters the mailstream. If the Postal Service accepts a mail piece before the posted CET for that day, the day of entry is designated as the “start-the-clock” date. If the mail piece is accepted after the CET or dropped at a collection box, business mail chute, or Post Office location after the last posted pickup time or on a day when pickup does not occur, the mail piece will have a “start-the-clock” date of the following applicable processing day.

The *stop-the-clock* is the date/time when delivery occurs or is initially attempted.

⁹ © 2007 United States Postal Service. All rights reserved.

⁴ In FY 2008, pilot programs involving IMBs may yield performance measurements as well.

⁵ To measure First-Class presort flats, the Postal Service proposes to use EXFC data for machine-addressed flats only. *Id.* at 22.

The *service performance* is the number of calendar days from the “start-the-clock” to the “stop-the-clock.” However, if the day of receipt occurs after a non-delivery day (Sunday or a holiday), then one day is subtracted for each non-delivery day.

The *Annual Compliance Report* is the national service performance report for market-dominant mail service that is subject to compliance review on a fiscal year basis.

[C. Description of Proposal]

1. Introduction

Among many requirements, the Postal Accountability and Enhancement Act

(PAEA) instructs the United States Postal Service (Postal Service) to establish modern service standards for its market-dominant mail products by December 20, 2007. These standards should be designed with the intent of providing a system of objective external performance measurement. However, the law allows for the implementation of an internal measurement system instead of an external one, with the approval of the Postal Regulatory Commission (PRC).¹⁰

The proposed service performance measurement system is designed to provide the Postal Service and its customers with data sufficiently

accurate and reliable for purposes of assessing the quality of mail service in a cost effective manner. The measurement system is also intended to provide the PRC with the ability to perform its responsibilities under the PAEA with a high degree of confidence. The following table summarizes the proposed measurement system. Each “start-the-clock” and “stop-the-clock” event is described in detail in later sections.

TABLE 1.—MEASUREMENT APPROACH AT FULL ROLLOUT¹

	Single-piece			Presort		
	Letters	Flats	Parcels	Letters	Flats	Parcels
First-Class Mail	EXFC	EXFC	Start: Delivery Confirmation delivery scan. Stop: Delivery Confirmation delivery scan.	Start: Documented Arrival Time at Unit. Stop: External reporting.	EXFC as Proxy ²	Start: Documented Arrival Time at Unit. Stop: Delivery Confirmation delivery scan.
Single-Piece First-Class Mail International	IMMS ³ ...	EXFC as proxy ⁴ .	Single-Piece First-Class Mail parcels as proxy ⁵ .	N/A	N/A	N/A.
Periodicals ⁶	N/A	N/A	N/A	Start: Documented Arrival Time at Unit. Stop: External reporting.	Start: Documented Arrival Time at Unit. Stop: External reporting.	N/A.
Standard Mail	N/A	N/A	N/A	Start: Documented Arrival Time at Unit. Stop: External reporting.	Start: Documented Arrival Time at Unit. Stop: External reporting ⁷ .	Start: Documented Arrival Time at Unit. Stop: Delivery Confirmation delivery scan.
Package Services	N/A	N/A ⁸	Start: Delivery Confirmation delivery scan. Stop: Delivery Confirmation delivery scan.	N/A .....	.....	Start: Documented Arrival Time at Unit. Stop: Delivery Confirmation delivery scan.

¹ Special Services are not included in Table 1 as they have different methods to “start-the-clock” and “stop-the-clock” from the market-dominant mail classes. The approach for measuring Special Services is explained in detail later in this document.

² The Postal Service will use the External First-Class Mail Measurement System (EXFC) measurement for single-piece flats as a proxy for Presort First-Class Mail flats due to small volumes. The external measurement contractor will create test mail pieces with characteristics of Presort mail and seed them into the mailstream via retail.

³ The International Mail Measurement System (IMMS) is an external measurement system for which an independent measurement contractor seeds mail into the mailstream with a wide range of mail characteristics representing international mail.

⁴ The EXFC measurement for domestic single-piece First-Class Mail flats will serve as a proxy for single-piece First-Class Mail International flats due to the small volume in this category. After clearing customs, single-piece First-Class Mail International flats enter the domestic mailstream and are handled with domestic single-piece First-Class Mail flats.

⁵ The Postal Service will use the measurement for domestic single-piece First-Class Mail parcels as a proxy for single-piece First-Class Mail International inbound surface parcels due to the small volume in this category. After clearing customs, single-piece First-Class Mail International inbound surface parcels enter the domestic mailstream and are handled the same way as domestic single-piece First-Class Mail parcels.

⁶ Two external systems, Red Tag and Time Inc.’s DelTrak, will be used for measurement during FY 2009, as the Postal Service transitions to a statistically viable long-term solution.

⁷ Presort Package Services flats consist primarily of Bound Printed Matter, which has similar physical characteristics as Presort and can be scanned by external reporters. Accordingly, Presort Package Services flats will be measured via the same approach as Presort Standard Mail flats and reported together.

⁸ Single-piece Package Services flats make up less than 4% of all Package Services flats (excluding retail Media Mail, which was discontinued as a result of PRC Docket No. R2006–1) and only 1% of the total Package Services mail base; therefore, the Postal Service does not propose a single-piece Package Services flats measure. As a result, the Package Services measurement will be strictly parcel volume.

¹⁰ Postal Accountability and Enhancement Act. 39 U.S.C. 3691(b)(1)(D) and 3691(b)(2). <http://www.prc.gov/notices/PL109-435PAEA.pdf>.

The Postal Service believes that the proposed measurement and reporting systems described in greater detail below satisfy all legislative requirements and provide the PRC with sufficiently reliable data with which to perform its service performance accountability responsibilities. The proposed system is cost effective, statistically significant, sufficiently granular in detail, and includes numerous methods of auditability. The Postal Service is asking for approval to move forward with development of these systems with the understanding that the approval is for the conceptual approach documented here and is subject to review of the implemented systems. In order to begin reporting service performance metrics as quickly as possible, the Postal Service requests that the PRC do the following:

Approve continued use of EXFC for service performance measurement of First-Class Mail single-piece letters and flats, and as a proxy for First-Class Mail Presort flats;

Approve continued use of Delivery Confirmation service for service performance measurement of parcel-shaped components of each domestic market-dominant mail class;

Approve the use of an external measurement system that supplements externally collected delivery data with Intelligent Mail scans for service performance measurement of Presort letters and flats;

Approve the use of data from external measurement systems—Red Tag and DelTrak—as an interim service performance measurement for Periodicals until adoption of IMBs is sufficient to permit migration to the external measurement provider;

Approve continued use of IMMS for service performance measurement of single-piece First-Class Mail International letters, and the use of domestic single-piece First-Class Mail flat performance as a proxy for single-piece First-Class Mail International flats;

Approve the use of internal data for service performance measurement of Special Services; and

Approve the reporting proposals specified.

2. Measurement Approach

The Postal Service proposes continued use of EXFC to measure single-piece First-Class Mail letters and flats and IMMS to measure single-piece First-Class Mail International letters.¹¹

¹¹ The only major type of International Mail classified as market-dominant is single-piece First-Class Mail International. For single-piece First-Class Mail International flats and parcels, the Postal

For letter- and flat-shaped Presort mail within First-Class Mail, Periodicals, and Standard Mail services, the Postal Service has designed an external measurement approach that supplements mail scans available from an internal Intelligent Mail system with externally collected data. For parcel-shaped mail within First-Class Mail, Standard Mail, and Package Services,¹² the Postal Service proposes to use an internal solution based on Delivery Confirmation scans obtained at acceptance and delivery. Additionally, the proposed performance measurement of various domestic special services will use an internal measurement approach.

The two critical elements for service performance measurement of a mail piece are the date/time when the mail piece enters the mailstream, otherwise known as the “start-the-clock,” and the date/time when delivery occurs or is attempted, otherwise known as the “stop-the-clock.” The mail piece service performance can be viewed as the difference between the “start-the-clock” and “stop-the-clock” dates compared to the established service standard for the mail category. When assessing mail piece performance, the facility Critical Entry Time (CET) must be taken into account. The CET is the latest time mail can be received at designated induction points in the postal network in order for it to be processed and dispatched in time to meet service standards. If the Postal Service accepts a mail piece before the CET on a given processing day, the mail piece will have a “start-the-clock” date of the current day. If the mail piece is accepted after the CET, the mail piece will have a “start-the-clock” date of the following applicable processing day.

2.1 Presort Letter and Flat-Shaped Mail

For Presort Standard Mail, First-Class Mail and Periodical letters and Standard and Periodical flats, the Postal Service proposes a service performance measurement system that uses the induction event to “start-the-clock,” and an external, third-party “stop-the-clock” performed by reporters with scanners in their home. Additional data on mail piece tracking from Intelligent Mail

Service will use the domestic flats and parcel measurements as proxies, as explained in Section 4.

¹² Package Services market-dominant products include single-piece Parcel Post, Bound Printed Matter, Library Mail, and Media Mail. For purposes of service standard establishment and service performance measurement, the market-dominant products designated by 39 U.S.C. 3621(a) as single-piece Parcel Post, Bound Printed Matter, Library Mail, and Media Mail are grouped together as Package Services due to the small volumes.

Barcode (IMB) scans will also be used to supplement the external data. However, any data collected by the Postal Service will be provided to an independent, external contractor to calculate service measurement and compile the necessary reports.

To facilitate an accurate “start-the-clock,” mailers will prepare mail with IMBs and submit electronic mailing information that describes the mail profile. During mail induction, the Postal Service will scan barcodes to record mail arrival at sites that are equipped with scanners. At other sites, the “start-the-clock” will be the documented arrival time at the Postal Service unit. In all cases, mailings are verified to ensure they meet acceptable mail preparation requirements to qualify for service performance measurement. Mail arrival times and mail preparation quality information will be made available to mailers to ensure validity.

The proposed measurement system will determine the service performance by using data collected by the Postal Service on the time taken from the “start-the-clock” through processing. The external measurement contractor will combine this data with data from anonymous households and small businesses that report directly to an external service measurement contractor. The reporters in anonymous households will submit in-home delivery information to the external measurement contractor, and that information will be used to determine the “stop-the-clock” service day. The end-to-end service measure will have two parts, (1) how long mail pieces take to get through processing, and (2) how long mail takes from the last processing scan to arrive in-home—the second portion will be used as a delivery factor differential to determine the percent of mail not delivered on time even though it made through processing timely. For Presort letters and flats entered at Delivery Units that do not receive processing scans, postal delivery personnel will scan IMBs to indicate intention to deliver same-day. The delivery factor differential for the performance measurement between the date of the last IMB scan and the date reported in-home will be determined for each mail category. This factor represents last mile delivery performance. With this measurement approach, the core of the service performance score would be based on data provided by external reporters, which would make it easily auditable, and yet cost effective.

Using external reporters, barcoded mail that falls out of automation, such as non-machinable and not flat-

machinable (NFM) mail, will be included in service performance measurement. To ensure that the external service measurement contractor is able to measure service performance for properly prepared and addressed mail pieces, the Postal Service will provide the contractor with mail quality information that it derives by scanning IMBs.

The proposed approach leverages data from internal systems to enhance measurement for Presort letters and flat-shaped mail has several key advantages: greater representation of mail characteristics; allows for richer diagnostics; and provides opportunities to reduce the cost of measurement.

2.2 Requirements for Presort Mailers

Since the Postal Service measurement system for letter and flat-shaped mail is dependent on the IMB, the Postal Service will require the use of IMBs to qualify for automation discounts as of January 2009. It is important to note that the IMB alone does not provide enough information for service performance measurement. The mailer adoption rates projected throughout this document include both adoption of the IMB as well as the adoption of electronic mailing information. For service performance measurement purposes, mailers will need to:

Prepare mailings using the Intelligent Mail series of barcodes to provide a sufficient level of uniqueness and abide by mail preparation requirements to ensure that the mailings are automation-compatible;¹³ and

Submit electronic mailing information describing the mail contents and Intelligent Mail barcodes used.

Service performance measurement will depend on high-quality mail presented to the Postal Service. The Postal Service requires that mail meet the required mail preparation criteria. The quality of the mail will be verified by either Seamless Acceptance, semi-automated verification such as MERLIN, or manual verification processes. Under the Seamless Acceptance verification process, certain characteristics of mail will be inspected while mail is processed in the mailstream. Because incorrectly addressed pieces and improperly prepared mail make it impossible in many cases to meet the service standard, only mailings that meet acceptable mail preparation criteria will be included for service measurement.

¹³ Domestic Mail Manual sections 200.3.1 through 200.3.14. Physical Standard Mails for Automation Letters and Cards. Domestic Mail Manual sections 300.3.1 through 300.3.14.

2.3 Parcels

For parcel-shaped mail within First-Class Mail, Standard Mail, and Package Services, the Postal Service will use an internal solution based on Delivery Confirmation scans obtained at acceptance and delivery. The Postal Service currently measures service performance for Retail parcels via Delivery Confirmation barcode scans. The existing Delivery Confirmation performance reports for mail originating at postal retail units can be used in the short-term to measure the service performance of all Package Services until service measurement can be extended to Presort parcels. For reporting purposes, First-Class Mail parcels will be included with the First-Class Mail aggregated performance results, Standard Mail parcels will be included with the Standard Mail aggregated performance results, and the Package Services aggregated performance results will include only parcel volume.

Parcel-shaped Retail mail will use the Delivery Confirmation scan at the retail counter as the "start-the-clock." Parcel-shaped Presort mail will use the documented arrival time at the postal unit as the "start-the-clock." For Presort parcels, validation similar to that for letters and flats will be performed to ensure that the proper parcels were dropped at the correct postal facility.

The "stop-the-clock" is the Delivery Confirmation scan performed by postal delivery personnel at delivery.¹⁴ Since postal personnel scan virtually every piece with a Delivery Confirmation scan at delivery, the measurement system is truly an end-to-end performance system. In addition, the sender has access to the Delivery Confirmation "stop-the-clock" information from usps.com and, thus, can independently verify the delivery date.

More detail on parcels can be found under the specific class descriptions below.

2.4 Reporting

The Postal Service will use an independent, external contractor to prepare service performance reports for domestic First-Class Mail, Periodicals, Standard Mail, and single-piece First-Class Mail International letters. For the letter- and flat-shaped components of its market-dominant mail classes, the Postal Service's external contractor will employ reporters equipped with handheld scanners who, each day, will scan the IMB on live mail pieces received at their delivery addresses. The

¹⁴ Carriers en-route and clerks at post office boxes.

reporters will transmit scan data back to the external contractor and the scans will be used as the "stop-the-clock" for the mail pieces. Since there is considerable set-up associated with this type of system, the Postal Service will begin reporting from this system in FY 2009.

External "stop-the-clock" scanning offers many benefits to the Postal Service, the PRC, and mailers concerning the accuracy and auditability of service performance measurement:

Last-mile sampling data will be used to provide the granularity required for the district level reporting;

Association of the reporter scan data to the final Mail Processing Equipment scan will be used to assess and correct any last mile failures;

Mail pieces used will have no distinguishing features; and

The volume of mail going to a reporter will remain unchanged.

The Postal Service plans to continue collecting performance data for parcels within each domestic market-dominant mail class as it does today based on Delivery Confirmation acceptance and delivery scans. The Postal Service will send performance data for First-Class Mail parcels and Standard Mail parcels to the external service performance contractor for consolidated reporting into each mail class' reporting measurement. Service Performance for Package Services parcels and Special Services will be reported by the Postal Service. Quarterly reports will include data on the percentage of mail delivered on time as well as the percentage of mail delivered within 1-day, 2-days, and 3-days of the standard being measured. Annual compliance reports will include the annual goal and the annual percentage of mail for each class delivered on time or the percentage of special services provided on time by service.

2.5 Timeline

The Postal Service will use a phased rollout of the service performance measurement system, which will correspond with Presort-mailer adoption of the IMBs and other needed electronic mailing information. A significant adoption of IMBs by presort mailers is expected by FY 2009. This will provide sufficient representative volume to provide statistically valid judgment.¹⁵

Some components of the proposed measurement system are already in place. The Postal Service will continue

¹⁵ Excludes Periodicals Mail, which will cutover in 2009.

to use EXFC to measure single-piece First-Class Mail letters and flats, as well as IMMS to measure single-piece First-Class Mail International letters. EXFC and IMMS are specifically designed to be representative of those mailstreams and already provide an external, statistically valid performance measurement. Measurement is also becoming available for Package Services parcels entered at retail.¹⁶ The existing Delivery Confirmation performance reports for mail originating at postal retail units can be used in the short-term to measure the service performance of all Package Services until service

measurement can be extended to Presort parcels.

Although use of the IMB will not be required until January 2009, several Presort mailers have already adopted the IMB and submit electronic mailing information. Pilot programs are currently underway for measurement of Presort First-Class Mail and Standard Mail. Mailer adoption rates are expected to continue growing.

Toward the end of 2008, external reporters will be trained to use a new scanning device for in-home delivery reporting of all mail received that contains an IMB. Beginning in 2009, IMB and electronic mailing information adoption will occur in sufficient

quantity that measurement based on scans generated by external reporters will provide statistically valid measurements for service performance of Presort First-Class Mail letters and Standard Mail.

For Periodicals mailers, adoption of IMBs and electronic mailing information is projected to be slower. Measurements from DelTrak and Red Tag, which are two external measurement systems, will be used for measurement during a portion of FY 2009 as the Postal Service transitions to a statistically viable long-term solution using the same methodology explained above.

TABLE 2.—MEASUREMENT IMPLEMENTATION TIMELINE

	January 2008	FY 2009	FY 2010
First-Class Mail Single-Piece Letters and Flats.	EXFC	EXFC	EXFC.
First-Class Mail Presort Flats and Single-Piece International Mail Flats.	EXFC as Proxy	EXFC as Proxy	EXFC as Proxy.
Single-Piece First-Class Mail International Letters.	IMMS	IMMS	IMMS.
First-Class Mail Presort Letters	Intelligent Mail Pilot	Reporter + IMB/Electronic Mailing Information (25–50% of system).	Reporter + IMB/Electronic Mailing Information (50–75% of system).
First-Class Mail Parcels ¹ and International Mail Parcels.	System Setup and Development.	Retail and Presort Delivery Confirmation Sample (5–10% system).	Retail and Presort Delivery Confirmation Sample (5–10% system).
Standard Mail Letters and Flats ²	Intelligent Mail Pilot	Reporter + IMB/Electronic Mailing Information (25–50% of system).	Reporter + IMB/Electronic Mailing Information (50–75% of system).
Standard Mail Parcels ³	System Setup and Development.	Delivery Confirmation Sample (5–10% of system).	Delivery Confirmation Sample (10–25% of system).
Periodicals Letters and Flats	Red Tag/DelTrak System Review.	Red Tag/DelTrak Reporter + IMB ⁴ ...	Reporter + IMB/Electronic mailing information ⁵ (25–75% of system).
Periodicals: Within County ⁶		Red Tag.	
Package Services Parcels (includes Bound Printed Matter, Library Mail, Media Mail and Parcel Post).	Retail Only (15% Retail)	Retail and Presort Delivery Confirmation Sample (5–10% system).	Retail and Presort Delivery Confirmation Sample (10–25% system).
Special Services	System Setup and Development.	Internal Measurement	Internal Measurement.

¹ First-Class Mail parcels will be rolled into the First-Class Mail measurement based on percent of mail.

² Presort Package Services flats are included with Standard Mail flats.

³ Standard Mail parcels will be rolled into the Standard Mail measurement based on percent of mail.

⁴ Once a threshold is met for IMB statistical validity, which the Postal Service expects to occur in 2009, the Postal Service plans to cutover to reporting via IMB scanning. Red Tag and DelTrak will be used for reporting in 2009 until the cutover occurs; however, the long-term measurement approach for Periodicals is planned for 2010, subject to the considerations expressed above in fn. 16.

⁵ The Postal Service may elect to have its external provider use data from DelTrak or Red Tag even in future years if it proves to increase the overall robustness of the data and the statistical validity.

⁶ The Postal Service is still attempting to determine how an accurate measurement system for In-County Periodicals could be developed. In the interim, the Postal Service is hopeful that existing systems like Red Tag could be expanded to provide data in the short-term and that mailer adoption of IMBs will provide additional granularity in the long-term.

3. First-Class Mail

3.1 Background

First-Class Mail pieces represented 46.0% of the overall mail volume in FY 2006,¹⁷ with nearly 98 billion pieces. Of First-Class Mail, 42.5% are single-piece

letters or flats, 0.36% are single-piece parcels, 55.9% are Presort letters, 1.0% are Presort flats, and 0.194% are Presort parcels. The Postal Service plans to measure each of these different segments and report a weighted average measurement. Below Table 3—First-

Class Mail Volume illustrates the make-up of First-Class Mail by entry volume and shape. The table also illustrates the percentage that the First-Class Mail segments represent within the overall mailstream.

¹⁶ Under Order No. 43, the PRC has classified all inbound single-piece surface parcels tendered at Universal Postal Union inward land rates in the market-dominant category. This mail includes surface parcels, which enter the United States via surface transportation at the New Jersey International Bulk Mail Center, as well as surface airlift parcels, which enter at the five International Service Centers in Miami, Chicago, Los Angeles,

New York JFK, and San Francisco. Once surface parcels clear customs, they are transferred from the acceptance facility to a Bulk Mail Center (BMC). Once entered into the BMC network, inbound parcels undergo the same processing as domestic single-piece Package Services parcels. Because the volume of the inbound surface parcels is small in proportion to other market-dominant categories, creating a separate measurement system for these

parcels is not cost-justified. Given that inbound surface parcels are handled through the domestic BMC network, the Postal Service submits that the service performance measurement statistics for corresponding domestic surface parcels serves as a reasonable proxy for International Mail inbound surface parcels.

¹⁷ http://www.usps.com/financials/_pdf/Fy2006_RPWsummaryreport.pdf.

TABLE 3.—FIRST-CLASS MAIL VOLUME

	Single-piece			Presort			Total (percent)
	Letters (percent)	Flats (percent)	Parcels (percent)	Letters (percent)	Flats (percent)	Parcels (percent)	
First-Class Mail	39.06	3.49	0.36	55.9	1.0	0.19	100
Overall Mailstream	18.0	1.6	0.17	25.7	0.47	0.09	46.0

3.2 First-Class Mail Single-Piece Letters and Flats

Collection boxes and office building chutes are the primary methods for entering First-Class Mail single-piece letters and flats. Combined, this mail represents 19.6% of the total mailstream. Service performance is currently measured through EXFC and, subject to PRC approval, the Postal Service plans to continue to use EXFC for this purpose.

EXFC currently has approximately 13,000 reporters and measures 2.7 million mail pieces each year. EXFC continuously measures 463 3-digit ZIP Code service areas selected based on geography and volume density. Approximately 90% of First-Class Mail volume originates and 80% destines in these EXFC measurement areas. EXFC mail pieces are designed to resemble the rest of the mailstream; pieces are hand- or machine-addressed, stamped or metered, and are of different colors, sizes, and weights. The Postal Service intends to expand the use of EXFC in FY 2009 to cover nearly all 3-digit ZIP Code areas.

3.2.1 Statistical Validity

Each EXFC postal administrative reporting district currently receives approximately 5,000 EXFC mail pieces with an overnight service standard, 1,500 pieces with a two-day standard, and 1,500 pieces with a three-day standard each quarter. The original EXFC system used a precision level of +/-3% to produce statistically valid results at the postal administrative district level over an entire postal quarter. To reach this level of statistical validity, a certain number of pieces must be mailed during a given test period. Over the years, the Postal Service has increased the original sample size, which has driven the precision level to a much narrower variance and enhanced the system's accuracy. Precision levels at the district level for the annual results are now typically under +/-1% for each service standard. To ensure the integrity of the measurement, the Postal Service does not know where EXFC mail is being dropped or received.

At the national level, the current system has a precision level of +/-0.05% across all three days in the current First-Class Mail service standard range (overnight, two-day, three-day) over an entire fiscal year.

The EXFC system has been in place since 1990 and provides accurate, independent, and externally generated service performance results. Quality reviews are conducted for droppers and reporters, and data are reviewed on a daily, weekly, cross-weekly, monthly, and quarterly basis.

3.2.2 "Start-the-Clock"

The date/time that the mail piece is dropped into the collection box, business mail chute, or at a Post Office location is the "start-the-clock." Mail piece droppers report the "start-the-clock" directly to the external service measurement contractor. If a mail piece is dropped at a collection box, business mail chute, or Post Office location after the last posted pickup time or on a day when pickup does not occur, the next pickup day will be used as the "start-the-clock."

The induction points for the "start-the-clock" are determined before the start of each quarter. Droppers are provided with a listing of collection boxes that they are allowed to use for their assigned inductions in a given 3-digit ZIP Code service area. Enough locations are chosen to ensure a certain amount of overage, to accommodate any unforeseen issues that may arise with the selected induction points. The collection boxes are chosen in a random selection process with replacement, meaning that the same induction location may be chosen multiple times. The induction points are weighted going into the selection process, so that locations in 5-digit ZIP Code areas with a larger number of collection boxes have a greater chance of being selected than locations in ZIP Code areas with a smaller number of collection boxes. The external contractor monitors drop compliance continuously throughout the quarter to ensure proper diversification of mail locations.

EXFC origin-destination mail flows are based on estimated 3-digit ZIP Code origin-destination pair volume flows for

corresponding 3-digit ZIP Code pairs over the past three fiscal years. The number of pieces entered from each district is proportionate to the origin-destination volumes by service standard. The measurement system will be expanded to nearly all 3-digit ZIP Codes in FY 2009.

3.2.3 "Stop-the-Clock"

The date/time that the mail piece is received at a household, small business, or Post Office Box is reported as the "stop-the-clock" directly by the reporter to the external contractor for EXFC reporting purposes. The service performance is the number of calendar days from the "start-the-clock" to the "stop-the-clock." However, if the day of receipt occurs after a non-delivery day (Sunday or a holiday), then one day is subtracted for each non-delivery day.

3.3 First-Class Mail Presort Letters

The primary induction method for Presort letters is bulk entry at postal mail processing plants and Business Mail Entry Units (BMEUs) across the United States. Presort First-Class Mail letters represent 25.7% of the total mailstream. The measurement approach proposed by the Postal Service uses externally generated scans of mail pieces containing IMBs by reporters to record in-home delivery dates. In combination with Intelligent Mail scan data collected by the Postal Service, this approach enables the granular level of reporting being sought by the mailing industry.

3.3.1 Adoption Rates

Participation in the Intelligent Mail pilot, the benefits of the IMB for special services, and the expectation that the Postal Service will require IMBs on mail subject to automation discounts are factors that, in combination, are expected to generate 13.6 billion Presort letters with IMBs and the other needed electronic mail information by January 2009. This volume will satisfy the conditions for performance measurement in FY 2009. With required use by January 2009, the minimum estimates for mailer adoption are:

January 2009: 25% of First-Class Mail Presort letters; and

January 2010: 50% of First-Class Mail Presort letters.

3.3.2 Statistical Validity

We plan to use the last mile estimate based on combined data from presorted First-Class letters with IMBs and the EXFC pieces with IMBs. Assuming that

25% of presorted First-Class mail will have an IMB and be measurable, the average district will have approximately 6,775 pieces per quarter upon which to base the last mile estimates when presorted First-Class mail is combined with available data from EXFC. The last mile factor estimate with a 95%

confidence interval would be +/-0.5% at the district level on average. Current EXFC data indicates that district last mile factors vary over time and geography, but generally fall in the 2–3% range. The Postal Service anticipates a precision between +/-0.5% and +/-0.6% as illustrated in the table below.

TABLE 4.—PRECISION FOR FIRST-CLASS MAIL PRESORT LETTERS

	Confidence interval (percent)	Last mile factor estimate (percent)	Coverage of IMB + electronic mailing information (percent)	Precision (percent)
First-Class Mail Presort Letters	95	2	25	+/-0.5
Presort Letters	95	3	25	+/-0.6

It should also be noted that the last mile factor is one piece of the overall service performance estimate, with the performance of the acceptance to final processing scan being the other. The availability of billions of data records to sample from to form these estimates means that the Postal Service can economically take large samples for individual report cells (e.g. Baltimore SCF-entry Standard Mail, Chicago 3-day First-Class Presorted Mail). The estimated precision levels will be shared with the PRC during the development process.

3.3.3 “Start-the-Clock”

Mailers are required to prepare mail with IMBs and submit electronic mailing information listing the IMBs used. Mail is verified to ensure it meets mail preparation criteria. Mail that does not meet mail preparation standards will be excluded from service performance in order to ensure that the system produces a valid, reliable measurement score. The “start-the-clock” will be the documented arrival time at the Postal Service unit. Mail arrival times and mail preparation quality information will be made available to mailers.

3.3.4 “Stop-the-Clock”

External reporters will be equipped with handheld scanners capable of scanning IMBs and reporters will scan all mail they receive that contains an IMB. These scan data will be transmitted to the external reporting system and will be the “stop-the-clock” for the individually scanned mail pieces. By comparing the date of the final Postal Service scan with the actual receipt date for these pieces, the external measurement contractor will calculate a factor for the actual service performance of the last mile for First-Class Mail Presort letters. This factor

will be combined with the Intelligent Mail data to report the end-to-end service performance measurement.

The use of external reporters will allow for measurement of manually processed mail and mail that falls out of automation to be included in service performance measurement. The external reporters will provide the actual “stop-the-clock” and the external provider will calculate the service performance for those pieces.

3.4 First-Class Mail Presort Flats

Presort First-Class Mail flats represent only 0.47% of the total mailstream, producing one of the smallest mail categories. This low volume makes creating a statistically valid measurement system difficult. Since there are four times as many single-piece First-Class Mail flats as there are Presort flats, and the single-piece and Presort flats mailstreams are combined in operations, the Postal Service will use the EXFC measurement of single-piece First-Class Mail flats as a proxy for Presort flats. In order to determine a more accurate estimate for First-Class Mail Presort flats, the portion of EXFC that reflects this mail category, i.e., machine-addressed flats, rather than hand-addressed, will be used.

3.5 First-Class Mail Retail Parcels

The Postal Service currently measures service performance for retail parcels via Delivery Confirmation barcode scans. This approach for measuring performance is working well, so the Postal Service will continue using this measurement approach for this mail shape. For reporting purposes, performance results will be sent to the external measurement contractor for inclusion into the First-Class Mail aggregated performance results. First-Class Mail Retail parcels represent

under 0.4% of all First-Class Mail and less than 0.2% of the total mailstream.

3.5.1 Statistical Validity

In 2006, just over 14 million First-Class Mail Retail parcels included Delivery Confirmation service, representing 4% of these parcels. While this represents low usage of the Delivery Confirmation service, it is still representative of the population and, hence, provides an acceptable basis for service performance measurement. The Postal Service will continue to use Delivery Confirmation scans as long as they continue to provide accurate, auditable data for service performance measurement.

3.5.2 “Start-the-Clock”

Primarily, the “start-the-clock” occurs at the retail counter when customers purchase Delivery Confirmation for parcels they intend to mail. When postal retail clerks apply Delivery Confirmation forms to these parcels, they scan the Delivery Confirmation barcodes on the forms. The scan is captured via either a Point-of-Sale (POS) terminal at the retail counter or an Intelligent Mail handheld scanning device. Since the customer is present at the “start-the-clock” event and receives a time-stamped receipt with purchase, there are several validation points.

3.5.3 “Stop-the-Clock”

At delivery, the carrier will scan the Delivery Confirmation barcode to denote delivery or that delivery was attempted, either of which will serve to “stop-the-clock” for service performance measurement.

Retail parcel reporting for service performance measurement will use the date of the “start-the-clock” event and count the days between the “start-the-clock” and the “stop-the-clock” to determine delivery performance. A

TABLE 4–B¹.—QUARTERLY SERVICE PERFORMANCE FOR PRESORT FIRST-CLASS MAIL—MAIL VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH MAIL VARIANCE FOR PRESORT FIRST-CLASS MAIL—Continued

District	Overnight			Two-day			Three-day/four-day		
	Within +1-day (percent)	Within +2-day (percent)	Within +3-day (percent)	Within +1-day (percent)	Within +2-day (percent)	Within +3-day (percent)	Within +1-day (percent)	Within +1-day (percent)	Within +2-day (percent)
Mid-Carolinas District	XX	XX	XX	XX	XX	XX	XX	XX	XX
No. Virginia District	XX	XX	XX	XX	XX	XX	XX	XX	XX
Richmond District .....	XX	XX	XX	XX	XX	XX	XX	XX	XX

¹ For purposes of publication, the reference to Figure 2 in the Proposal has been changed to Table 4–B.

3.7.2 Annual Reporting

Separate national measures will be compiled for each First-Class Mail grouping (single-piece and Presort) and by service standard (one-day, two-day,

and three-day/four-day) for letter, flat, and parcel-shaped First-Class Mail. Annual performance consists of a weighted average for each First-Class Mail segment that allots weight based on the volume of mail in each district. If the segments are not representatively

distributed, the weighting will ensure that each district counts for its fair share in the national aggregate.

The proposed report format for First-Class Mail Annual Compliance Report is as follows:

TABLE 4–C¹.—ANNUAL COMPLIANCE REPORT FORMAT FOR FIRST-CLASS MAIL SAMPLE ANNUAL REPORT FORMAT FOR FIRST-CLASS MAIL

Mail class	Goal (percent)	On-time (percent)
First-Class Mail:		
Single-Piece Overnight	XX	XX
Single-Piece Two-Day	XX	XX
Single-Piece Three-Day/Four-Day	XX	XX
Presort Overnight	XX	XX
Presort Two-Day	XX	XX
Presort Three-Day/Four-Day	XX	XX

¹ For purposes of publication, the reference to Figure 3 in the Proposal has been changed to Table 4–C.

4. Single-Piece First-Class Mail International

4.1 Background

Outbound single-piece First-Class Mail International pieces are accepted by the United States Postal Service for processing and transfer to foreign postal administrations for delivery in other countries. The service standard for the outbound domestic transit of this mail is the same as for First-Class Mail pieces from the domestic 3-digit ZIP Code of origin to the domestic 3-digit ZIP Code area in which the Postal Service International Service Center (ISC) designated for that origin is located.¹⁸

Inbound single-piece First-Class Mail International originates from other countries and is destined for delivery to

addresses in 3-digit ZIP Code areas of the United States. The service standard for the inbound domestic transit of this mail is the same as for First-Class Mail that originates from the 3-digit ZIP Code in which the ISC is located to the 3-digit ZIP Code area of the delivery address.

Service performance for the domestic transit of both inbound and outbound single-piece First-Class Mail International is currently measured through the International Mail Measurement System (IMMS), which is operated by an external service performance measurement contractor. The Postal Service plans to continue to use IMMS for this purpose.

IMMS utilizes only letter-shaped mail pieces, which is the predominant shape of both outbound and inbound single-piece First-Class Mail International. The processing of single-piece First-Class Mail International—during either outbound transit from domestic origin to the designated ISC or inbound transit from the designated ISC to the domestic delivery address—is the same as for domestic single-piece First-Class Mail flats and parcels, which are discussed above in Sections 3.2 and 3.5, respectively. The domestic transit service standards are the same.

Accordingly, the Postal Service proposes that the data (EXFC for flats, Delivery Confirmation for parcels) utilized to report for domestic single-piece First-Class Mail flats and parcels be used to serve as a proxy for estimating the service performance for outbound and inbound single-piece First-Class Mail International flats and parcels.

4.1.1 Statistical Validity

The purpose of IMMS is to provide independently gathered, accurate, and reliable information on the transport time for the domestic leg of transit for letters. IMMS is designed as an area-level measurement, as International Mail volume varies substantially by postal administrative district. The volume of outbound IMMS test mail is based on estimated international origin-destination pair volumes. The import distributions are based on the mail profiles obtained from the System of International Revenue and Volume-Inbound. A minimum volume of 1,025 pieces within each postal administrative area, per quarter, is used to deliver measurement results that have a precision of +/- 3% at a 95% confidence level.

¹⁸ The postal mail processing network includes a handful of ISCs each of which serves a region of the postal network and is responsible for conducting the initial international processing for outbound international mail or the final international processing for inbound international mail. For outbound mail, the ISC for a postal network region may be the gateway facility from which mail is transported from the postal network to the custody of a foreign postal administration. In a small percentage of cases, outbound mail may be transported from its designated ISC to another ISC for the outbound gateway processing that precedes its exit from the postal network.

4.1.2 “Start-the-Clock”

To test outbound single-piece First-Class Mail International letters, sample international pieces are combined with the bundles created for the domestic EXFC testing program, which is described above in Section 3.2. The date/time that the test bundle is dropped into the collection box or business mail chute is the “start-the-clock” and is reported directly to the independent contractor.

To test inbound single-piece First-Class Mail International letter service performance, sample letters addressed to reporters in the United States employed by the contractor are mailed from foreign countries by droppers employed by the contractor. The IMMS service performance measurement contractor has worldwide operations. To maintain the confidentiality of the program, the identities and addresses of the reporters and droppers (as well as the participating foreign countries of the droppers) are known only to the contractor. The inbound “start-the-clock” tracking begins with the first scan of the PLANET Code series on a piece at the ISC designated for the region of the USPS network that includes the delivery address.

4.1.3 “Stop-the-Clock”

As an outbound international mail letter travels through the domestic

processing system, the PLANET Code¹⁹ information is captured and used to measure its progress. When the letter is sorted at the designated ISC, it receives a PLANET Code scan. The “stop-the-clock” date for an outbound mail piece is the date of the last scan at this facility, unless the scan is after 8 p.m. For example, if the last PLANET Code scan for a piece occurs at 11:30 p.m. on Thursday, July 26, 2007, then the “stop-the-clock” date is Friday, July 27, 2007. The number of transit days for outbound mail is the difference between the induction date and the last PLANET Code read at the designated ISC. Because the “stop-the-clock” event takes place at an ISC, as opposed to a delivery point, the transit days calculation includes Sundays and holidays.

An inbound international mail letter flows through the USPS network from the ISC to the delivery addresses. The “stop-the-clock” data for inbound mail is the date the mailpiece is delivered to a reporter employed by the service measurement contractor. The reporter is part of the EXFC survey group and is responsible for receiving the mail and reporting the date of delivery. The number of transit days for inbound test mail is the difference between the delivery date and the date of the first PLANET Code read or ID tag at the designated ISC. Sundays and holidays

are not included in the transit days calculation for import mailpieces.

Because the service standards for both outbound and inbound single-piece First-Class Mail International flats and parcels are based on the domestic transit of such mail, on-time performance is measured against the same set of origin-destination 3-digit ZIP Code area service standards as domestic First-Class Mail. To determine if a mailpiece is on time, the number of transit days is compared to the service standard for the applicable origin-destination 3-digit ZIP Code pair.

4.2 Reporting Single-Piece First-Class Mail International Letters

4.2.1 Quarterly Reporting

Since not all postal administrative districts have sufficient volumes for reporting, the Postal Service proposes reporting quarterly service performance at a postal administrative area level. Each measurement will include the percent delivered on time for outbound and for inbound single-piece First-Class Mail International letters. All scores are weighted at the area level using proportions derived from a rolling average of estimated volumes for 12 fiscal quarters.

The proposed quarterly report format for single-piece First-Class Mail International letters is as follows:

TABLE 4–D¹.—QUARTERLY SERVICE PERFORMANCE FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL; SAMPLE QUARTERLY REPORT FORMAT FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL LETTERS

Area	Outbound/Inbound on-time (percent)
Northeast Area	XX
New York Metro Area	XX
Eastern Area	XX
Capital Metro Area	XX
Southeast Area	XX
Great Lakes Area	XX
Western Area	XX
Southwest Area	XX
Pacific Area	XX
NATIONAL	XX

¹ For purposes of publication, the reference to Figure 4 in the Proposal has been changed to Table 4–D.

The mail variance for single-piece First-Class Mail International letters will be reported separately with the

percentage of mail that is delivered within one-day, two-days, and three-days of the applicable standard. The

proposed quarterly report format is as follows:

¹⁹ The PLANET Code is a barcode printed on mail pieces by mailers participating in the CONFIRM

program. CONFIRM enables mailers to receive detailed scan information about the pieces they

mail in order to track mail through the postal network.

TABLE 4—E ¹—QUARTERLY SERVICE PERFORMANCE FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL MAIL VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH THE MAIL VARIANCE FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL LETTERS

Area	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
Northeast Area	XX	XX	XX
New York Metro Area	XX	XX	XX
Eastern Area	XX	XX	XX
Capital Metro Area	XX	XX	XX
Southeast Area	XX	XX	XX
Great Lakes Area	XX	XX	XX
Western Area	XX	XX	XX
Southwest Area	XX	XX	XX
Pacific Area	XX	XX	XX
NATIONAL	XX	XX	XX

¹ For purposes of publication, the reference to Figure 5 in the Proposal has been changed to Table 4—E.

4.2.2 Annual Reporting

The Postal Service proposes reporting national measures for the percentage of single-piece First-Class Mail International letters delivered on time.

Annual performance consists of a weighted average that allots weight based on the volume of mail in every area. If the data are not representatively distributed, the weighting will ensure

that each area counts for the correct portion of the national aggregate. The proposed report format for the single-piece First-Class Mail International Annual Compliance Report is as follows:

TABLE 4—F. ¹—ANNUAL COMPLIANCE REPORT; SAMPLE ANNUAL REPORT FORMAT FOR SINGLE-PIECE FIRST-CLASS MAIL INTERNATIONAL LETTERS

Mail class	Goal (percent)	On-time (percent)
Single-Piece International First-Class Mail	XX	XX

¹ For purposes of publication, the reference to Figure 6 in the Proposal has been changed to Table 4—F.

5. Standard Mail

5.1 Background

Standard Mail pieces represented 48.25% of the overall mail volume in FY 2006.²⁰ At over 100 billion mail pieces per year, it is the largest class of mail. Of Standard Mail, 60.48% are

letters, 38.95% are flats, and 0.56% are parcels. Table 5—Standard Mail Volume below illustrates the make-up of Standard Mail. The table also illustrates the percentage that Standard Mail letters, flats, and parcels represent in relation to the overall mailstream. Because the categories of Standard Mail

have different requirements for mailers and thus are measured differently, this section has been separated into the following sub-sections: non-carrier route letters, non-carrier route flats, saturation letters and carrier route flats, and saturation flats.

TABLE 5.—STANDARD MAIL VOLUME

	Presort			
	Letters	Flats ¹	Parcels	Total (percent)
Standard Mail	60.48	38.95	0.56	100
Overall Mailstream	29.18	18.79	0.27	48.25

¹ Service performance measurement results for Standard Mail flats will include Package Services flats.

5.2 Standard Mail Non-Carrier Route Letters

The primary induction method for non-saturation Standard Mail letters is bulk entry. Standard Mail letters represent 24.68% of the total mailstream. The Postal Service will base service performance measurement on

mail induction, and in-home IMB scan data provided by external reporters.

5.2.1 Adoption Rates

Participation in the Intelligent Mail pilot, the benefits of the IMB for special services, and the upcoming requirement to use the IMB for automation discounts are expected to generate over 13 billion

Standard Mail non-carrier route letters with IMBs and electronic mail information by January 2009. This volume will satisfy the conditions for performance measurement in FY 2009. The estimates for mailer adoption of the IMB and electronic mailing information are:

²⁰ http://www.usps.com/financials/_pdf/Fy2006_RPWsummaryreport.pdf

January 2009: 25% of Standard Mail non-carrier route letters; and

January 2010: 50% of Standard Mail non-carrier route letters.

5.2.2 "Start-the-Clock"

Mailers are required to prepare mail with IMBs and submit electronic mailing information listing the IMBs used. Mail is verified to ensure it meets preparation requirements. Mail that does not meet mail preparation requirements will be excluded from service performance in order to ensure that the system produces a valid, reliable measurement score. Drop shipment mailers create appointments for Standard Mail non-carrier route letters in the Facility Access and Shipment Tracking (FAST) system at designated facilities, which provide electronic advance notification of the mail profile including arrival times. At sites that are equipped with scanners, containers with Intelligent Mail Container barcodes will be scanned to record arrival times. At other sites, the "start-the-clock" will be the documented arrival time at the Postal Service unit. Mail arrival times and mail preparation quality information will be made available to mailers.

5.2.3 "Stop-the-Clock"

External reporters will be equipped with handheld scanners capable of scanning the IMB and will scan all mail they receive containing an IMB. These data will be sent to the external reporting system and will be the "stop-the-clock" for the individually scanned mail pieces. By comparing the date of the final Postal Service scan with the actual receipt date for these pieces, the external service performance measurement contractor will calculate a factor for the actual service performance of the last mile for Standard Mail letters. This factor will be combined with the Intelligent Mail data to form the end-to-end service performance.

The use of external reporters will allow for mail that is not exposed to or that falls out of automation to be included in service performance measurement. The external reporters will provide the actual "stop-the-clock" on such pieces, and the external measurement contractor will calculate the service performance for those pieces that go to the external reporters.

5.3 Standard Mail Non-Carrier Route Flats

The primary induction method for Presort non-carrier route flats is bulk entry. Presort flats represent 6.51% of the total mailstream and, when combined with Standard Mail carrier

route flats, are the third largest mail segment behind Presort First-Class Mail letters and Standard Mail letters. Since Package Services flats are operationally handled in the same manner as Standard Mail non-carrier route flats, the Postal Service plans to include the measurement of Package Services flats in the Standard Mail performance results.

5.3.1 Adoption Rates

Participation in the Intelligent Mail pilot, the benefits of the IMB for special services, and the upcoming requirement to use the IMB for automation discounts are expected to generate over 3.4 billion Standard Mail non-carrier route flats with IMBs and electronic mail information by January 2009. This volume will satisfy the conditions for performance measurement in FY 2009. The estimates for mailer adoption of the IMB and electronic mailing information are:

January 2009: 25% of Standard Mail non-carrier route flats; and

January 2010: 50% of Standard Mail non-carrier route flats.

5.3.2 "Start-the-Clock"

Mailers are required to prepare mail with IMBs and submit electronic mailing information listing the IMBs used. Mail is verified to ensure it meets mail preparation criteria. Mail that does not meet mail preparation standards will be excluded from service performance in order to ensure that the system produces a valid, reliable measurement score. Drop shipment mailers create appointments for Standard Mail flats in FAST at designated facilities providing advance notification of the mail profile including arrival times. At sites that are equipped with scanners, containers with Intelligent Container barcodes will be scanned to record arrival times. At other sites, the "start-the-clock" will be the documented arrival time at the Postal Service unit. Mail arrival times and mail preparation quality information will be made available to mailers.

5.3.3 "Stop-the-Clock"

External reporters will be equipped with handheld IMB scanners and will scan all mail they receive that bears an IMB. The scan data will be sent to the external reporting system and will be the "stop-the-clock" for the individually scanned mail pieces. By comparing the date of the final postal mail processing scan with the actual receipt date for these pieces, the external service measurement contractor can calculate a factor for the actual service performance of the last mile for Standard Mail flats.

This factor will be combined with the Intelligent Mail data to form end-to-end service performance estimates.

5.4 Standard Mail Carrier Route Flats and Saturation Letters

For carrier route flats and saturation letters, the primary induction method is Sectional Center Facility or Delivery Unit dropped bundles and saturation trays. Carrier route flats represented 12.29% of the total mailstream in FY 2006. Due to the distinct characteristics of carrier route flats and saturation letters, the Postal Service is proposing a measurement approach specific to these mail types.

5.4.1 Adoption Rules

In order to be included in service performance measurement, Presort saturation letter mailers must provide electronic mailing information and use the Intelligent Mail series of barcodes. Currently, mailers are not required to print a barcode on carrier route flats.

Starting in January 2009, mailer use of IMBs will be required for automation discounts and mailer adoption is expected to rise substantially during the weeks immediately prior to the effective date. Furthermore, as described in the previous section, non-saturation carrier route flats will migrate to automated processing, and mailers will be required to pre-apply IMBs to facilitate automated sequencing. Over 6.5 billion Standard Mail carrier route flats are expected to have IMBs by January 2009. This growth in IMB and electronic mailing information adoption will provide sufficient volume and representation of the mail category to enable external measurement. The estimates for mailer adoption of the IMB and electronic mailing information are January 25% of Standard Mail carrier route flats and saturation letters; and January 50% of Standard Mail carrier route flats and saturation letters.

5.4.2 "Start-the-Clock"

Mailers are required to prepare mail with IMBs and submit electronic mailing information listing the IMBs used. Mail is verified to ensure it meets mail preparation criteria. Mail that does not meet mail preparation standards will be excluded from service performance in order to ensure that the system produces a valid, reliable measurement score. Drop shipment mailers create appointments for Standard Mail in FAST at designated facilities providing advance notification of the mail profile including arrival times. At sites that are equipped with scanners, containers with Intelligent Container barcodes will be scanned to

record arrival times. At other sites, the “start-the-clock” will be the documented arrival time at the Postal Service unit. Mail arrival times and mail preparation quality information will be made available to mailers.

5.4.3 “Stop-the-Clock”

As with non-carrier route Standard Mail flats, carrier route flats with IMBs will be scanned by external reporters to “stop-the-clock.” However, unique barcodes are not required on carrier route or saturation flats. Though the Postal Service expects an increased adoption of IMBs on these pieces as automation of current carrier route flat mail base increases, there will likely be a portion without unique barcodes on each piece. The Postal Service is exploring methods for external reporters to capture the “stop-the-clock,” such as encouraging mailer adoption of the IMBs for this mail category or through the application of alternate barcodes that will allow postal delivery unit personnel to “stop-the-clock” via scanning. As a contingency, the external service measurement contractor will be required to train reporters to identify carrier route flats mail and have them report delivery of such pieces without an IMB scan. These data will be sent to the external reporting system and will be the “stop-the-clock” for the individual mail pieces. The external service measurement contractor will calculate the service performance for the pieces that go to the external reporters.

5.5 Standard Mail Saturation Flats

The primary induction method for saturation flats are Sectional Center Facility or Delivery Unit dropped bundles. Due to the distinct characteristics of saturation flats, the Postal Service is proposing a measurement approach specific to this mail.

5.5.1 Adoption Rates

In order to be included in service performance measurement, Standard

Mail saturation flats mailers must provide electronic mailing information.

5.5.2 “Start-the-Clock”

The “start-the-clock” for Standard Mail saturation flats will be the documented arrival time at the Postal Service unit.

5.5.3 “Stop-the-Clock”

Unique barcodes are not required on saturation bundled flats. The Postal Service is exploring methods for external reporters to capture the “stop-the-clock,” such as encouraging mailer adoption of the IMBs for this mail, or through the application of alternate barcodes that will allow postal delivery unit personnel to “stop-the-clock” via scanning. As a contingency, the external service measurement contractor will be required to train its reporters to identify saturation flats and to have those reporters record delivery of such pieces without an IMB scan. These data will be sent to the external reporting system and will be the “stop-the-clock” for the individual mail pieces. The external service measurement contractor will calculate the service performance for these pieces that go to the external reporters.

5.6 Standard Mail Parcels

Many Presort Standard Mail parcel shippers chose to purchase special services such as Delivery Confirmation for their mail. For reporting purposes, performance results will be calculated by the Postal Service then sent to the external measurement contract for inclusion into the Standard Mail aggregated results. Standard Mail parcels represent 0.3% of the total mailstream, and 9% of Standard Mail parcels have Delivery Confirmation service. This sample size is more than adequate for service performance measurement of this mail category.

5.6.1 Adoption Rates

Many Presort mailers already meet the electronic mailing information requirements necessary for performance measurement. The Postal Service plans

to expand internal Delivery Confirmation sampling processes that verify shipment contents and the accuracy of the electronic mailing information. As verification becomes more prevalent, the volume of parcels that are measured will increase.

5.6.2 “Start-the-Clock”

The “start-the-clock” for Standard Mail parcels will be the documented arrival time at the Postal Service unit. For mail that is presented at the BMEU, the acceptance of the mailing will be used as the “start the-clock” as long as the mailing meets the preparation requirements.

5.6.3 “Stop-the-Clock”

Postal delivery personnel scan Delivery Confirmation barcodes upon delivery of parcels for which Delivery Confirmation service has been purchased. They can denote the delivery or attempted delivery, either of which will serve to “stop-the-clock.”

5.7 Reporting for Standard Mail

5.7.1 Quarterly Reporting

The Postal Service proposes quarterly reporting for Standard Mail that will measure service performance by administrative district separately for destination entry mail and end-to-end mail. Reporting destination entry mail and end-to-end mail separately by day significantly expands the number of performance measures reported and the number of external reporters required. The proposed measurements provide ample detail to assess the quality of service without becoming cost prohibitive for the Postal Service.

The quarterly reports will provide service performance scores for letter, flat, and parcel-shaped Standard Mail. The Postal Service will send performance data for Standard Mail parcels to the external service performance contractor for consolidated reporting purposes.

The proposed quarterly report format for Standard Mail is as follows:

TABLE 5—A¹.—QUARTERLY SERVICE PERFORMANCE FOR STANDARD MAIL; SAMPLE QUARTERLY REPORT FORMAT FOR STANDARD MAIL

District	Destination entry on-time (percent)	End-to-end on-time (percent)
CAPITAL METRO AREA	XX	XX
Baltimore District	XX	XX
Capital District	XX	XX
South Carolina District	XX	XX
Greensboro District	XX	XX
Mid-Carolinas District	XX	XX
No. Virginia District	XX	XX

TABLE 5-A¹.—QUARTERLY SERVICE PERFORMANCE FOR STANDARD MAIL; SAMPLE QUARTERLY REPORT FORMAT FOR STANDARD MAIL—Continued

District	Destination entry on-time (percent)	End-to-end on-time (percent)
Richmond District	XX	XX

¹ For purposes of publication, the reference to Figure 7 in the Proposal has been changed to Table 5-A.

The mail variance for Standard Mail pieces will be reported separately with the percentage of mail that is delivered within one-day, two-days, and three-days of the applicable standard. The proposed quarterly report format for Standard Mail variance is as follows:

TABLE 5-B¹.—QUARTERLY SERVICE PERFORMANCE FOR STANDARD MAIL—MAIL VARIANCE; SAMPLE QUARTERLY REPORT FORMAT FOR STANDARD MAIL VARIANCE²

	Destination entry			End-to-end		
	Within +1-day (percent)	Within +2-day (percent)	Within +3-day (percent)	Within +1-day (percent)	Within +2-day (percent)	Within +3-day (percent)
CAPITAL METRO AREA	XX	XX	XX	XX	XX	XX
Baltimore District	XX	XX	XX	XX	XX	XX
Capital District	XX	XX	XX	XX	XX	XX
South Carolina District	XX	XX	XX	XX	XX	XX
Greensboro District	XX	XX	XX	XX	XX	XX
Mid-Carolinas District	XX	XX	XX	XX	XX	XX
No. Virginia District	XX	XX	XX	XX	XX	XX
Richmond District	XX	XX	XX	XX	XX	XX

¹ For purposes of publication, the reference to Figure 8 in the Proposal has been changed to Table 5-B.

² Destination Entry includes DBMC, DSCF, DDU.

5.7.2 Annual Reporting

The Postal Service proposes reporting a national aggregate measure for the percentage of Standard Mail delivered on time. This Annual Compliance Report includes letter, flat, and parcel-

shaped Standard Mail and consists of a weighted average for each Standard Mail segment that allots weight based on the volume of mail in each district. If the segments are not representatively distributed, the weighting will ensure

that each district counts for the appropriate portion of the national aggregate.

The proposed report format for Standard Mail Annual Compliance Report is as follows:

TABLE 5-C¹.—ANNUAL COMPLIANCE REPORT; SAMPLE ANNUAL REPORT FORMAT FOR STANDARD MAIL

Mail class	Goal	On-time (percent)
Standard mail	XX	XX

¹ For purposes of publication, the reference to Figure 9 in the Proposal has been changed to Table 5-C.

5.7.3 Statistical Validity

The Postal Service anticipates that 25% of Standard Mail will have an IMB and be measurable by January 2009. Using this adoption rate, the average

district will have approximately 4,750 pieces per quarter upon which to base the last mile factor estimates. At 50% IMB coverage, the volume increases to 9,500 pieces per quarter on average. Precision is affected by the last mile

factor estimate and mailer adoption of the IMB and electronic mailing information. The Postal Service anticipates a precision between +/- 0.5% and +/- 0.9% as illustrated in the table below.

TABLE 6.—PRECISION FOR STANDARD MAIL

	Confidence interval (percent)	Last mile factor estimate (percent)	Coverage of IMB + electronic mailing information (percent)	Precision (percent)
Standard Mail	95	3	25	+/- 0.75
		3	50	+/- 0.5
		5	25	+/- 0.9
		5	50	+/- 0.7

The assumption of last mile factor estimates in the 3–5% range for Standard Mail service is based on the mix of letter and flat volumes, and is an estimate at this point, which can be refined when data is available.

It should also be noted that the last mile factor is one piece of the overall service performance estimate, with the performance of the acceptance to final processing scan being the other. The availability of billions of data records to sample from to form these estimates means that we can economically take large samples for individual report cells (e.g. Baltimore SCF-entry Standard Mail, Chicago 3-day First-Class Presorted Mail). The estimated precision levels will be shared with the PRC during the development process.

In 2009, the performance of an estimated 2.7 million Standard Mail parcels will be sampled for end-to-end service measurement, representing 9% of these parcels. While this represents low usage of Delivery Confirmation service, it is still representative of the population and, hence, provides an acceptable basis for service performance measurement.

6. Periodicals

6.1 Background

Periodicals represented just over 4% of the overall mail volume in FY 2006,²¹ with 9 billion mail pieces. Periodicals consist of letters and flats, most of which are destination dropped. The Postal Service will use the same measurement approach for both letters

and flats. Since IMB and electronic mailing information adoption for Periodicals is projected to be slower than for Standard Mail and First-Class Mail, the Postal Service will use as an interim approach for performance measurement while IMB and electronic mailing information adoption rates grow. The interim approach relies on external reports generated by Red Tag and DelTrak, which conduct performance research independently.

6.2 Periodicals Letters and Flats

All Periodicals are bulk entry, and the vast majority of the volume is flats. Table 7—Periodicals Mail Volume illustrates the make-up of Periodicals Mail. It also illustrates the percentage that each Periodicals shape represents within the overall mailstream.

TABLE 7.—PERIODICALS MAIL VOLUME

	Letters (percent)	Flats (percent)	Total (percent)
Periodicals	1.56	98.4	100.0
Overall Mailstream	0.07	4.2	4.25

6.2.1 Adoption Rates

Initial adoption of IMBs is projected to be slower for Periodicals than for First-Class Mail and Standard Mail. However, revisions to the technical specifications for the IMB and recent successful tests indicate the IMB is viable for Periodicals. With required use by January 2009, the conservative estimates for IMB and electronic mailing information adoption for Periodicals are:

FY 2009: 10.25% of letters and flats; and

FY 2010: 25+% of letters and flats.

These estimates equate to just over 2.2 billion Periodicals with IMBs and electronic mailing information that satisfy the conditions for performance measurement in FY 2009.

6.2.2 Statistical Validity

Different numbers of districts in each area, as well as varying mail volumes and mixes make it challenging to estimate the precision level for Periodicals at this time without the methodology for calculations being fully developed. The Postal Service will continue to work on trying to estimate what precision will likely be achieved, but do not currently have the data or assumptions necessary to make an educated estimate.

6.2.3 Interim Approach

In FY 2008, the Postal Service is evaluating two existing mailer-operated measurement systems, Red Tag and DelTrak, to measure Periodicals service performance. The “start-the-clock” for both systems is the mailer-reported induction time. For DelTrak, the transportation company hired by the mailer is required to enter the date/time when mail is dropped at a postal facility. The Postal Service has discussed adding the FAST appointment number to both DelTrak and Red Tag, so the reported “start-the-clock” could be audited in the same manner as is being planned for the long-term IMB-based approach. For Red Tag and DelTrak, the “stop-the-clock” is the delivery date reported online by the external reporters. These external reporters are mainly concentrated in postal administrative districts with high population density. Due to the limited number of reporters participating in these programs, data will only be statistically valid for the desired precision at a national aggregate level. In 2008, the Postal Service is conducting evaluations of these systems to ensure valid data can be available in FY 2008 and used for reporting in FY 2009.

6.2.4 “Start-the-Clock”

Mailers are required to prepare mail with IMBs and submit electronic mailing information listing the IMBs used. Mail is verified to ensure it meets mail preparation criteria. Mail that does not meet mail preparation standards will be excluded from service performance in order to ensure that the system produces a valid, reliable measurement score. Drop shipment mailers provide advance notification in FAST at designated facilities, providing mail profile, to include arrival times. At sites that are equipped with scanners, containers with Intelligent Container barcodes will be scanned to record arrival times. At other sites, the “start-the-clock” will be the documented arrival time at the Postal Service unit. Mail arrival times and mail preparation quality information will be made available to mailers.

6.2.5 “Stop-the-Clock”

External reporters will be equipped with handheld IMB scanners and will scan any IMBs on mail that they receive. These scan data will be sent to the external reporting system and will be the “stop-the-clock” for the individually scanned mail pieces. By comparing the date of the final postal mail processing scan with the actual receipt date for these pieces, the external service

²¹ http://www.usps.com/financials/_pdf/Fy2006_RPWsummaryreport.pdf.

measurement contractor can calculate a factor for the actual service performance of the last mile for Periodicals. This factor can be combined with the Intelligent Mail data to form the end-to-end service performance measure.

6.3 Reporting for Periodicals

6.3.1 Quarterly Reporting

In 2008, the Postal Service is reviewing Red Tag and DelTrak data for reporting at the national level on a quarterly basis for the reasons stated above. The Postal Service is currently in discussions with both the operators of DelTrak and Red Tag to develop and setup the system for combined measurement no later than FY 2009; however, the initial proposed format includes national aggregate scores for percent delivered on time, and within 1-day, 2-days, and 3-days of the applicable standard.

Due to the slower projected adoption rates for Periodicals, the Postal Service proposes reporting service performance

at a postal administrative area level in the interim until the volume of Periodicals with IMBs and electronic mailing information is reliable enough to provide statistically significant results at a lower level of aggregation.²² As IMB and electronic mailing information adoption grows and additional performance data become available, the granularity will increase and allow for reporting at the district level.

The proposed quarterly report format for Periodicals is as follows:

TABLE 7-A¹.—QUARTERLY SERVICE PERFORMANCE FOR PERIODICALS; SAMPLE QUARTERLY REPORT FORMAT FOR PERIODICALS

Area	On-time (percent)
Northeast Area	XX
New York Metro Area	XX
Eastern Area	XX

TABLE 7-A¹.—QUARTERLY SERVICE PERFORMANCE FOR PERIODICALS; SAMPLE QUARTERLY REPORT FORMAT FOR PERIODICALS—Continued

Area	On-time (percent)
Capital Metro Area	XX
Southeast Area	XX
Great Lakes Area	XX
Western Area	XX
Southwest Area	XX
Pacific Area	XX
NATIONAL	XX

¹ For purposes of publication, the reference to Figure 10 in the Proposal has been changed to Table 7-A.

The mail variance for Periodicals will be reported separately, reflecting the percentage of mail that is delivered within one-day, two-days, and three-days of the applicable standard. The proposed quarterly report format with the mail variance for Periodicals is as follows:

TABLE 7-B.¹—QUARTERLY SERVICE PERFORMANCE FOR PERIODICALS MAIL VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH MAIL VARIANCE FOR PERIODICALS

Area	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
Northeast Area	XX	XX	XX
New York Metro Area	XX	XX	XX
Eastern Area	XX	XX	XX
Capital Metro Area	XX	XX	XX
Southeast Area	XX	XX	XX
Great Lakes Area	XX	XX	XX
Western Area	XX	XX	XX
Southwest Area	XX	XX	XX
Pacific Area	XX	XX	XX
NATIONAL	XX	XX	XX

¹ For purposes of publication, the reference to Figure 11 in the Proposal has been changed to Table 7-B.

6.3.2 Annual Reporting

The Postal Service proposes reporting national measures for the percentage of Periodicals mail delivered on time.

Annual performance consists of a weighted average for each Periodicals segment that allots weight based on the volume of mail in every district. If the data are not representatively distributed, the weighting will ensure that each

district counts for the correct portion of the national aggregate.

The proposed report format for Periodicals Mail Annual Compliance Report is as follows:

TABLE 7-C.¹—ANNUAL COMPLIANCE REPORT; SAMPLE ANNUAL REPORT FORMAT FOR PERIODICALS

Mail class	Goal	On-time (percent)
Periodicals	XX	XX

¹ For purposes of publication, the reference to Figure 12 in the Proposal has been changed to Table 7-C.

7. Intelligent Mail Adoption

As reflected in the three sections above pertaining to First-Class Mail, Standard Mail and Periodical pieces, the

Postal Service intends to rely on Intelligent Mail Barcodes as a central component of service performance measurement. That is not the case for

Package Services. Accordingly, before discussing Package Services below in Section 8, it is worthwhile to emphasize several important considerations

²² A postal area is the administrative level directly below national headquarters and is

comprised of multiple subordinate postal districts. There are currently nine areas that span the entirety

of the postal network; each of the 80 districts is part of one area.

relevant to IMBs and electronic mailing information.

During initial discussions with the PRC, concerns were raised regarding IMB adoption. Mailer participation and adoption of the Intelligent Mail series of barcodes and associated electronic mailing information is critical to the success of service performance measurement. The Postal Service is evaluating strategies to encourage mailer adoption and has been collaborating with the industry to mitigate potential adoption obstacles.

7.1 Intelligent Mail Pilot

The Postal Service launched the Intelligent Mail system pilot with Presort First-Class Mail letters in September 2006. Following the success of the initial pilot, the program expanded to include Standard Mail letters and flats in July 2007. By the end of FY 2007, over 350 mailings and 18 million mail pieces from five large mailers and presort companies have been tracked and service measurement calculated. The Postal Service is using this pilot to demonstrate the mailers' ability to meet the mail make-up

requirements for service measurement and the Postal Service's ability to calculate measurement and Seamless Acceptance. When the service performance measurement system is implemented for letter and flat shaped mail, an external contractor will perform the calculations.

The pilot is in the process of expanding by increasing the volume of tracked mail pieces and adding more mail acceptance sites. As of October 2007, the average Intelligent Mail volume is forecasted to increase to 1.4 million pieces per day and 7 million per week. In January 2008, the addition of new mailers to the pilot will increase Intelligent Mail volume to an average of 7 million pieces per day and 35 million pieces per week. These volumes and mailer capabilities demonstrate the feasibility of the system.

7.2 Growth of Intelligent Mail Barcode (IMB) Adoption

A major component of the new system is the IMB. The IMB has only been available to mailers for a little over a year. The chart below illustrates the capability of the industry to provide the

volumes needed for measurement. The volumes show continued growth between June and September 2007. During the first year of use, postal mail processing equipment scanned over one billion IMBs. By September 2007, 135 medium-to-large-volume postal customers and data consolidators were using IMBs, and approximately 2% of scans on postal automation equipment were IMBs.

The following figure shows actual IMB scans for previous three months and an estimated trend line depicting the growth.

[Figure 13, captioned "Growth of IMBs," is not reproduced here. It can be viewed by accessing the pdf version of the Service Performance Measurement filing (December 5, 2007) posted on the Commission's web site.]

With the January 2009 requirement to utilize IMBs, there is a potential for IMB volumes to exceed 2 billion per week and 100 billion per year at that point.

The table below contains estimated mailer adoption rates of both the IMB and the electronic mailing information for performance measurement.

TABLE 8.—ESTIMATED MAILER ADOPTION RATES

	2009 (percent)	2010 (percent)
First-Class Mail:		
Presort Letters	25–50	50–75
Standard Mail:		
Letters	25–50	50–75
Flats	25–50	50–75
Periodicals:		
All	10–25	25–75

8. Package Services

8.1 Background

Package Services market-dominant products include single-piece Parcel Post, Bound Printed Matter, Library Mail, and Media Mail. Presort Package Services flat-shaped mail is mainly composed of oversized catalogs, which are operationally handled the same as Standard Mail flats. Accordingly, the Postal Service will measure and report on Presort Package Services flats using the same approach as Standard Mail.

Package Services parcel-shaped mail represented less than 0.3 of the overall mail volume in FY 2006.²³ Among

Package Services parcels, 16 are Retail and 84 are Presort.

Measurement sample size for parcels is significantly higher than for letter and flat-shaped mail. This is due to the inclination of mailers to purchase Delivery Confirmation on parcels, especially Presort parcels. For Retail parcel-shaped Package Services mail, the Postal Service captures the "start-the-clock" at the retail counter as part of the Delivery Confirmation payment transaction. The "stop-the-clock" is captured at delivery or attempted delivery. The result is an unparalleled scanning volume that creates a sample size more than sufficient for

performance measurement. For Presort Package Services parcels, mailers are currently required to submit electronic mailing information, which will be used for verification of shipment contents and mail preparation quality. As the verification processes are rolled out nationally, the volume of Presort parcels that are measured will increase.

Table 9—Package Services Parcel-Shaped Mail Volume illustrates the make-up of parcels by entry method. The table also illustrates the percentage that market-dominant Package Services parcel-shaped mail represents within the overall domestic mailstream.

²³ http://www.usps.com/financials/_pdf/Fy2006_RPWsummaryreport.pdf.

TABLE 9.—PACKAGE SERVICES PARCEL-SHAPED MAIL VOLUME

	Retail (percent)	Presort (percent)	Total (percent)
Package Services (Parcel-shaped)	16.0	84.0	100.0
Total Domestic Mailstream	0.04	0.23	0.27

8.2 Retail Package Services

The Postal Service currently measures service performance for Package Services Retail mail via Delivery Confirmation scans. This approach for measuring performance is working well, so there are no plans to change the measurement method for this mail. Retail Package Services mail represents 16.0% of all Package Services parcels, but only 0.04% of the total mailstream. Delivery Confirmation is included on 15% of such parcels, which represents a significant portion of the mail.

8.2.1 Statistical Validity

In 2006, over 14 million Package Services parcels included Delivery Confirmation service, representing 15% of these parcels. Since nearly all of these parcels are scanned at retail and delivery, this measurement is representative and, hence, provides an acceptable basis for service performance measurement.

In 2009, the performance of an estimated 2.7 million parcels will be sampled for service measurement, representing 9% of these parcels. While this represents low usage of Delivery Confirmation service, it is still representative of the population and, hence, provides an acceptable basis for service performance measurement.

8.2.2 “Start-the-Clock”

The “start-the-clock” for Retail Package Services mail occurs at the retail counter when the customer purchases Delivery Confirmation. When retail clerks apply the Delivery Confirmation forms to parcels, they scan the Delivery Confirmation form barcodes. The scans are captured via either a POS terminal at the retail counter or an Intelligent Mail handheld scanning device. Because the customer is present at the “start-the-clock” event and receives a time-stamped receipt with purchase, there are several validation points.

8.2.3 “Stop-the-Clock”

Postal delivery personnel scan the Delivery Confirmation barcodes upon delivery or attempted delivery, either of which will serve to “stop-the-clock.”

8.3 Presort Package Services

Presort Package Services mail represent 84.0% of all parcel-shaped Package Services mail volume and 0.23% of the total mailstream. Delivery Confirmation service is included on 21% of Presort Package Services mail pieces.

8.3.1 Adoption Rates

Many mailers already meet the electronic mailing information requirements necessary for performance measurement. The Postal Service plans to expand internal Delivery Confirmation sampling processes that verify shipment contents and the accuracy of the electronic mailing information. As verification becomes more prevalent, the volume of parcels that are measured will increase.

8.3.2 Statistical Validity

With the selected approach, the performance of an estimated 5 million parcels will be sampled for service measurement in FY 2009. Since the 21% of the mail category contains Delivery Confirmation service, concerns about the representativeness of the sample used to measure service performance are minimal.

8.3.3 “Start-the-Clock”

The “start-the-clock” for Presort Package Services is the documented arrival time at the Postal Service unit. Since it is not practical to scan every parcel in the Presort shipment, the Postal Service will instead scan a subset of the parcels to validate shipment content. For mail that is presented at the BMEU, the acceptance of the mailing will be used as the “start-the-clock” as long as the mailing meets the

preparation requirements. As with mailings that enter at the dock, the Postal Service will scan containers that have an Intelligent Mail Container barcode to validate mailer shipment content and the acceptance time.

8.3.4 “Stop-the-Clock”

Postal delivery personnel scan Delivery Confirmation barcodes upon delivery or attempted delivery, either of which will serve to “stop-the-clock” for service performance measurement.

8.4 Reporting for Package Services

8.4.1 Quarterly Reporting

The Postal Service proposes reporting quarterly on the percentage of mail that is delivered on time. The proposed quarterly report format for Package Services parcels is as follows:

TABLE 9—A¹.—QUARTERLY SERVICE PERFORMANCE FOR PACKAGE SERVICES; SAMPLE QUARTERLY REPORT FORMAT FOR PACKAGE SERVICES PARCELS

District	On-time (percent)
CAPITAL METRO AREA	XX
Baltimore District	XX
Capital District	XX
South Carolina District	XX
Greensboro District	XX
Mid-Carolinas District	XX
No. Virginia District	XX
Richmond District	XX

¹ For purposes of publication, the reference to Figure 14 in the Proposal has been changed to Table 9—A.

The mail variance for Package Services parcels will be reported separately with the percentage of mail that is delivered within one-day, two-days, and three-days of the applicable standard. The proposed quarterly report format with the mail variance for Package Services is as follows:

TABLE 9.—B¹.—QUARTERLY SERVICE PERFORMANCE FOR PACKAGE SERVICES MAIL VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH MAIL VARIANCE FOR PACKAGE SERVICES PARCELS

District	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
CAPITAL METRO AREA	XX	XX	XX

TABLE 9.—B¹.—QUARTERLY SERVICE PERFORMANCE FOR PACKAGE SERVICES MAIL VARIANCE; SAMPLE QUARTERLY REPORT FORMAT WITH MAIL VARIANCE FOR PACKAGE SERVICES PARCELS—Continued

District	Within + 1-day (percent)	Within + 2-days (percent)	Within + 3-days (percent)
Baltimore District	XX	XX	XX
Capital District	XX	XX	XX
South Carolina District	XX	XX	XX
Greensboro District	XX	XX	XX
Mid-Carolinas District	XX	XX	XX
No. Virginia District	XX	XX	XX
Richmond District	XX	XX	XX

¹ For purposes of publication, the reference to Figure 15 in the Proposal has been changed to Table 9—B.

8.4.2 Annual Reporting

The Postal Service proposes reporting national measures for the percentage of Package Services mail delivered on

time. Annual performance consists of a weighted average that allots weight based on the volume of mail in each district. If the data are not representatively distributed, the

weighting will ensure that each district counts for its fair share in the national aggregate. The proposed report format for Parcels Annual Compliance Report is as follows:

TABLE 9—C.1—ANNUAL COMPLIANCE REPORT; SAMPLE ANNUAL REPORT FORMAT FOR PACKAGE SERVICES

Mail class	Goal (percent)	On-time (percent)
Package Services	XX	XX

¹ For purposes of publication, the reference to Figure 16 in the Proposal has been changed to Table 9—C.

9. Special Services

9.1 Background

There are two categories of special services: ancillary and stand-alone. Ancillary special services are purchased in addition to the postage applicable to First-Class Mail, Periodicals, Standard Mail, and Package Services. These optional special services are varied in nature and include Delivery Confirmation, Signature Confirmation, Certified Mail, Return Receipt, Registered Mail, Collect on Delivery, Address Correction Service, and CONFIRM, among others. In contrast to ancillary special services, stand-alone special services are not contingent on sending or receiving a particular mail piece and include services such as P.O. Box Service and Address List Services.

9.2 Delivery Confirmation, Signature Confirmation, Certified Mail, Registered Mail, Electronic Return Receipt, and Collect on Delivery

A principal feature of these special services is the electronic provisioning of information by the Postal Service to the sender regarding the delivery status of a particular mail piece. That information may consist of confirmation that delivery was attempted, completed, or that a copy of the recipient’s signature was captured.

For a number of these services, delivery-related information is generated by postal scanning of mail

pieces at delivery units or during delivery. Before the completion of daily work shifts, postal delivery personnel dock their portable handheld scanners, so that delivery information pertinent to each scanned mail piece can be transmitted to appropriate postal data systems. New scanners currently being deployed allow for signatures to be captured at delivery and transmitted with the delivery information. Delivery information captured is then made available to the purchaser of the special service.

The service measurement for Delivery Confirmation, Signature Confirmation, Certified Mail, Registered Mail, electronic Return Receipt, and Collect on Delivery will use barcode scans to measure the time between when delivery information was collected and when that information was made available to the customer. When the delivery event scan is captured by the handheld scanner, a timestamp is associated to the scan; this is the “start-the-clock.” Once the device is docked, the delivery event scan information is transmitted to the centralized system where it is made available to customers and the posting time is recorded. The posting time is the “stop-the-clock.”

9.3 CONFIRM and Address Correction

Electronic information from the Postal Service to the sender is a key component for CONFIRM and automated Address Correction services

as well. CONFIRM scanning of mail and identification of automated address correction of applicable mail pieces are performed passively by automated mail processing equipment, which then transmit information to postal data systems. Information from these systems is made available to the purchaser of the special service.

The service measurement for CONFIRM and automated Address Correction will use the IMB to measure between the time scan information was collected and the time scan information was made available to the customer. When the piece is scanned, a timestamp is associated to the scan to provide the “start-the-clock.” When the scan information is transmitted to the centralized system and made available to customers, the posting time is recorded. The posting time is the “stop-the-clock.”

9.4 P.O. Box Service

Post Office Box Service will be internally measured using scanning technology to ensure timely availability of the mail by the posted “uptime.” The “uptime” is the time of day by which customers can expect to collect the mail that is committed for that day from their P.O. Box. A barcode will be placed in the P.O. Box Section that the Postal Service will scan after the distribution of this mail is complete. USPS will evaluate performance by comparing the actual completion of the box

distribution for this mail compared to the posted “uptime” for the location.

9.5 Insurance Claims Processing

The Customer Inquiry Claims Response System (CICRS) is an application used to process indemnity claims when insured articles are lost or damaged in the mail. For domestic claims, after the customer has completed the appropriate claim form, Postal Service employees complete the claim form and submit it for processing via the CICRS system. The claim is keyed into the system and the data is uploaded for processing. CICRS processing includes identifying claims that are not complete and require additional information from the customer. Correspondence is automatically generated and mailed to the customer requesting the missing information, which includes instructions with where to send the additional information. Once all information is received by CICRS, the system will proceed to the claims processing resolution phase. The date that all information is available for claims processing resolution is the “start-the-clock.” Depending on the value of the item lost or damaged, the claim may be automatically paid or denied by the system or sent for review by an adjudicator or consumer advocate. The adjudicator or consumer advocate decides if the claim should be paid, denied, or closed. The date either the

system or the adjudicator pays, denies, or closes the claim is the “stop-the-clock.”

9.6 Money Order Inquiry Processing

The Money Order Inquiry System (MOIS) is an application used to process Postal Money Order inquiries made by customers. After the customer has completed the appropriate form, Postal Service employees submit the form to a centralized unit for processing. The inquiry is scanned into the system and the data are uploaded for processing. MOIS processing includes verifying if the money order subject to inquiry has been cashed, by running the money order number against a database of cashed money orders. The system generates correspondence to customers regarding the status of the money order in question. The Postal Service intends to establish a service standard of 15 business days for this service. The “start-the-clock” is the date the Money Order Inquiry form is filed by the customer; the “stop-the-clock” is the date the money order inquiry information is issued to the customer by the Money Order Inquiry System.

9.7 Address List Services

Address List Services are available to customers seeking correction of the addresses or ZIP Codes on their mailing lists, or the sequencing of their address cards. Address Changes for Election Boards, corrections of addresses or ZIP

Codes on mailing lists, and Sequencing of Address Cards will use an external customer survey to measure customer satisfaction with the timeliness of receipt for their address list request. The service performance measure will include the customer satisfaction percentage.

9.8 Reporting

9.8.1 Quarterly Reporting

The Postal Service proposes reporting Delivery Confirmation, Signature Confirmation, Certified Mail, Registered Mail, electronic Return Receipt, and Collect on Delivery as an aggregate score on a quarterly basis by district. The service standards for these special services are aggregated as they all measure the time elapsed from when the delivery information is captured by the Postal Service until it is available to the customer. The Post Office Box Service will also be reported quarterly by district.

Since CONFIRM, Address Correction, Insurance Claims Processing, Money Order Inquiry Processing, and Address List Services are national services and are not linked with particular postal districts, they will be reported at a national level. The Postal Service proposes reporting quarterly on the percentage of those services that meet the service standard.

The proposed quarterly report format for Special services is as follows:

TABLE 9.—D ¹.—QUARTERLY SERVICE PERFORMANCE FOR SPECIAL SERVICES; SAMPLE QUARTERLY REPORT FORMAT FOR SPECIAL SERVICES REPORTED AT THE DISTRICT LEVEL

District	Delivery information special services combined score ² on-time (percent)	Post office box service on-time (percent)
CAPITAL METRO AREA	XX	XX
Baltimore District	XX	XX
Capital District	XX	XX
South Carolina District	XX	XX
Greensboro District	XX	XX
Mid-Carolinas District	XX	XX
No. Virginia District	XX	XX
Richmond District	XX	XX

¹ For purposes of publication, the reference to Figure 17 in the Proposal has been changed to Table 9—D.

² Includes Delivery Confirmation, Signature Confirmation, Certified Mail, Registered Mail, electronic Return Receipt, and Collect on Delivery.

The proposed quarterly report format for CONFIRM, Address Correction, Insurance Claims Processing, Postal

Money Order Inquiry Processing, and Address List Services is as follows:

TABLE 9-E.¹—QUARTERLY REPORT FOR SPECIAL SERVICES; SAMPLE QUARTERLY REPORT FORMAT FOR SPECIAL SERVICES REPORTED AT THE NATIONAL LEVEL

	Confirm on-time	Address correction on-time (percent)	Insurance claims processing on-time (percent)	Money order inquiry on-time (percent)	Address list services satisfied (percent)
NATIONAL	XX	XX	XX	XX	XX

¹ For purposes of publication, the reference to Figure 18 in the Proposal has been changed to Table 9-E.

9.8.2 Annual Reporting

Due to the numerous different measurements presented in the Special Service category, the Postal Service will develop an annual index or indices that consolidate the multiple measurements into an aggregate score(s). The exact approach is still being developed; however, the methodology is intended to be similar to the aggregate measurement used for the Customer Service Measurement (CSM).

10. Service Performance Measurement Validation

Every aspect of the service performance measurement system must reflect the highest degree of commitment to data integrity. Accordingly, the Postal Service will implement appropriate internal control processes in addition to the existing quality control processes in place for the external measurement systems (EXFC and IMMS). The existing measurement systems apply a proven and auditable approach to quality assurance backed

up by 17 years experience in mail performance measurement.

The Postal Service's proposed measurement approach includes internal validation processes to ensure data quality. Business rules will be defined to ensure that only mailings that do not meet mail preparation standards are excluded from service performance. In addition, service performance data will be made available to the Office of the Inspector General (OIG) for auditing purposes.

11. Appendix

11.1 Appendix I—Mail Volumes

	Single-piece				Presort						ALL	
	Letters		Flats		Letters		Flats		Parcels		2006 Total	
	2006 Total volume	2006 Total volume	2006 Total volume	2006 DelCon	2006 Total volume	2009 Adoption	2006 Total volume	2009 Adoption	2006 Total volume	2006 DelCon		2009 Sample
1. Total Mail Volume by Mail Classification (000's)**												
Adoption Rate						25%		25%			5%	
First-Class	38,127,475	3,405,121	350,979	14,208	54,550,677	13,637,669	993,985	248,496	189,216	89,782	4,489	97,617,453
Periodicals					140,682	35,171	8,880,202	2,220,051				9,020,884
Standard					61,971,735	15,492,934	39,911,201	9,977,800	576,623	54,473	2,724	102,459,559
Standard Carrier Route ..					9,561,885	2,390,471	26,087,072	6,521,768				36,648,967
Standard Non Carrier Route ..					52,409,850	13,102,463	13,824,129	3,456,032				66,810,602
Package Services		12,000	93,599	14,105			326,374	81,594	490,738	103,108	5,155	922,711

* Package Services excludes Parcel Select because it is not a market dominant product and Service Performance Measurement is not required.

** 2006 Total mail volume sums to 210 billion due the exclusion of Parcel Select because it is not a market dominant product.

2. Percent of Mail Class												
First-Class	39.058%	3.488%	0.360%	0.015%	55.88%	13.97%	1.02%	0.25%	0.19%	0.09%	0.26%	100.000%
Periodicals					1.56%	0.39%	98.44%	24.61%				100.000%
Standard					60.48%	15.12%	38.95%	9.74%	0.56%	0.05%	0.16%	100.000%
Standard Carrier Route ..					26.82%	6.71%	73.18%	18.29%				100.000%
Standard Non Carrier Route ..					78.45%	8.42%	20.69%	9.69%				100.000%
Package Services		1.301%	10.144%	1.529%			0.92%	0.23%	53.18%	11.17%	0.30%	100.000%

3. Percent of Total Mailstream												
First-Class	17.955%	1.604%	0.165%	0.007%	25.690%	6.422%	0.468%	0.117%	0.089%	0.042%	0.002%	45.971%
Periodicals					0.066%	0.017%	4.182%	1.045%				4.248%
Standard					29.184%	7.296%	18.795%	4.699%	0.272%	0.026%	0.001%	48.252%
Standard Carrier Route ..					4.503%	1.126%	12.285%	3.071%				16.788%
Standard Non Carrier Route ..					24.681%	6.170%	6.510%	1.628%				31.463%
Package Services		0.006%	0.044%	0.007%			0.154%	0.038%	0.231%	0.049%	0.002%	0.435%

	FY '09 volume per household*	FY '09 IMB/electronic mailing information adoption	FY '09 IMB volume per household	Volume at external reporters
4. Estimated Volume to External Reporters				
First-Class Mail—Single-piece	223	N/A	N/A	N/A
First-Class Mail—Presort	296	25%	74	740,000
Standard	760	25%	190	1,900,000
Periodicals	59	10–25%	5.9–14.75	59,000–147,500

*Per 2006 Household Diary Study

Table 1 includes the total mail volumes in FY 2006 for each mail category. This table also includes the projected IMB and electronic mailing information adoption rates for FY 2009 and the estimated volumes for each year. The estimated volumes for FY 2009 represent the total mail volumes that will be included in service performance measurement. All volumes are in thousands.

Table 2 depicts the percent of the mail class that the mail category represents. For instance, single-piece First-Class Mail letters make up 39.058% of all First-Class Mail.

Table 3 illustrates the percent of the total mailstream that the mail category represents. For example, single-piece First-Class Mail letters make up 17.955% of the entire mailstream.

Table 4 provides an estimate of the volume expected to be received by the external reporters in FY 09. The volumes were estimated as follows:

According to the 2006 USPS Household Diary Study, 1338 non-expedited mail pieces were received per U.S. household during the past year broken down into the volumes shown in FY '09 Volume Per Household;

Applying the Adoption Rates the result is FY '09 IMB Volume Per Household; and

Since there will be 10,000 external reporters, the total mail volume scanned by external reporters is shown in Volume @ External Reporters.

This estimate provides the number of pieces with end-to-end service measured by the external reporters in order to determine the factor differential for each mail category.

This analysis assumes uniform distribution of the mail for each mail class and mail shape. It also assumes reporters never miss a day reporting and no mail received by reporters is excluded due to improper mailer preparation.

11.2 Appendix II—Enablers

The success of the service performance measurement system relies on many efforts already underway at the Postal Service. The Postal Service expects completion of all components needed for service performance measurement by 2009.

11.2.1 Intelligent Mail Series of Barcodes

The Postal Service has recently introduced three new Intelligent Mail barcodes that enable the tracking of pieces, handling units, and containers as they move across the Postal Service network. Each of these barcodes are mailer applied and have a common customer identifier called the Mailer ID (MID) which can be used to associate the mail asset to the appropriate mailer. Each barcode also has a field that is used to support a serial number allowing mailers of any size to identify their mail assets.

The Mailer ID field within the Intelligent Mail barcodes is used to identify Mail Owners and/or Mailing Agents. The MIDs are assigned by the Postal Service to each Mail Owner and/or Mailing Agent that requests them. A MID can be a 9-digit field or a 6-digit identifier and is assigned based on the annual mail volume of the mailer. MIDs are used in the Intelligent Mail barcode, Intelligent Mail Tray barcode, and Intelligent Mail Container barcode. [Figure 19, captioned “Intelligent Mail Series of Barcodes” is not reproduced here. It can be viewed by accessing the pdf version of the Service Performance Measurement filing (December 5, 2007) posted on the Commission’s Web site.]

Intelligent Mail Barcode (IMB). The Intelligent Mail barcode is a 31-digit Postal Service barcode used to sort and track letters and flats. Unlike the POSTNET barcode that only contains the delivery point ZIP Code, the new Intelligent Mail barcode contains additional fields such as the Service Type Indicator, Mailer ID, and Serial Number. These fields expand the ability to track individual pieces and provide greater visibility into the mailstream. With this Intelligent Mail barcode, a mailer can request services such as tracking and address correction all in one barcode. The Intelligent Mail barcode allows the mailer to number mail so that each mailpiece in a mailing can be uniquely identified. It contains a Mailer ID field that allows the mailer to obtain data about mailings.

Intelligent Mail Tray Barcode. A cornerstone of the overall tracking strategy is the capability to uniquely

track handling units such as trays, sacks, and tubs. The tray label that is in use today is a 10-digit label used solely for routing. The new transitional label, the 10/24, has the old barcode on it and a new 24-digit Intelligent Mail Tray barcode. The 24-digit barcode includes routing information and data that can uniquely identify handling units and allows for the identification and tracking of the progress of trays, sacks, and tubs. The inclusion of the old 10-digit label is a transitional strategy as the Postal Service enhances all processing systems to read the new 24-digit barcode.

Ideally, mailpieces with the Intelligent Mail barcodes applied to them are placed into trays that are presorted and being routed to specific destinations. Using the Intelligent Mail Tray barcode allows the pieces within the tray to be linked to each specific tray prepared.

[Figure 20, captioned “Intelligent Mail Tray Barcode Affixed to Postal Service Mail Tray shows the Intelligent Mail Tray barcode affixed to a tray,” is not reproduced here. It can be viewed by accessing the pdf version of the Service Performance Measurement filing (December 5, 2007) posted on the Commission’s Web site.]

Intelligent Mail Container Barcode. The Postal Service is transitioning to a new pallet label for application on containers. The new pallet label contains the Intelligent Mail Container barcode allowing mailers to uniquely identify each container in a mailing. The Intelligent Mail Container barcode is applied to a customer’s containers that contain trays and sacks. This barcode is applied by mailers and scanned at induction and at other points of the mailstream by handheld scanners.

[Figure 21, captioned “Intelligent Mail Container Barcode Affixed to a Mailer Pallet shows the Intelligent Mail Container barcode affixed to a pallet,” is not reproduced here. It can be viewed by accessing the pdf version of the Service Performance Measurement filing (December 5, 2007) posted on the Commission’s Web site.]

Intelligent Mail package Barcode. The Intelligent Mail Package barcode conforms to different barcoding

standards to accommodate the package market, but its benefits are similar to those created by the Intelligent Mail barcode for letters and flats. It contains information about the package and the mailer, which is used to sort and track the packages.

[Figure 22, captioned "Intelligent Mail Package Barcode Affixed to a Parcel shows the Intelligent Mail Package barcode affixed to a parcel," is not reproduced here. It can be viewed by accessing the pdf version of the Service Performance Measurement filing (December 5, 2007) posted on the Commission's web site.]

11.2.2 Electronic Mailing Information

There are three forms of electronic mailing information transmission for letter and flat-shaped mail: Mail.dat®, Web Services, and Postage Statement Wizard®. All involve sending information to the Postal Service's *PostalOne!*® system. All three of these options provide customers the ability to submit electronic information about their mailings, which the Postal Service can use to generate the necessary documentation to support verification, payment, and "start-the-clock." This electronic information can also be used to automate payment processes using electronic payment options such as ACH Credit or Debit.

PostalOne! System. The *PostalOne!* system enables Intelligent Mail by serving as the single point of entry for all electronic mailing information used in service performance measurement to validate mail piece scan data. The *PostalOne!* system manages business mailing transactions and streamlines the mail acceptance process by facilitating the electronic exchange of mailing information between mailers and the Postal Service. This collaboration gives customers a streamlined process for mail entry, payment, tracking and reporting.

Customers select one of the electronic mailing information transmission methods (Mail.dat, Web Services, Postage Statement Wizard) and send the electronic information using the *PostalOne!* system. This information management system provides an electronic linkage between a customer's mailing information and Postal Service business mail acceptance and induction processes. The *PostalOne!* system translates this customer generated electronic information into mailing documentation. Thus, mailers are able to avoid the creation of paper based forms and use technology to manage their mailing data. *PostalOne!* can also use this information to automate payment processes using ACH Debit or

Credit payment methods. With the *PostalOne!* system, mailers have 24X7 access to their mailing documentation and financial transaction information.

Mail.dat®. Mail.dat is a composite file structure that was developed by the IDEAlliance® organization for the industry to communicate mailing information across the mail supply chain. Mail.dat files are sent electronically to the *PostalOne!* system where they are stored and used to generate documentation to support verification and payment.

Web Services. Web Services enables customers to submit mailing information using a Web Service over a secure connection (HTTPS) with the Postal Service. Web Services use a SOAP protocol to submit information in an XML format that ensures that the data can be sent and received by applications written in various languages and deployed on various platforms.

Postage Statement Wizard. The Postage Statement Wizard (PSW) is a tool that provides a secure way to submit a postage statement online using a *PostalOne!* account. The PSW verifies completed information for an online postage statement. The PSW automatically populates the permit holder section of the postage statement based on the account number provided. It guides the user through the items needed to complete the statement based on information provided. When entering mailing information through PSW, it automatically calculates the postage and validates the information entered. Once the postage statement is completed online, the electronic statements will be submitted directly to the acceptance unit.

There is one method of electronic mailing information for parcel-shaped mail—the Confirmation Services file. The Confirmation Services file is submitted to the Product Tracking System (PTS). Electronic mailing information is a requirement for Presort parcel mailers to qualify for the electronic rate option.

Product Tracking System. The Product Tracking System (PTS) provides tracking information for Confirmation Services, i.e., Delivery Confirmation and Signature Confirmation, as well as Express Mail. Parcel mailers create manifests and submit them electronically to the Product Tracking System. The electronic manifests are processed in PTS and then sent to *PostalOne!* for financial reconciliation.

Confirmation Services file. To qualify for the reduced rates of the electronic Confirmation Services option, mailers are required to send a file electronically

with a listing of all the barcodes and some related shipping information. The electronic file contains information about the mailer, the date and time of mailing, the entry facility, the tracking number, and the destination ZIP Code for each parcel. Delivery information about the mail pieces is made available electronically in extract files. The Delivery information includes an "electronic receipt" for each mail piece submitted and associated scan events. Payment for the postage is unaffected by this service.

11.2.3 Facility Access and Shipment Tracking (FAST)

The Facility Access and Shipment Tracking (FAST) system is an electronic appointment system that mailers use to schedule the deposit of mail at postal facilities. Customers may schedule appointments online using the FAST web site or they may submit appointment requests using the Transaction Messaging™ specifications submitted through *PostalOne!*/FAST Web Services. This convenient messaging protocol provides customers the opportunity to integrate the appointment scheduling process into their supply chain management software and receive information about their appointments from the Postal Service electronically. FAST takes into account mail shape (e.g., letters, flats, and parcels) and pallet presort-level information to maximize the capacity offered at each facility. All Periodicals, Standard Mail, and Package Services drop shipment customers are required to schedule appointments using FAST at designated facilities. First-Class Mail will be enabled in 2008.

11.2.4 Seamless Acceptance

Seamless Acceptance streamlines the business mail acceptance process by automating the Business Mail Entry (BME) mail verification processes for letter and flat mail. By applying unique barcodes on mail pieces, handling units and containers, and providing barcode information in electronic mailing information, Seamless Acceptance mailers support the automation of verification processes. Seamless Acceptance mail receives Postal Service mail-processing scans of the barcodes and the Postal Service uses the information gathered to verify the electronic mailing information submitted by the mailers and to determine mail preparation quality.

The business benefits envisioned from the implementation of Seamless Acceptance include, but are not limited to:

Increasing the quality of the mail and mailers' electronic mailing information by providing timely feedback to mailers through actionable mail quality reports;

Allowing mailers additional flexibility in selecting the timeframe and location of mail entry;

Improving the accuracy of the verification process through analysis of a larger percentage of mail pieces of a mailing;

Introducing more accountability for all participants by basing verification results on mail processing data instead of clerk performed tests;

Enhancing automation compatibility based on results from Postal Service mail processing equipment;

Identifying and eliminating systemic problems in Postal Service mail handling and mailer preparation;

Providing near real-time visibility for both mailers and the Postal Service;

Decreasing cycle time and reduce costs across the mail supply chain;

Increasing amount of time Postal Service clerks are available for customer service; and

Reducing/removing sampling procedures during verification.

11.2.5 Mail Processing Equipment

As mail processing equipment sorts a mail piece, information is gathered from machine scans to determine the piece's location within the postal network. All major mail processing equipment has the ability to scan the Intelligent Mail barcode on mail pieces during processing. The machines with mail piece barcode scanning capability include:

Letters: Delivery Barcode Sorters (DBCS), Mail Processing Barcode Sorters (MPBCS), and Carrier Sequence Barcode Sorters (CSBCS);

Flats: AFSM 100 and UFSM 1000;²⁴

Packages: Automated Package Processing System (APPS) and Small Package Bundle Sorter (SPBS).

11.2.6 Intelligent Mail Device (IMD)

The Intelligent Mail Device (IMD) is an ergonomically designed, handheld computer capable of running mail processing applications and scanning barcodes. The Postal Service has rolled out new Intelligent Mail Devices to carriers, mail handlers, and drivers. The Intelligent Mail Devices currently in the field can read IMBs, but will need a software upgrade in order to collect data using new start- and "stop-the-clock" event codes, parse the data in the codes,

and make that data available to other USPS systems.

11.2.7 Intelligent Mail Data Acquisition System (IMDAS)

IMDAS has replaced the handheld scanners that carriers, mail handlers, and drivers formerly used to scan IMBs on handling units and Delivery Confirmation forms.

The Intelligent Mail Data Acquisition System (IMDAS) program is implementing a standardized hardware and software platform for mobile data collection and data transfer through scanning technology. The IMDAS program promotes a family of handheld data acquisition devices to support the current scanning needs of Postal Service products and services, as well as support the future scanning needs of Intelligent Mail products and services. The IMDAS supports tracking mail pieces, unit loads, transportation, inventory and performance operations using a standardized family of mobile devices. This program includes replacing the current Mobile Data Collection Device (MDCD) scanners, which postal personnel use for delivery operations, dock operations, and customer service operations. The Intelligent Mail Data Acquisition System was developed using integrated architecture and infrastructure that are consistent with industry best practices. The IMDAS yields an accurate, reliable, and stable flow of data, and is required to interface successfully with the existing postal infrastructure.

III. Ordering Paragraphs

It is ordered:

1. Docket No. PI2008-1 is established for the purpose of receiving comments regarding the Postal Service's proposed service performance measurement systems.

2. Interested persons may submit written comments on any or all aspects of the Postal Service's proposed service performance measurement systems and reporting systems by no later than January 18, 2008.²⁵

3. Reply comments may be filed by no later than February 1, 2008.²⁶

4. Kenneth E. Richardson, acting director of the Office of the Consumer Advocate, is designated to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

(Authority: 39 U.S.C. 3691(b)(1)(D) and (b)(2)).

Steven W. Williams,

Secretary.

[FR Doc. E7-24528 Filed 12-19-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56947; File No. SR-Amex-2007-134]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Commentary .10 to Amex Rule 584 To Delete the Reference to the Weekly Bulletin

December 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 6, 2007, the American Stock Exchange LLC ("Amex" or the "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 prepared substantially by the Amex. The Amex filed the proposed rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt changes to Commentary .10 to Amex Rule 584 to delete the reference to the Weekly Bulletin therein. The text of the proposed rule change is available at <http://www.amex.com>, the principal offices of the Amex, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any

²⁴ UFSM 1000 can read barcodes printed at original specifications and will be updated in early 2008 to read barcodes printed according to the revised specifications.

²⁵ Changed from January 7, 2008 (per Order No. 48) by Order No. 49.

²⁶ Changed from January 18, 2008 (per Order No. 48) by Order No. 49.

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).

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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .10 to Amex Rule 584⁵ to delete the reference to the Weekly Bulletin therein. Commentary .10 to Amex Rule 584 requires that all information filed with the Exchange pursuant to Rule 584 be made public in the lists of the meetings of stockholders in the Weekly Bulletin.

The Weekly Bulletin, published by the Exchange, currently contains information on the seat market, admission of members, listings and stockholder meetings. In deleting the reference to the Weekly Bulletin in Commentary .10 to Amex Rule 584, the Exchange seeks the flexibility of posting the Weekly Bulletin and/or the information contained therein on the AmexTrader Web site (<http://www.amextrader.com>) for a wider circulation.⁶

The Commission previously approved an Exchange proposal to delete references in Amex's Constitution and Rules to the requirement that membership, corporate governance, stockholder meetings and disciplinary information be published in the Weekly Bulletin.⁷ However, Commentary .10 to Amex Rule 584 still contains a reference to the Weekly Bulletin. Therefore, the Exchange proposes to delete the reference to the Weekly Bulletin in Commentary .10 of Amex Rule 584 in order to harmonize this rule with the remainder of Amex's Constitution and Rules.

The Exchange does not believe that this proposal will engender any controversy as the information contained in the Weekly Bulletin will continue to be available to its existing constituency and will be made available to the general public through the AmexTrader Web site.

⁵ Amex Rule 584 specifies requirements for members and member organizations regarding proxy contests involving unregistered companies.

⁶ In the instance that a person does not have access to the Internet, the list of meetings of stockholders will be made available upon request.

⁷ See Securities Exchange Act Release No. 41840 (Sept. 7, 1999), 64 FR 50128 (Sept. 15, 1999) (SR-Amex-99-31).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),¹⁰ the Amex provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

The Amex has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission hereby grants the Amex's request¹³ and believes that

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the

waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it previously approved an Exchange proposal to delete references in the Amex's Constitution and Rules to the requirement that membership, corporate governance, stockholder meetings and disciplinary information be published in the Weekly Bulletin¹⁴ and that the proposed amendment conforms the language in Commentary .10 of Amex Rule 584 with the remainder of the Exchange's Constitution and Rules by deleting the reference to the Weekly Bulletin. In addition, the Commission believes that waiver of the 30-day operative period would enable the Exchange to implement the proposal as quickly as possible, and thereby provide for greater uniformity among the Amex's Constitution and Rules. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-134 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-2007-134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ See note 7, *supra*.

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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 publicly available. All submissions should refer to File Number SR-Amex-2007-134 and should be submitted on or before January 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-24693 Filed 12-19-07; 8:45 am]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56959; File No. SR-Amex-2007-46]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Require Specialists To Yield Orally Agreed Upon Proprietary Trades to Later-Arriving Customer System Orders

December 13, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on May 10, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On December 4, 2007, Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 950-ANTE to require specialists to yield proprietary transactions in options to later arriving off-Floor customer system agency orders that enter and are displayed on the specialist's Book ("Agency Orders") and could take the specialist's place in the proprietary transaction.

The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and <http://www.cboe.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex states that ANTE Public Orders Ahead Block ("Block") is the functionality designed to assist specialists in complying with their agency obligations, and prevents specialists from trading ahead of a public customer order in violation of the priority rules, unless the trade is marked as meeting one of the proposed specified exceptions in the Exchange's rules.

The Amex is proposing to add new Commentary .04 to Amex Rule 950-ANTE (I) to codify these exceptions to the requirement that options specialists yield proprietary transactions to later arriving Agency Orders that enter and are displayed on the options specialist's

Book and could take the options specialist's place in the not yet reported proprietary transaction.

Exchange rules require specialists to always yield to customer orders on the Book when trading in their specialty securities for their dealer account. When no other interest is present on the specialists' Book, specialists may trade for their own account with interest represented on the Book or in the trading crowd.³

The Exchange proposes to add Commentary .04 to paragraph (I) of 950-ANTE to specify certain limited exceptions when options specialists are not required to yield to customers orders on the Book when trading for their own account. These exceptions are as follows:

(i) If the later arriving order is an off-Floor system order for the account of a broker-dealer (including, but not limited to, a foreign broker-dealer, Registered Options Trader, Supplemental Registered Options Trader, Remote Registered Options Trader, or Away Market Maker);⁴

(ii) If the specialist's trade for his or her dealer account is a trade effected pursuant to Rule 950-ANTE (d), Commentary .01 or Commentary .07(b);

(iii) If the specialist's trade for his or her dealer account is a report of principal participation on an order sent to another market center through Options Intermarket Linkage and the system order arrived after the specialist sent the Linkage order;

(iv) If the specialist's trade for his or her dealer account is in connection with a P/A order sent to another market center through the Options Intermarket Linkage; or

(v) If the specialist's trade for his or her dealer account is a correction of a bona fide specialist error.

These exceptions are discussed in more detail below:

Priority Over Accounts of Broker-Dealers

Because, pursuant to Amex Rule 950-ANTE, orders for the accounts of broker-dealers do not have priority over specialists acting as principal, the Block allows for the specialist not to yield to such orders.

Complex or Combination Trade Priority

Specialist participation in a transaction effected pursuant to Rule

³ See Amex Rule 150(b), Rule 155 and Rule 170 generally made applicable to options by Rule 950-ANTE (a) and (I).

⁴ Pursuant to 900-ANTE (b)(48), an "Away Market Maker" is a market maker, as defined in Section 3(a)(38) of the Act, in options registered as such on such other national securities exchange.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

950-ANTE (d), Commentary .01 or Commentary .07(b) is not subject to the requirement to yield, consistent with the limited priority exceptions that already exists for certain transactions, such as those involving complex or combination orders.⁵

The specialist will not be required to yield to Agency Orders if the specialist's trade for his or her dealer account is: (1) A complex trade such as a spread, straddle, ratio, or combination transaction pursuant to Commentary .01 to Rule 950-ANTE (d); or (2) if the specialist is participating in a "split price priority" transaction, or a pair of purchase or sale priority transactions.

When a specialist participates in a trade with a broker or market maker that constitutes a complex trade (spread, straddle, etc.), the specialist must enter the execution into the trading system (ANTE). Whenever the specialist participates in a transaction in ANTE where he enters his interest and it is on the same side of a customer order at the same price level, the quantity going to the specialist is automatically swapped with that requested by the customer order. In the case where the transaction is a spread trade, the specialist can click a button labeled "spread" to indicate the trade is a spread trade, and the system will not automatically swap the quantity allocated to the specialist with that of the customer thereby allowing the specialist to receive the execution. For example:

—A Floor Broker walks into the crowd with a spread trade request.

1. Buy 10 Intel Jan 25 calls at \$5 (Amex quote = 4.90×5).
2. Sell 10 Intel Jan 25 puts at \$1 (Amex quote = 0.95×1.05).

—There is a customer order to sell 10 contracts at \$5, which could be an existing order or one that comes in after the Floor Broker enters the crowd. The specialist executes the spread trade buying 10 Jan 25 puts @ 1 and selling 10 Jan. 25 calls @ 5. The specialist enters the transaction into the trading system and indicates the trade is a spread trade by clicking the spread button.

In the foregoing, when entering the transaction into the system, if the specialist does not click the "spread" button, the 10 contracts allocated to him at \$5 will be swapped with the customer order. However, in the above example, because the specialist indicates the spread transaction by clicking "spread",

⁵ The priority exception requires the specialist to improve the market on one "leg" of the complex trade, which must be marked as a "spread" transaction.

the quantity is allocated to the specialist and not to the customer.

The processing for split price priority is the same as that for complex trades.⁶ If the specialist indicates both executions are split price executions by clicking the "spread" button, the trading system will allow the transaction to process ahead of any customer orders on the book.⁷ For example:

—Floor Broker walks into the crowd with an order to buy 100 @ \$5 or, an order comes into the system to buy 100 @ \$5.

1. Amex quote = 4.80×5 .
2. There is a customer order to sell 10 at \$5.

—The specialist executes the buy order 50 @ \$4.90 (this price is better than the ABBO and customer orders price) and 50 @ \$5, against the specialist account or he enters a trade for the specialist account to match against the Brokers order—50 @ \$4.90 and 50 @ \$5.

When the specialist enters the transaction into the trading system, he or she can indicate the split price trade by clicking the "spread" button just as he or she does for the execution of complex trades. By doing so, the system allows the quantity allocated to the specialist to remain with the specialist. As noted above, if the specialist does not click on the "spread" button, then 10 of the 50 contracts allocated to the specialist will be allocated to the customer instead.

Certain Linkage Transactions

The Block will not be triggered if: (1) The specialist's trade for his or her dealer account is a report of principal participation on an order sent to another market center through Options Intermarket Linkage prior to the time the Agency Order was displayed on the Book;⁸ or

(2) The transaction is in connection with a P/A order sent to another market center through the Options Intermarket Linkage.

A specialist who participates as principal on an order sent to another

⁶ Pursuant to Commentary .07(b) to Amex Rule 950-ANTE (d), this exception applies to orders of 100 contracts or more.

⁷ The Exchange states that when a specialist marks a trade as "spread", it is reported to the tape as a spread transaction although the trade may not necessarily be a spread trade. FINRA conducts surveillance to monitor whether specialists are inappropriately marking trades as spread, when the trade does not qualify for such treatment pursuant to Amex Rule 950-ANTE (d), Commentaries .01 or .07(b).

⁸ The Block will be triggered if an eligible Agency Order is displayed on the Book at the time the specialist attempts to send a principal order to another market.

market center through Options Intermarket Linkage is not required to yield to an Agency Order that arrives subsequent to the time the specialist sent a principal linkage commitment, but prior to receiving a report of execution back. In this case, the specialist has time priority to the Agency Order since the proprietary trade has already taken place. Furthermore, a specialist is not required to yield to an Agency Order where a specialist is obligated to trade with an order on the book on the basis of receiving an execution report of a "P/A" order (as defined in Amex Rule 940(b)(10)(i)), sent to another market center through Options Intermarket Linkage. Under applicable linkage rules, this trade was done expressly on behalf of a customer order, and the specialist must relinquish the position to the customer upon receiving the execution report.⁹ The exception ensures that the specialist maintains this obligation.

Correction of a Bona Fide Error

Specialist options errors are processed outside of the ANTE trading system by Exchange staff through Exchange error corrections facilities. In circumstances in which a specialist must correct a *bona fide* error, if the correction involves principal participation and an Agency Order is present on the Book at the time of the correction, there is no requirement that the specialist yield to later arriving customer Agency Orders. All errors are appropriately documented and reported to the Exchange, by the Service Desk, in a manner designated by the Exchange.

Although ANTE has systematized the functionality required by the proposed exceptions codified in proposed Commentary .04 to Amex 950-ANTE (l), the Exchange wishes to advise that there is an inherent limitation in fully systematizing this functionality. The ANTE trading system combines the electronic routing, quoting, and execution of options orders with on floor auction market trading in options. In this regard, specialists can and will be involved in orally consummated orders. Often these "crowd trades" involve a number of registered options traders as contra-parties to the transaction together with the specialist. To enable timely trade reporting, the specialist may report a crowd transaction without all of the names of the contra-parties reflected, and shortly thereafter submit an Action without an Order (known as an "AWO") to provide the names of all counter-parties to the trade. If the specialist is a party to the

⁹ See Amex Rule 941(b).

trade, his participation must be reported on either the trade report or the AWO. The trading ahead block will replace his participation if a later arriving off-floor customer agency order is entitled to participate in the specialist's place. However, it is theoretically possible that if there was a customer agency order on the specialist book at the time of the trade report that was cancelled prior to the AWO, the trading ahead block would not be able to replace the specialist's participation with the customer. Similarly though, a customer order could be entered subsequent to the trade report but prior to the AWO, and in such a situation the specialist's participation will be replaced.

Because the specialist has the ability to delay reporting his participation in a transaction there is of course the potential that a specialist may inappropriately use this ability to avoid being replaced by a customer order. While the Exchange acknowledges that this type of inappropriate action could happen, a specialist delaying the reporting of his participation to avoid being replaced by a customer order runs the risk that the customer order does not cancel or otherwise get executed, or the risk that additional customer orders arrive that could also replace the specialist's participation. However, FINRA conducts routine surveillance to identify situations in which a specialist traded ahead of an order by the use of an AWO to report his participation after the reporting of a transaction. The Exchange states that to date, this surveillance indicates that specialists generally report their proprietary participation at the time of the trade report, rather than through a later AWO. Moreover, even when a later AWO is used, FINRA has only identified two possibly valid trading ahead alerts, which are currently under review. To the extent violative conduct is found to have occurred, the Amex will take appropriate disciplinary action against the specialist in question.

The Exchange notes that the foregoing amendment to Commentary .04 to 950-ANTE(l) shall remain applicable until the Amex Book Clerk ("ABC") program has been fully implemented.¹⁰ The ABC program eliminates the obligation and ability of Exchange options specialists to execute orders as agent in his or her assigned options classes. Rather, an Exchange employee or independent contractor, the ABC shall be responsible for maintaining and operating the customer limit order book and display

book. The Amex anticipates a six month rollout period of ABC program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act¹¹ in general and furthers the objectives of section 6(b)(5) of the Act¹² 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 regulating, clearing, settling, processing information with respect to and 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; and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers. Specifically, the Exchange believes that conforming the Exchange's rule text to the ANTE Public Orders Ahead Block functionality is consistent with the protection of investors and the public interest, and would sooner afford market participants the benefits that should flow from the proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-46 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-Amex-2007-46. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. 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-2007-46 and should be submitted on or before January 10, 2008.

IV. Commission Findings and Accelerated Approval

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹³ and, in particular, the requirements of section 6 of the Act.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁰ See Securities Exchange Act Release No. 56804 (November 16, 2007), 72 FR 66002 (November 26, 2007) (SR-Amex-2006-107).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and 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, because the proposed rule change modifies the Exchange's ANTE system to systematically prevent a specialist from trading ahead of public customer orders except in those limited circumstances that are enumerated in the proposed rule.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,¹⁶ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register** as the proposal does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. The Commission notes that the proposed rule change codifies the system changes made in response to certain undertakings made by the Amex.¹⁷ Moreover, the Commission believes that granting accelerated approval to this proposed rule change will allow these changes to be effective without delay and to remain in effect during the transition to the ABC program.¹⁸

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-Amex-2007-46), as amended, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24726 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56969; File No. SR-Amex-2007-53]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, and Notice of Amendment No. 3 to the Proposed Rule Change Relating to the Listing and Trading of the GreenHaven Continuous Commodity Index Fund

December 14, 2007.

On May 29, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² list and trade shares ("Shares") of the GreenHaven Continuous Commodity Index Fund ("Fund") pursuant to Commentary .07 to Amex Rule 1202. On July 31, 2007, Amex filed Amendment No. 1 to the proposed rule change, and on November 16, 2007, Amex filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 26, 2007 for a 15-day comment period.³ The Commission did not receive any comments regarding the proposal. On December 13, 2007, Amex filed Amendment No. 3 to the proposed rule change.⁴ This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56802 (November 16, 2007), 72 FR 65994 ("Notice").

⁴ Amendment No. 3 would amend the proposed rule change by: (a) Clarifying that only Reuters determines the composition of the Index (defined *infra*), and stating that Reuters: (i) considers information about changes to the Index and related matters to be potentially market-moving, material, and confidential; and (ii) has policies and procedures in place to ensure to prevent the use and dissemination of such information; (b) stating that the Web sites for the Fund and/or the Exchange will disseminate information the information discussed *infra* (including the composition of the portfolio of the Fund) to everyone at the same time; (c) adding information concerning halting of trading in the Shares; (d) adding information about applicable existing rules that would govern specialists' potential conflicts of interest; and (e) stating that the Information Circular (described *infra*) would discuss the regulatory jurisdiction over the physical trading of commodities or the futures contracts on which the value of the Shares is based, and that there is no regulated source of last sale information regarding physical commodities.

The text of Amendment No. 3 to the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at <http://www.amex.com>.

3 thereto, on an accelerated basis. Simultaneously, the Commission is providing notice of and soliciting comments from interested persons regarding Amendment No. 3.

I. Description

As described in the Exchange's proposal,⁵ the Fund's primary investment objective is to reflect the performance of the Continuous Commodity Total Return Index (the "Index" or "CCI-TR"), over time, less the expenses of the operations of the Fund and the Master Fund. The Master Fund will invest in a portfolio of exchange-traded futures ("Commodity Futures Contracts") on the commodities comprising the Index.⁶

GreenHaven Commodity Services LLC, a Delaware limited liability company, will serve as Managing Owner of the Fund and the Master Fund. The Managing Owner will serve as the commodity pool operator and commodity trading advisor of the Fund and the Master Fund. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission ("CFTC") and with the National Futures Association ("NFA").⁷

II. Commission Findings and Accelerated Approval

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of an exchange be designed, among other things, to promote just and

⁵ Substantially all of the assets of the Fund will be invested in the Master Fund. For a more detailed description of the Fund and Master Fund, including their structure, holdings, applicable exchange listing and trading rules, disclosure of pricing information, surveillance, and other regulation, see Notice at 65997-66001. Terms not otherwise defined herein have the same meaning as the meaning given in the Notice.

⁶ For information regarding the Commodity Futures Contracts, see Notice at 65996-65997.

⁷ As a registered commodity pool operator and commodity trading advisor with respect to both the Fund and the Master Fund, the Managing Owner is required to comply with various regulatory requirements under the Commodity Exchange Act and the rules and regulations of the CFTC and the NFA, including investor protection requirements, antifraud prohibitions, disclosure requirements, and reporting and recordkeeping requirements.

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See Securities Exchange Release No. 55507 (March 22, 2007).

¹⁸ See *supra* note 10 and accompanying text.

²⁰ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁰ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange represents that futures contract quotes and last sale information for the Commodity Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for the Commodity Futures Contracts is available by subscription from Reuters and Bloomberg. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for each Commodity Futures Contract are also available from the various futures exchanges on their Web sites as well as other financial informational sources. Further, the Web sites for the Fund and/or the Exchange, which are publicly accessible at no charge, will disseminate the following information to everyone at the same time: (a) The current NAV per Share daily and the prior business day's NAV per Share and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV per Share as of the time it is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against the NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (e) the Prospectus; (f) the composition of the portfolio of the Fund; and (g) other applicable quantitative information.

The Commission believes that the proposal to list and trade Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain from the Fund, prior to listing the Shares, a

representation that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, as mentioned above, the Exchange represents that the Web site disclosure of the portfolio composition of the Fund will be made to all market participants at the same time. Moreover, the Exchange states that: (1) Only Reuters determines the composition of the Index; and (2) Reuters (a) considers information about changes to the Index and related matters to be potentially market-moving, material, and confidential, and (b) has policies and procedures in place to ensure to prevent the use and dissemination of such information. Further, the trading of the Shares would subject to certain conflict of interest provisions set forth in Commentary .07(e) to Amex Rule 1202.¹¹ Additionally, Commentary .07(g)(3) to Amex Rule 1202 prohibits the specialist in the Shares from using any material nonpublic information received from any person associated with a member, member organization or employee of such person regarding trading by such person or employee in the Index commodities, related futures or options on futures, or any other related derivatives.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. The Exchange states that trading in the Shares will be halted in the event the market volatility halt parameters set forth in Amex Rule 117 have been reached. The Exchange also states that it will halt trading in the Shares if trading in the Commodity

¹¹ Specifically, Commentary .07(e) provides that the prohibitions in Rule 175(c) apply to a specialist in the Shares so that the specialist or affiliated person may not act or function as a market maker in an underlying asset, related futures contract or option or any other related derivative. An affiliated person of the specialist consistent with Rule 193 may be afforded an exemption to act in a market making capacity, other than as a specialist in the Shares on another market center, in the underlying asset, related futures or options or any other related derivative. Commentary .07(e) further provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Shares on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

Commentary .07(e) to Rule 1202 also ensures that specialists handling the Shares provide the Exchange with all the necessary information relating to their trading in physical assets or commodities, related futures contracts and options thereon or any other derivative.

Futures Contracts is halted or suspended. Additionally, if the value of the Index or the Indicative Fund Value is not being disseminated on at least a 15-second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the value of the Index or the Indicative Fund Value occurs. If the interruption to the dissemination of the value of the Index or the Indicative Fund Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Further, with respect to a halt in trading that is not specified above, the Exchange may consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Trust Issued Receipts, Portfolio Depository Receipts and Index Fund Shares. The Exchange states that it currently has in place comprehensive surveillance sharing agreements with the InterContinental Exchange, the London Metals Exchange, and the New York Mercantile Exchange for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange also notes that the Chicago Board Options Exchange, Chicago Mercantile Exchange, and New York Board Of Trade are members of the Intermarket Surveillance Group. As a result, the Exchange asserts that market surveillance information is available from relevant futures exchanges, if necessary, due to regulatory concerns that may arise in connection with the Commodity Futures Contracts.

(2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the prospectus delivery requirements

¹⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

applicable to the Shares. The Information Circular also will highlight the special risks and characteristics of the Fund and Shares, as well as applicable Exchange rules. In addition, the Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and discuss the relevant regulatory jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Shares is based. This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹² for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the 30th day after the date of publication of notice in the **Federal Register**. Amendment No. 3 made only minor changes to the overall proposal, which was subject to a 15-day comment period.¹³ The Commission notes that the present proposal, as amended, is similar to prior proposals that the Commission has approved,¹⁴ and is consistent with current Amex listing requirements. The Commission does not believe that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, raises any novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,¹⁵ to approve the proposal, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

¹² 15 U.S.C. 78s(b)(2).

¹³ As mentioned above, the Commission did not receive any comments regarding the proposed rule change and Amendment Nos. 1 and 2 following publication in the **Federal Register**.

¹⁴ See, e.g., Securities Exchange Act Release No. 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (approving the listing and trading of the United States Natural Gas Fund, LP); Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex 2005-127) (approving the listing and trading of the United States Oil Fund, LP); and Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex 2005-059) (approving the listing and trading of the DB Commodity Index Tracking Fund).

¹⁵ 15 U.S.C. 78f(b)(5).

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-2007-53 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-Amex-2007-53. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-53 and should be submitted on or before January 4, 2008.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-Amex-2007-53), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved on an accelerated basis.

¹⁶ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-24729 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56948; File No. SR-BSE-2007-52]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

December 12, 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 November 30, 2007, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to amend the Fee Schedule of the Boston Options Exchange ("BOX"). The proposed amendment will remove the Minimum Activity Charge ("MAC") from the Fee Schedule of the BOX. The proposed amendment also will increase the number of options classes that will participate in the Liquidity Make or Take Pricing Structure ("Make or Take"). The text of the proposed rule change is available at BSE's principal office, the Commission's Public Reference Room, and <http://www.bostonstock.com>.

¹⁷ 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)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BOX currently charges its Market Making Participants a monthly fixed fee for each option class in which the Participant is assigned, known as the MAC. MAC fee levels are determined according to certain "categories" of options classes listed on BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by Options Clearing Corporation ("OCC") data. BOX is proposing to eliminate the MAC so Market Makers will only be charged fees for contracts which are traded. Such fees will be determined on a "Per Contract Execution" basis rather than by setting minimum fee levels that Market Making Participants must incur each month, regardless of the level of their trading activity.

Additionally, BOX currently applies an alternative pricing structure for certain options classes, referred to as Make or Take. Make or Take is currently applicable only to options classes participating in the Penny Pilot,⁵ as referenced in Chapter V, section 33 of the BOX Trading Rules. Make or Take pricing is driven by liquidity, whereby

⁵ The "Original Penny Pilot Program Approval Order" listed the initial thirteen options classes participating in the Penny Pilot Program. See Securities Exchange Act Release No. 54789 (November 20, 2006), 71 FR 68654 (November 27, 2006) (SR-BSE-2006-49). On September 27, 2007, the Commission approved an extension and expansion of the Penny Pilot Program to include fifty additional classes, in two phases. See Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007) (SR-BSE-2007-40). Phase One began on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One added twenty-two options classes to the Penny Pilot. Phase Two is scheduled to begin on March 28, 2008, and will continue for one year until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase.

orders that add liquidity to the BOX Book receive a transaction credit and orders which take liquidity from the BOX Book are charged a transaction fee. The proposed amendment will increase the number of classes for which the Make or Take pricing structure will be applicable. The proposed classes being added to Make or Take are the twenty-five (25) most actively-traded, multiply-listed options classes on BOX which are presently not included in the Penny Pilot.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,⁶ in general, and section 6(b)(4) of the Act,⁷ in particular, which requires that an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁹ because it establishes or changes a fee applicable only to a member imposed by the Exchange. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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-BSE-2007-52 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-BSE-2007-52. 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, on official business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of BSE. 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-BSE-2007-52 and should be submitted on or before January 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24724 Filed 12-19-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56970; File No. SR-CBOE-2007-99]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to a Delta Hedging Exemption From Equity Options Position Limits

December 14, 2007.

On August 21, 2007, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to create a delta hedging exemption from equity options position limits. On October 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as amended by Amendment No. 1, for comment in the *Federal Register* on October 15, 2007.³ On October 24, 2007, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change as modified by Amendment Nos. 1 and 2.

Under the proposal, the Exchange would provide an exemption from equity options⁵ position and exercise limits⁶ for positions held by CBOE

members and certain non-member affiliates⁷ that are “delta neutral”⁸ under a “permitted pricing model.”⁹ The options contract equivalent of the net delta¹⁰ of a hedged options position still would be subject to the position limits in Rule 4.11 (subject to the availability of any other position limit exemptions).¹¹ A member that intends to employ, or whose non-member affiliate intends to employ, this exemption would be required to provide a written certification to CBOE stating that the member and/or its affiliate will use a permitted pricing model.¹² In addition, members that carry an account that includes an equity option position for a non-member affiliate would be required to obtain a written statement from the non-member affiliate confirming that the affiliate: (1) Is relying on this exemption; (2) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of this exemption; (3) will promptly notify the member if it ceases to rely on this

⁷ The Commission notes that only those non-member affiliates identified in the definition of “permitted pricing model” would be eligible to rely on the delta hedging exemption. See *infra* note 9.

⁸ The term “delta neutral” would be defined in proposed Rule 4.11.04(c)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

⁹ “Permitted pricing model” for purposes of this exemption would be a pricing model used by: (1) A member or its non-member affiliate, using a pricing model maintained and operated by the Options Clearing Corporation; (2) a member or its non-member affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3-1 under the Act (*i.e.*, a consolidated supervised entity or “CSE”); (3) a financial holding company (“FHC”) or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; (4) a Commission registered OTC derivatives dealer; and (5) a national bank under the National Bank Act. See proposed Rule 4.11.04(c)(C).

¹⁰ “Net delta” would be defined to mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position. See proposed Rule 4.11.04(c)(B).

“Options contract equivalent of the net delta” would be defined to mean the net delta divided by the number of shares underlying the options contract. See proposed Rule 4.11.04(c)(B).

¹¹ See proposed Rule 4.11.04(c)(B). The Commission notes that Rule 4.11.04 provides for multiple, independent hedge exemptions. Of course, to the extent that a position is used to hedge for the purpose of one exemption from position limit requirements, such as the delta hedge exemption, such position cannot be used to take advantage of another exemption from position limit requirements.

¹² See proposed Rule 4.11.04(c)(E)(1) and (E)(3)(i)

exemption; (4) authorizes the member, upon request, to provide to the Exchange or the Options Clearing Corporation such information regarding positions of the non-member affiliate as part of the Exchange’s confirmation or verification of the accuracy of the net delta calculation under this exemption; and (5) if the non-member affiliate is using the Options Clearing Corporation model, has duly executed and delivered to the Exchange such documents as the Exchange may require as a condition to reliance on this exemption.¹³

Furthermore, any member would be required to report, in accordance with Rule 4.13, all equity options positions (including those that are delta neutral) that are reportable under that rule, and also would be required to report on its own behalf or on behalf of a designated aggregation unit¹⁴ the net delta and options contract equivalent of the net delta of such positions for each account that holds an equity option position subject to the delta hedging exemption in excess of the levels specified in Rule 4.11.¹⁵ Each member relying on the exemption would be required to retain, and undertake reasonable efforts to ensure that its non-member affiliates relying on the exemption retain, a list of the options, securities, and other instruments underlying each option position net delta calculation reported to the Exchange; and to produce such information to the Exchange upon request.¹⁶ In addition, the options positions of a non-member relying on the exemption would be required to be carried by a member with which it is affiliated.¹⁷

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.¹⁸ In particular, the Commission believes that the proposed rule change is consistent with section

¹³ See proposed Rule 4.11.04(c)(E)(3)(ii).

¹⁴ See proposed Rule 4.11.04(c)(D), which provides, under certain conditions, that the net delta of an options position held by an entity entitled to rely on the exemption could be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or another trading unit within the same entity, provided that, among other things, no control relationship exists between such affiliates or trading units and the entity has designated in writing in advance the affiliates or trading units that are to be considered separate and distinct from each other.

¹⁵ See proposed Rule 4.11.04(c)(F).

¹⁶ See proposed Rule 4.11.04(c)(G).

¹⁷ See proposed Rule 4.11.04(c)(E)(2).

¹⁸ In approving this rule, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56631 (October 9, 2007), 72 FR 58341.

⁴ In Amendment No. 2, CBOE made a technical revision to the proposal. This is a technical amendment and is not subject to notice and comment. In Amendment No. 2, CBOE noted that the effective date of the proposal will be February 1, 2008, or such later date as may be necessary to ensure completion of the required technology changes by the Options Clearing Corporation and the Securities Industry Automation Corporation.

⁵ Equity options for purposes of this proposed rule change includes stock options and options on exchange-traded funds.

⁶ CBOE Rule 4.12 establishes exercise limits for an option at the same level as the option’s position limit under Rule 4.11. Therefore, no changes are proposed to Rule 4.12.

6(b)(5) of the Act,¹⁹ which requires, among other things, that CBOE rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.²⁰

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-CBOE-2007-99), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-24723 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56960; File No. SR-ISE-2007-118]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Fee Changes

December 13, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 11, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items

have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees to reflect the addition of six new Premium Products.⁵ The text of the proposed rule change is available at the Commission’s Public Reference Room, at the Exchange, and on its Web site at <http://www.ise.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

The Exchange is proposing to amend its Schedule of Fees to reflect the addition of options on the following new products: the ProShares UltraShort QQQ Fund® (“QID”), ProShares Ultra QQQ Fund® (“QLD”),⁶ ProShares

UltraShort S&P500® Fund (“SDS”), ProShares Ultra S&P500® Fund (“SSO”),⁷ ProShares UltraShort Russell2000 Fund (“TWM”) and ProShares Ultra Russell2000 Fund (“UWM”).⁸ The Exchange represents that QID, QLD, SDS, SSO, TWM and UWM are eligible for options trading because they constitute “Exchange-Traded Fund Shares,” as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange will charge an execution fee and a comparison fee for all transactions in options on QID, QLD, SDS, SSO, TWM and UWM.⁹ The amount of the

for trading, marketing, and promotion of options on QLD and QID or with making disclosures concerning options on QLD and QID under any applicable federal or state laws, rules or regulations. NASDAQ and ProShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

⁷ “Standard & Poor’s®,” “S&P®,” “S&P 500®,” “Standard & Poor’s 500®,” “Standard & Poor’s Depository Receipts®,” and “SPDR®” are trademarks of The McGraw-Hill Companies, Inc. (“McGraw-Hill”), and have been licensed for use by ProShares in connection with the listing and trading of the SSO and the SDS on the American Stock Exchange. SSO and SDS are not sponsored, sold or endorsed by Standard & Poor’s (“S&P”), a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in SSO and SDS. McGraw-Hill, S&P and ProShares have not licensed or authorized ISE to: (1) *Engage* in the creation, listing, provision of a market for trading, marketing, and promotion of options on SSO and SDS; or (2) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on SSO and SDS or with making disclosures concerning options on SSO and SDS under any applicable federal or state laws, rules or regulations. McGraw-Hill, S&P and ProShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

⁸ “Russell 2000® Index” is a trademark of Frank Russell Company (“Russell”) and has been licensed for use ProShares in connection with the listing and trading of the UWM and TWM on the American Stock Exchange. UWM and TWM are not sponsored, sold or endorsed by Russell, and Russell makes no representation regarding the advisability of investing in UWM and TWM. Russell and ProShares have not licensed or authorized ISE to: (1) *Engage* in the creation, listing, provision of a market for trading, marketing, and promotion of options on UWM and TWM; or (2) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UWM and TWM or with making disclosures concerning options on UWM and TWM under any applicable federal or state laws, rules or regulations. Russell and ProShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

⁹ These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (File No. S7-30-97) (adopting rules relating to OTC derivatives dealers). The Commission notes that it recently approved a proposal by the National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.) to expand the class of entities permitted to use the delta hedging exemption from equity options position limits. See Securities Exchange Act Release No. 56916 (December 6, 2007), 72 FR 70627 (December 12, 2007) (SR-NASD-2007-044).

²¹ 15 U.S.C. 78s(b)(2).

²² 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)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ “Premium Products” is defined in the Schedule of Fees as options on the products enumerated therein.

⁶ “NASDAQ-100 Index” is a trademark of the NASDAQ Stock Markets, Inc. (“NASDAQ”) and has been licensed for use by ProShares in connection with the listing and trading of the QLD and the QID on the American Stock Exchange. QLD and QID are not sponsored, sold or endorsed by NASDAQ, and NASDAQ makes no representation regarding the advisability of investing in QLD and QID. NASDAQ and ProShares have not licensed or authorized ISE to: (1) *Engage* in the creation, listing, provision of a market for trading, marketing, and promotion of options on QLD and QID; or (2) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market

execution fee and comparison fee for products covered by this filing shall be \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders¹⁰ and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.¹¹ Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.37 and \$0.03 per contract, respectively.¹² Further, since options on QID, QLD, SDS, SSO, TWM and UWM are multiply-listed, the Payment for Order Flow fee shall apply to these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

¹⁰ Public Customer Order is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

¹¹ The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

¹² The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.16 and \$0.03 per contract, respectively.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2007-118 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-ISE-2007-118. 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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-ISE-2007-118 and should be submitted on or before January 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24727 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56946, File No. SR-MSRB-2007-04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to Rule G-40 on E-Mail Contacts

December 12, 2007.

On October 16, 2007, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of amendments to Rule G-40, on electronic mail contacts, that would more fully conform MSRB requirements to Financial Industry Regulatory Authority ("FINRA") requirements relating to contact information. The MSRB proposed an effective date for this proposed rule change of December 31, 2007 to coincide with the effective date of recently-approved FINRA requirements.³ The proposed rule change was published for comment in the **Federal Register** on November 9,

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 56179 (August 1, 2007), 72 FR 44203 (August 7, 2007) (SR-NASD-2007-034).

2007.⁴ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

The proposed amendments to Rule G-40 would require dealers to: (i) Promptly update any change in the required information for their primary contact but not later than 30 days following such change; (ii) review and, if necessary, update required information on their primary contact within 17 business days after the end of each calendar year; and (iii) promptly comply with any request by the appropriate regulatory agency (as defined in Section 3(a)(34) of the Act) for such information but not later than 15 days following such request, or such longer period that may be agreed to by the appropriate regulatory agency. A full description of the proposal is contained in the Commission's Notice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB⁵ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act⁶ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.⁷ In particular, the Commission finds that the proposed rule change is consistent with the Act because substantially conforming Rule G-40 to comparable FINRA requirements relating to e-mail contact information will promote regulatory consistency by facilitating dealer compliance with such requirements, as well as the inspection and enforcement thereof. The proposal will be effective December 31, 2007, as requested by the MSRB.

⁴ See Securities Exchange Act Release No. 56736 (November 2, 2007), 72 FR 63633 (November 9, 2007) ("Commission's Notice").

⁵ In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-4(b)(2)(C).

⁷ *Id.*

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-MSRB-2007-04) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24652 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56958; File No. SR-NYSE-2006-99]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 2 and 3 Thereto Relating to Rule 104 (Dealings by Specialists)

December 13, 2007.

I. Introduction

On November 9, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 104 to allow the specialist's algorithm systems to generate trading messages that provide supplemental specialist volume to partially or completely fill an order at a sweep price. The Exchange filed and withdrew Amendment No. 1 to the proposal on October 24, 2007 and October 29, 2007, respectively. The Exchange filed Amendment Nos. 2 and 3 on October 29, 2007 and November 5, 2007, respectively. The proposed rule change was published for public comment in the **Federal Register** on November 13, 2007.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Currently, Rule 104(b)(i)(F) permits the specialist proprietary algorithm ("Specialist Algorithm") to generate a trading message to provide

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 56747 (November 5, 2007), 72 FR 63946 ("Notice").

supplemental specialist volume at the Exchange published best bid or offer ("BBO"). This trading message enables specialists, through the use of their algorithms, to provide more volume where, technically, there is no other interest available to trade with the customer order.

The Exchange seeks to further provide its customers with additional opportunities for a better priced execution by amending Rule 104(b)(i)(F) to allow the specialist to also partially or completely fill an order beyond the Exchange published best bid or offer at a sweep price.⁴ The Specialist Algorithm will generate this trading message in reaction to one order at a time and only as that order is entering Exchange systems. Additionally, this trading message will only be able to interact with the targeted order to add volume at one place, either at the Exchange best bid or offer or at a particular sweep price. In other words, the specialist will not have two opportunities to provide supplemental specialist volume to the incoming order at the Exchange best bid or offer and also at a particular price point should the order sweep the Display Book. There will be no change with respect to priority and parity. The specialist's algorithm will make a determination about where and how much supplemental specialist volume to provide based on the state of the book information when the order is received by Exchange systems.

The specialist would not be required to buy the full size remaining of the sell order at the particular sweep price. The Exchange states that there is no disadvantage to the customer in allowing the specialists to partially fill an order at a particular sweep price especially when applicable rules only allow the supplemental specialist volume to interact with the order when no other interest exists.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the

⁴ The instant filing was initially filed with the Commission on November 9, 2006. In the notice, the Exchange stated that the proposed functionality inadvertently became operational in Exchange systems without Commission approval on or about January 24, 2007. The proposed rule change, as amended, is intended to codify the current Exchange system functionality. See Notice, *supra* note 3, at note 6.

Act⁵ which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁶ Specifically, the Commission believes that the proposal should benefit investors and the public interest by enabling customers to receive better priced executions than they otherwise would have received. Additionally, when specialists choose, through their algorithms, to partially or completely fill orders beyond the Exchange BBO, the Commission notes that the Exchange has represented that its systems would not permit a trading message to provide supplemental specialist volume that would trade through a protected quotation in violation of Rule 611 of Regulation NMS under the Act.⁷ The Commission also notes that the supplemental specialist volume would yield to displayed and reserve interest (*i.e.*, customer limit orders, Floor broker agency interest and specialist interest).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-2006-99), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-24725 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56968; File No. SR-NYSE-2007-114]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to NYSE Rule 92 and Riskless Principal Trading at the Exchange

December 14, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 11, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to section 19(b)(3)(A) of the Act³ 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 the operative date of NYSE Rule 92(c)(3) from January 16, 2008 to May 14, 2008. The text of the proposed rule change is available at NYSE, the Commission’s Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, 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

The Exchange proposes to extend the delayed operative date of NYSE Rule 92(c)(3) from January 16, 2008 to May 14, 2008. On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.⁵ In connection with those amendments, the Exchange implemented NYSE Rule 92(c)(3), which requires members to

submit to a designated Exchange database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange requires that when executing riskless principal transactions, firms must submit order execution reports to the Exchange’s Front End Systemic Capture (“FESC”) database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required member organizations to make certain changes to their trading and order management systems, the Commission approved a delay to January 16, 2008 of the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.

The Exchange has been working diligently to develop its FESC database to accept riskless principal order types and the underlying batch orders. On October 12, 2007, the Exchange published an Information Memo that provided member organizations with information relating to the FESC technology interface and data requirements for riskless principal trading at the Exchange. The development of the systems, however, has taken longer than anticipated, which could affect the ability of member organizations to meet the operative date. Several member organizations have informed the Exchange that they need additional time to program their respective systems to meet the new FESC requirements.

To accommodate both the Exchange’s and the member organization community’s need to complete the development of the FESC technology to both accept and route riskless principal orders, the Exchange proposes to delay the operative date for NYSE Rule 92(c)(3) from January 16, 2008 to May 14, 2008.

Pending implementation of the FESC database and use of the riskless principal account type indicator, the Exchange will continue to require that,

⁵ 15 U.S.C. 78f(b)(5).

⁶ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 17 CFR 242.611.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 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. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR-NYSE-2007-21).

as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie the riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁶ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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-NYSE-2007-114 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-NYSE-2007-114. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-114 and should be submitted on or before January 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24728 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing, Diagnostic equipment, MRI (magnetic resonance imaging) manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission tomography) scanners manufacturing; and Positron emission tomography (PET) scanners manufacturing. The basis for a waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small business or SBA's 8(a) Business Development Program.

DATE: This waiver is effective January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or by e-mail at edith.butler@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small

⁹ 17 CFR 200.30-3(a)(12).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on October 23, 2007 to waive the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing, Diagnostic equipment, MRI (magnetic resonance imaging) manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission equipment tomography) scanners manufacturing; and Positron emission tomography (PET) scanners manufacturing. In response, on November 15, 2007, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing, Diagnostic equipment, MRI (magnetic resonance imaging) manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission equipment tomography) scanners manufacturing; and Positron emission tomography

(PET) scanners manufacturing. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products.

In response to this notice, a comment was received from an interested party, however, no small business manufacturing sources were discovered. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for Electromedical and Electrotherapeutic Apparatus Manufacturing, Diagnostic equipment, MRI (magnetic resonance imaging) manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission equipment tomography) scanners manufacturing; and Positron emission tomography (PET) scanners manufacturing, NAICS 334510.

Authority: 15 U.S.C. 637(a)(17).

Dated: December 13, 2007.

Arthur E. Collins, Jr.,

Director, Office of Government Contracting.

[FR Doc. E7-24716 Filed 12-19-07; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 6038]

Culturally Significant Objects Imported for Exhibition Determinations: "Color Chart: Reinventing Color"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Color Chart: Reinventing Color", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also

determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about March 2, 2008, until on or about May 12, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8058). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 13, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7-24731 Filed 12-19-07; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6037]

Culturally Significant Objects Imported for Exhibition Determinations: "The Color of Life"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Color of Life", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum at the Getty Villa, Malibu, California, from on or about March 6, 2008, until on or about June 23, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of

the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 13, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7-24733 Filed 12-19-07; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6036]

Culturally Significant Objects Imported for Exhibition Determinations: "Treasures from the Holy Land"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Treasures from the Holy Land", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, Legion of Honor, San Francisco, California, from on or about February 9, 2008, until on or about August 10, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact *Wolodymyr Sulzynsky*, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: December 13, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7-24732 Filed 12-19-07; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Delegation of Authority No. 307]

Delegation by the Director of U.S. Foreign Assistance to the Deputy Director of U.S. Foreign Assistance

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and delegated to me by the Secretary of State in Delegation of Authority 293-1, I hereby delegate the Deputy Director of U.S. Foreign Assistance, to the extent authorized by law, all authorities and functions vested in the Director of Foreign Assistance in Delegation of Authority 293-1, as well as all authorities and functions vested in that office in future iterations of that delegation.

Notwithstanding this delegation of authority, I may exercise any function or authority delegated by this Delegation.

This delegation of authority shall be published in the **Federal Register**.

Dated: December 8, 2007.

Henrietta H. Fore,

Director of Foreign Assistance, Department of State.

[FR Doc. E7-24770 Filed 12-19-07; 8:45 am]

BILLING CODE 4710-02-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2007-0108]

National Task Force To Develop Model Contingency Plans To Deal With Lengthy Airline On-Board Ground Delays

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of Intent (NOI) to Form an Advisory Committee.

SUMMARY: OST is establishing a National Task Force to develop model contingency plans to deal with lengthy airline on-board ground delays. The Task Force will be composed of individuals appointed by the Secretary of Transportation who represent a cross-section of the diverse agencies, organizations and individuals that

represent airlines, airports and consumer groups in the U.S. The Task Force will also ensure that members of the public are able to present their views to it. The purpose of this notice is to invite interested parties, organizations, and individuals, to submit applications to be considered for representation on the Task Force.

DATES: Comments and/or applications for membership or nominations for membership on the Task Force must be received on or before January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Livaughn Chapman, Jr., Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W-96-429, Washington, DC 20590-0001; *Phone:* (202) 366-9342; *Fax:* (202) 366-7152; *E-mail:* Livaughn.Chapman@dot.gov.

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

- *Web site:* <http://www.regulations.gov>.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.
- *Hand Delivery:* West Building, Ground Floor, Rm. W-12-140, 1200 New Jersey Ave., SE., Washington, DC 20590-0001 (between 9 a.m. and 5 p.m. EST, Monday through Friday, except on Federal holidays).

Instructions: All submissions must include the agency name and docket number for this notice. Note that all filings received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov> at any time or West Building, Ground Floor, Rm. W-12-140, 1200 New Jersey Ave., SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

DOT's Office of Inspector General recommended, in its audit report, entitled "Actions Needed to Minimize Long, On-Board Flight Delays," issued on September 25, 2007, that the Secretary of Transportation establish a national task force of airlines, airports, and the Federal Aviation Administration to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and airports to share facilities and make gates available in an

emergency. The Department is taking action to effectuate this recommendation.

A. Notice of Intent To Establish a Task Force and Request for Comment

In accordance with the requirements of the Federal Advisory Committee Act (FACA), an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. The purpose of this notice is to indicate that it is OST's intent to create a Task Force to develop model contingency plans to deal with lengthy airline on-board ground delays. OST has determined that the establishment of this Task Force is necessary and in the public interest.

B. Name of Committee

National Task Force To Develop Model Contingency Plans To Deal With Lengthy Airline On-Board Ground Delays.

C. Purpose and Objective

(1) The Task Force will develop model contingency plans for minimizing the impact of lengthy airline on-board ground delays.

(2) The Task Force will be responsible for reviewing incidents involving long, on-board ground delays and their causes; identifying trends and patterns of such events; and recommending workable solutions for mitigating the on-board consumer impact of extraordinary flight disruptions.

(3) The Task Force will report to the Secretary of Transportation the results of its consideration and a description of model contingency plans it develops.

(4) The Task Force will not exercise program management, regulatory or program guidance responsibilities. It will make no decision directly affecting the programs on which it provides advice. The Task Force will provide a forum for the development, consideration, and communication from a knowledgeable and independent perspective of a strategy for dealing with lengthy on-board ground delays nationwide.

D. Balanced Membership Plans

The Task Force will be composed of individuals appointed by the Secretary of Transportation. Task Force members will represent a cross-section of the diverse agencies, organizations and individuals that represent airlines, airports and consumer groups in the U.S.

This document gives notice to potential participants of the process and affords them the opportunity to request representation on the Task Force. The procedure for requesting such representation is set out below. In addition, we invite comments and suggestions for potential participants.

OST is aware that there are many more potential organizations and participants than there are membership positions on the Task Force. It is very important to recognize that interested parties who are not selected for membership on the Task Force can make valuable contributions to the work of the Task Force in several ways. For example, the person or organization could request to be placed on the Task Force mailing list and may submit written comments to the Task Force.

Further, any member of the public is welcome to attend Task Force meetings, and, as provided in the FACA, speak to the Task Force. Time will be set aside during meetings for this purpose as appropriate.

E. Applications for Membership

Each Application for membership or nomination to the Task Force should include:

(1) A brief resume or letter (no more than one page) demonstrating the applicant or nominee's unique qualifications and why they are interested in serving on the Task Force (please note, resumes or letters will be posted on the public docket and therefore should not contain personal information such as date of birth, etc.)

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and

(3) A written commitment that the applicant or nominee would participate in good faith.

Since all comments and/or applications for membership or nominations for membership on the Task Force will be posted on the Public Docket, we encourage you to include only that information you are willing to provide for the public docket and submit your application electronically using the docket number provided on this notice through the Federal Docket Management System found at <http://www.regulations.gov>.

F. Duration

The Task Force will terminate one year after the date of the filing of the Task Force charter unless prior to that time the charter is terminated or extended in accordance with the FACA.

G. Notice of Establishment

After evaluating applications and nominations received as a result of this notice, the Department will publish in the **Federal Register** a notice announcing the establishment and composition of the Task Force.

Issued on: December 17, 2007.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.

[FR Doc. E7-24745 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to land at Raleigh County Memorial Airport, Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 16.10 acres of land at the Raleigh County Memorial Airport, Beckley, West Virginia to the Raleigh County Airport Authority and the Raleigh County Commission for the development of an industrial park. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be paid to the Raleigh County Airport and the Raleigh County Commission, and used for Airport purposes.

DATES: Comments must be received on or before January 22, 2008.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Connie Boley-Lilly, Program Specialist, Federal Aviation Administration, Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas Cochran, Airport Manager, Raleigh County Memorial Airport at the following address: Thomas Cochran, Airport Manager, Raleigh County Memorial Airport, 176 Airport Circle, Room 105, Beaver, West Virginia 25813.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport District Office, (304) 252-6216 ext. 125, Fax (304) 253-8028.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10-181 (April 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Beckley, West Virginia on December 7, 2007.

Matthew P. DiGiulian,

Acting Manager, Beckley Airport District Office, Eastern Region.

[FR Doc. 07-6110 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program Notice; Austin-Bergstrom International Airport; Austin, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Austin under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On February 15, 2007, the FAA determined that the noise exposure maps submitted by the City of Austin under Part 150 were in compliance with applicable requirements. On December 7, 2007, the FAA approved the Austin-Bergstrom International Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

DATES: *Effective Date:* The effective date of the FAA's approval of the Austin-Bergstrom International Airport noise compatibility program is December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Blackford, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0650, (817) 222-5607. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Austin-Bergstrom International Airport, effective December 7, 2007. Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

- a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;
- b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;
- c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and
- d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the

acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA regional office in Fort Worth, Texas.

The City of Austin submitted to the FAA on August 14, 2007, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 15, 2005 through August 14, 2007. The Austin-Bergstrom International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 15, 2007. Notice of this determination was published in the Federal Register on February 23, 2007.

The Austin-Bergstrom International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from December 7, 2007 beyond the year 2012. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on August 14, 2007 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation off and on the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective December 7, 2007.

Outright approval was granted for all of the specific program elements. Approved measures consisted of (1) acquisition of noise sensitive land uses, (2) upgrade of the existing noise

monitoring system, and (3) the recommendation that the operating characteristics of the airport be monitored to ensure the accuracy of the noise exposure maps.

These determinations are set forth in detail in a Record of Approval signed by the Southwest Region, Airports Division Manager on December 7, 2007. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Austin-Bergstrom International Airport. The Record of Approval also will be available on-line at <http://www.faa.gov/arp/environmental/14cfr/150/index14.cfm>.

Issued in Fort Worth, Texas, December 11, 2007.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 07-6108 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request For Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Columbus Regional Airport Authority for Port Columbus International Airport under the provisions of 49 U.S.C. 47501, *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Port Columbus International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before June 1, 2008.

DATES: Effective Date: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 5, 2007. The public comment period ends February 2, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Jones, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite

107, Romulus, Michigan, phone number (734) 229-2958. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Port Columbus International Airport are in compliance with applicable requirements of Part 150, effective December 5, 2007. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 1, 2008. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47501, *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses.

Columbus Regional Airport Authority submitted to the FAA on November 27, 2007 noise exposure maps, descriptions and other documentation that were produced during the Port Columbus International Airport Part 150 Noise Compatibility Program Update, November 2007. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Columbus Regional Airport Authority. The specific documentation determined to constitute the noise exposure maps includes:

Existing (2006) Noise Exposure Map (NEM-1) and Future (2012) NEM with Noise Compatibility Program (NCP) (NEM-2). The Part 150 Noise Compatibility Program Update contains the required information for section 47503 of the Act and section A150.101 including the following specific references: current and forecast operations in Appendix J, Table 10; fleet mix and nighttime operations in Appendix C—Table C-1, C-2, C-3, C-4; flight patterns in Appendix C—Exhibits C-6, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-14, C-15, C-16, C-17, C-18, and land use in Exhibit 2-3. The FAA has determined that these maps for Port Columbus International Airport are in compliance with applicable requirements. This determination is effective on December 5, 2007. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under 14 CFR 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Port Columbus International Airport, also

effective on December 5, 2007. Preliminary review of the submitted material indicates it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 1, 2008.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

Columbus Regional Airport Authority, Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Dated: December 5, 2007.

Issued in Romulus, Michigan.

Matthew J. Thys,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 07-6109 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims.

SUMMARY: This notice announces that Federal actions taken by the California Department of Transportation

(Department) pursuant to its assigned responsibilities under 23 U.S.C. 327, as well as actions by other Federal agencies, are final within the meaning of 23 U.S.C. 139(j)(1). The actions relate to a proposed Highway 49 Widening at La Barr Meadows (Post Miles 9.7 to 11.2), from Ponderosa Way to North of Lode Line Way near Grass Valley in Nevada County, State of California. This action grants approval for the project.

DATES: By this notice, FHWA, on behalf of the Department, is advising the public of final actions subject to 23 U.S.C. 139(j)(1). These actions have been taken by the Department pursuant to its assigned responsibilities under 23 U.S.C. 327, as well as by other Federal agencies. A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 17, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Winder Bajwa, Project Manager, California Department of Transportation, 703 B Street, Marysville, CA 95901; Weekdays 8 a.m. to 4 p.m. (Pacific time); telephone (530) 741-4432; e-mail: Winder_Bajwa@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department, and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of California. The Highway 49 Widening at La Barr Meadows Project would improve operations and safety of State Route 49 in Nevada County, California. This would be accomplished by widening the existing roadway from two to four lanes with a continuous median/left turn lane, constructing a signalized intersection at La Barr Meadows Road and State Route 49, constructing frontage roads, and removing existing at-grade intersections. The actions by the Department and other Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/ Finding of No significant Impact (FONSI) for the project, approved by the Department on October 1, 2007. The EA/FONSI and other project records are available by contacting the Department at the address provided above. The EA/FONSI can be viewed and downloaded from the project Web site at <http://www.dot.ca.gov/dist3/departments/envinternet/hwy49labarr/labarr> or viewed at the Nevada County Public

Library—Grass Valley (Royce) Branch, 207 Mill Street, Grass Valley, CA 95945.

This notice applies to the Department and other Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following Federal environmental statutes and Executive orders:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401-7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703-712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209]; The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

7. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992(k).

8. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251-1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601-4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401-406]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001-4128.

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898,

Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (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.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 11, 2007.

Nancy Bobb,

Director, State Programs, Sacramento, California.

[FR Doc. E7-24700 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-0030; Notice 2]

Graco Children's Products, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance

Graco Children's Products, Inc. (Graco) has determined that certain child restraint systems that it recently manufactured do not comply with labeling requirements pertaining to stating the National Highway Traffic Safety Administration's (NHTSA) Vehicle Safety Hotline (Hotline) number and Graco's Web site registration address in paragraph S5.5.2(m) of 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. On October 26, 2007, Graco filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* identifying several million child restraint systems manufactured between June 21, 2006 and October 26, 2007 that do not comply with the paragraph of FMVSS No. 213 cited above. On November 30, 2007, Graco filed an amended report pursuant to 49 CFR Part 573 that corrected the time frame for the noncompliant child restraints identified in the October 26, 2007 report. Graco now has determined that all child restraint systems that it manufactured between November 28, 2005 and October 29, 2007, and certain child

restraint systems that it manufactured between September 1, 2006 and October 29, 2007, do not comply with the paragraph of FMVSS No. 213 cited above. Affected are over eight million child restraint systems.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Graco has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 10-day public comment period, on November 8, 2007 in the **Federal Register** (72 FR 63231). Although the text of that notice clearly indicated that only 10 days would be permitted for comments, the notice as published showed a comment closing date of December 10, 2007. On November 16, 2007, a correction notice (72 FR 64708) was published showing the correct comment closing date, which was November 19, 2007. No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then pull down the "Search for Dockets" menu tab and follow the online search instructions to locate docket number "NHTSA-2007-0030."

For further information on this decision, contact Mr. Zachary R. Fraser, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5754, facsimile (202) 366-7002.

Paragraph S5.5.2(m) of 49 CFR 571.213 requires that a child restraint system be permanently labeled with:

(m) One of the following statements, inserting an address and a U.S. telephone number. If a manufacturer opts to provide a Web site on the registration card as permitted in Figure 9a of this section, the manufacturer must include the statement in part (ii):

(i) "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available (preceding four words are optional) and the restraint's model number and manufacturing date to (insert address) or call (insert a U.S. telephone number). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153), or go to <http://www.NHTSA.gov/>."

(ii) "Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, e-mail address if available [preceding four words are optional], and the restraint's model number and manufacturing date to (insert address) or call (insert a U.S. telephone number) or register online at

(insert Web site for electronic registration form). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153), or go to <http://www.NHTSA.gov/>."

There are comparable requirements beyond these labeling requirements. See S5.6.1.7 of 49 CFR 571.213 concerning printed instructions.

Graco explained that all subject child restraint systems failed to comply with the above requirements because labels attached to them did not include Graco's Web site address for electronic registration, which is required when the manufacturer chooses to provide a Web site on the registration card. In addition, some models of these restraint systems also had labels that included an incorrect NHTSA Hotline telephone number. Graco stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

Graco stated that although the Hotline number printed on the labels is incorrect (i.e., the labels show a NHTSA Hotline telephone number that the agency once used but had relinquished its rights to), Graco has procured the former Hotline number and is prepared to have all calls to that outdated number automatically routed to the correct number (i.e., the current NHTSA Hotline number) for a period of 7 years.

Graco additionally stated that although its electronic registration Web site address is not on the restraint systems, its toll-free telephone number appears in at least two places on all the restraint systems. Also, full contact information, including the Graco's company Web site address, appears in the owner's manual of every child restraint system manufactured by Graco.

Graco stated that neither the incorrect NHTSA Hotline number nor the absence of Graco's Web site address have any effect on the crashworthiness of the restraint systems. Therefore, Graco stated that these noncompliances are inconsequential to motor vehicle safety.

In addition, Graco proposed two measures as "an interim solution to bring infant and child seats produced with the incorrect label into substantial compliance." First, Graco reiterated its proposal to have calls to the incorrect NHTSA Hotline number automatically rerouted to the correct number, which has been made possible by Graco's obtaining the rights to the old number. Graco also proposed to send a broadcast e-mail to certain consumers about the importance of registration of their child restraint systems. The e-mail would include a direct link to Graco's online registration Web site and be sent to approximately 570,000 consumers who

have either created baby registries through Graco, requested Graco's newsletter, or whose names have been acquired from prenatal lists. Graco believes that providing the direct Graco online registration link will allow those consumers to register their Graco-brand seats once they have received the e-mail.

NHTSA Decision

NHTSA regulations specify that child seat manufacturers must provide the telephone number for the Vehicle Safety Hotline so that consumers concerned about safety recalls or potential safety-related defects could contact the agency. That telephone number has been changed. A rule published on June 21, 2005, in the **Federal Register** (70 FR 35556) revised the relevant section of the regulations to state the new telephone number. The effective date for the new telephone number was June 21, 2006; however, NHTSA issued an amendment on June 21, 2006 (71 FR 35558) that changed the effective date of the new telephone number to September 1, 2006.

Although the Hotline number printed on the labels is not the correct number, Graco proposed to redirect calls made to the incorrect Hotline number to the current Hotline number for a period of 7 years. Since filing its petition, Graco has in fact redirected those calls so that anyone who calls the incorrect number is automatically connected to NHTSA's Hotline. NHTSA has confirmed that this change has been activated. Also, NHTSA has initiated appropriate measures to reacquire the incorrect Hotline number from Graco. Once NHTSA has re-acquired the rights to the old number, calls to that number will continue to be routed directly to the new Hotline. NHTSA therefore agrees with Graco that there is no adverse safety consequence from this aspect of the noncompliance because consumers who call the incorrect Hotline number will automatically be redirected to the current Hotline number.

Although the Graco models at issue do not have labels containing Graco's electronic registration Web site address, that address is shown on the registration cards that come with each new child restraint system. Those who purchase the seat are, therefore, immediately presented with the online registration option and the necessary Web site address where they are most likely to

look for it, i.e., on the product registration card. The additional requirement that the Web site address also be on the seat label provides helpful information to owners who have not already registered by using the registration card or the online option, and may be particularly helpful for subsequent owners who have not received the registration card. However, even without the Web site information, the noncompliant label provides the important information that registration is essential to being notified of a recall, explains what information needs to be submitted for registration, and provides Graco's mailing address and telephone number for that purpose. Therefore, any owner who reads the label will be informed of the importance of registration and provided with two methods for accomplishing registration. Also, Graco's company Web site address appears in every owner's manual, so a person intent on registering the seat online could readily determine how to do so.

The only risk created by the noncompliance is that someone who wished to register the seat online but either ignored the online registration information on the registration card, or never had the card, would choose not to register the seat despite the ability to do so by mail, telephone, or by locating the Web site information in the owner's manual or through a simple online search. We think the likelihood is far greater that a person interested in registering the seat would use one of the available options. Although provision of information for registration of child seats is very important and inclusion of the Web site address on the label is one way of making registration easier, we think the risk created by this particular noncompliance is very slight and inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that Graco has met its burden of persuasion that the labeling noncompliances described are inconsequential to motor vehicle safety. Accordingly, Graco's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 13, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7-24702 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT:

Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

Key to "Reason for Delay":

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes.

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on December 14, 2007.

Delmer F. Billings,

*Director, Office of Hazardous Materials,
Special Permits and Approvals.*

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
11579-M	Austin Powder Company, Cleveland, OH	3, 4	12-31-2007
New Special Permit Applications			
14385-N	Kansas City Southern Railway Company, Kansas City, MO	4	12-31-2007
14402-N	Lincoln Composites, Lincoln, NE	1	12-31-2007
14436-N	BNSF Railway Company, Topeka, KS	4	12-31-2007
14500-N	Northwest Respiratory Services, St. Paul, MN	4	12-31-2007
14507-N	Gulf Coast Hydrostatic Testers, LLC, Denham Springs, LA	4	12-31-2007
14508-N	Gulf Coast Hydrostatic Testers, LLC, Denham Springs, LA	4	12-31-2007

[FR Doc. 07-6127 Filed 12-19-07; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comments concerning an information collection titled "Bank Secrecy Act/Money Laundering Risk Assessment" (MLR). The OCC is also giving notice that it has sent the information collection to OMB for review.

DATES: Comments must be submitted by January 22, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0231, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons,

the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OMB Desk Officer, 1557-0231, by mail to U.S. Office of Management and Budget, 725 17th St., NW., #10235, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend the approval for the following information collection:

Title: Bank Secrecy Act/Anti-Money Laundering Risk Assessment.

OMB Number: 1557-0231.

Affected Public: Businesses or other for-profit.

Type of Review: Regular review.

Abstract: The MLR enhances the ability of examiners and bank management to identify and evaluate any Bank Secrecy Act/Anti-Money Laundering risks associated with the banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and the banks expand through mergers and acquisitions, management's evaluation of money laundering and terrorist financing risks must evolve as well. Absent appropriate controls, such as this risk assessment, these lines of business, products, or entities could elevate Bank Secrecy Act/Anti-Money Laundering risks. The information collection only includes community banks.

Burden Estimates:

Estimated Number of Respondents: 1,670.

Estimated Number of Responses: 1,670.

Frequency of Response: Annually.

Estimated Annual Burden: 10,020 hours.

Comments: The OCC requested comments on the renewal of the information collection (72 FR 44920, August 9, 2007). Two comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 14, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E7-24722 Filed 12-19-07; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS-2007-0009]

Savings and Loan Holding Company Rating System

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final guidance—Savings and Loan Holding Company Rating System.

SUMMARY: The Office of Thrift Supervision (OTS) is revising its savings and loan holding company (SLHC) rating system to better reflect and communicate its supervisory expectations. The new SLHC rating system revises component descriptions to better emphasize risk management and adopts a numeric rating scale.

DATES: The revised rating system will be applied to all SLHC examinations beginning on or after January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and Affiliates, (202) 906-7488.

SUPPLEMENTARY INFORMATION:

Background

OTS has a well-established program for meeting its statutory responsibilities with respect to SLHCs and the thrift industry. Holding company supervision is an integral part of this oversight program, and, OTS routinely takes steps to enhance its risk-focused supervision of these enterprises. On April 9, 2007, the OTS published a notice in the *Federal Register* (72 FR 17618) requesting comment on proposed revisions to the SLHC rating system.

The SLHC rating system is an internal rating system used by the OTS as a management information and supervisory tool that defines the condition of all SLHCs in a systematic manner. It provides an evaluation of the SLHC's condition for use by the supervisory community and identifies any practices requiring supervisory responses and actions. The SLHC rating system also provides a measurement tool to discuss the enterprise's condition with SLHC management.

OTS implemented the former SLHC rating system in 1988. Since the introduction of this rating system, banking organizations and SLHCs have become more complex. Several SLHCs have significant international operations and many engage in multiple types of financial activities. In addition, certain SLHCs that existed prior to the enactment of activities restrictions in the Gramm-Leach-Bliley Act engage in commercial, manufacturing, and other retail activities. As of June 2007, SLHCs had aggregate consolidated assets of \$8.5 trillion.

Given the diversity of the SLHCs supervised by OTS and OTS's risk focused holding company examination approach, the examinations and ratings must document our assessment of the risk profile of the holding company

enterprise as well as management's ability to identify, measure, monitor, and control risks. OTS believes that the proposed changes further this objective and, therefore, OTS is adopting the proposed SLHC rating system with minor clarifications to reflect comments received.

Summary of Changes to Examination Components

The former SLHC rating system has four examination components: Capital, Earnings, Organizational Structure and Relationship. The revised SLHC rating system changes two of the existing four examination components—Organizational Structure and Relationship. OTS is making this change to place greater emphasis on risk management. The number of components and OTS's risk focused examination approach remain unchanged.

The revised SLHC rating system includes a review of two components that focus on financial condition (Capital and Earnings) and two other components (Organizational Structure and Risk Management) that focus on the activities and operations conducted within the enterprise and the SLHC's risk management practices.

With the exception of the ratings changes discussed later in this document, OTS is not changing its philosophy on evaluating the financial components (Capital and Earnings). OTS will continue to evaluate capital adequacy relative to a given enterprise's risk profile.

Within the Organizational Structure component, examiners will assess inherent risk in the context of lines of business, operations, affiliate relationships, concentrations, and other exposures. The most significant types of risk are defined in the proposed rating description for the Organizational Structure component. Based on its experience regulating SLHCs and on a review of similar guidance by other banking and supervisory agencies, OTS compiled a comprehensive list of risks that SLHC enterprises face.

OTS is changing the name of the "R" component from Relationship to Risk Management. Within the Risk Management component, examiners will evaluate corporate governance; board of directors and senior management oversight; policies, procedures, and limits; risk monitoring and management information systems; and internal controls. OTS recognizes that each SLHC must have the flexibility to tailor risk management programs to its size, complexity, and inherent risks. OTS also recognizes that its most

complex holding companies are highly integrated and may manage risk on an enterprise-wide basis, both within and across business lines and legal entities.

Summary of Changes to Rating System

OTS is adopting a new rating scale for SLHCs. An effective rating system must include an accurate assessment of each enterprise's financial and managerial condition. The rating system must be flexible and apply to holding companies of all sizes and complexity. The former rating scale did not facilitate meaningful distinctions in the strengths and weaknesses of an enterprise. Therefore, OTS is adopting a five-point numeric scale similar to the Uniform Financial Institution Ratings System (UFIRS) and the OTS CAMELS rating system. The five-point scale will be used for both composite and component ratings assigned to SLHCs. The use of a five-point scale will better reflect issues of supervisory concern and will provide more distinction in the supervisory assessment of condition. A five-point scale also correlates with and is more comparable to the thrift and bank holding company rating systems.

The new SLHC rating system incorporates one other change to the ratings definitions. Historically, OTS has based the rating of the holding company enterprise on its effect on its subsidiary thrift. OTS has encountered situations where it has supervisory concerns within the holding company enterprise, which did not have a direct impact on the thrift. OTS believes that using the effect on the thrift subsidiary as a SLHC rating criterion can lead to misinterpretation of the rating. It also may not be as accurate in portraying the condition of the SLHC enterprise as ratings criteria based on financial condition, operations, and risk profile.

After thoroughly evaluating the language in the ratings definitions, OTS believes that language emphasizing the SLHC's effect on its thrift subsidiary limits the supervisory purpose of the rating. The SLHC's effect on its thrift subsidiary will continue to be an important consideration in the examination process, but the rating descriptions do not include such language as rating criterion.

The changes will elevate the prominence of risk management; better align holding company examination components with OTS's supervisory process; and provide a more accurate assessment of the condition of SLHCs. OTS recognizes that it bases certain guidance and administrative processes on the current SLHC rating scale and definitions.

The OTS assessment regulation is set forth in 12 CFR Part 502 Subpart A. Of particular relevance to the holding company rating changes, section 502.29 outlines how OTS determines the condition component for SLHCs. OTS does not intend to amend the holding company assessment regulations at the current time. Instead, OTS will update these regulations at a later date after most holding companies are assigned a rating under the new holding company rating system. Until the regulation is changed, the holding company assessment condition component will be charged if the most recent composite rating of any SLHC in the holding company structure is "Unsatisfactory" under the previous holding company rating system, or, a "4" or "5" under the new holding company rating system. This is consistent with the 100 percent condition component surcharge applied to "4" and "5" rated thrift institutions. Similarly, an "Unsatisfactory" rating carries the presumption that formal enforcement action is required. For this purpose, as well as for any other OTS regulatory or guidance references to "Unsatisfactory," OTS will consider a composite "4" or "5" holding company rating comparable.

Comments Received and Changes Made

The OTS received seven comments regarding the proposed revisions to the SLHC rating system. The comments came from four SLHCs and three trade associations. Commenters generally supported changes to the rating system, agreeing that the new rating system will elevate the prominence of risk management, better align holding company examination components with OTS's supervisory process, and provide a more accurate assessment of the condition of SLHCs.

General Comments

A few commenters encouraged OTS to rely on functional regulators that have primary oversight of insurance and other financial activities. The revised rating system does not signal a shift in OTS supervisory practices of coordinating with and relying to the greatest extent possible on the work of functional regulators. OTS is committed to avoiding unnecessary regulatory duplication and will continue to work closely with functional regulators.

Commenters also asked about revisions to the Holding Companies Handbook and implementation of the revised ratings changes. OTS will phase in the revised rating system for holding company examinations that commence on or after January 1, 2008. To facilitate SLHCs' understanding of the new rating

descriptions, OTS will include not only the composite rating, but also any component ratings assigned, in each holding company's report of examination. Additionally, in their meetings with management or the board of directors, examination staff will further explain how they reached their rating conclusions using the revised SLHC rating system.

OTS will simultaneously begin the process of updating the Holding Companies Handbook to reflect the changes to the SLHC rating system. Other references in guidance or regulations using terminology connected to the existing rating system will not be immediately updated; however, today's guidance clarifies the most significant references that affect unsatisfactorily rated SLHCs.

Another commenter asked OTS to address the likelihood of additional costs or assessments as a result of the new supervisory approach. As previously indicated, OTS anticipates that the changes will elevate the prominence of risk management; better align holding company examination components with OTS's supervisory process; and provide a more accurate assessment of the condition of SLHCs. OTS does not view these changes as a significant change in approach; rather the changes will better reflect current supervisory practices and the condition of SLHCs. OTS does not anticipate that the changes will result in significant additional costs or increases in the assessment charged to SLHCs.

The same commenter asked how OTS would tailor the ratings to address non-complex SLHCs for which much of the rating component detail is not materially relevant. Given the diverse nature of SLHCs, OTS recognizes that each SLHC must have the flexibility to tailor programs to its size, complexity, and inherent risks. OTS expectations vary accordingly. Furthermore, OTS will continue the policy of not requiring examiners to assign component ratings for non-complex institutions. Thus, if as the commenter suggests, an item is not materially relevant, the examiner may choose not to individually rate that component.

Composite Definition Comments

One commenter thought that the references to "consolidated financial strength" or "financial condition" in the composite rating descriptions could be interpreted as a shift in the overall weight that OTS places on capital and earnings by moving from two component references to a single measure. OTS does not intend such a shift and has clarified composite

definitions to track more closely with the CORE components.

Capital and Earnings Definition Comments

Two commenters questioned the use of the word "abundant" in describing the level of capital and cash flow associated with a "1" rating. One of those commenters noted that the word "abundant" does not have a generally accepted meaning in financial or supervisory literature. In defining the rating levels, OTS tried to choose words that do not have a specific meaning within an existing regulatory framework. For example, if OTS had chosen "well-capitalized," users could misinterpret the wording as having the same meaning as when used in the Prompt Corrective Action regulations (12 CFR 564.4). Because of the diverse holding company population, OTS intends the wording to provide flexibility without associating it with specific measures. OTS agrees, however, that the word "abundant" may overstate the amount of capital expected to achieve a Capital Rating of "1", and, therefore, has changed the description to "more than sufficient." Further, after considering this comment, OTS has also decided to change the use of the word "adequate" in the Capital Rating 2 description. When used in capital component rating descriptions, the word "adequate" may be associated with other predefined usages. Therefore, references to "adequate" in the Capital "2" rating description have been changed to "sufficient."

Another commenter asked that OTS articulate the regulatory and economic capital considerations that examiners will use in determining capital adequacy. OTS has long held that a savings and long holding company must have a prudential level of capital to support their risk profile. In fact, the lack of any specific capital requirement makes it essential to consider all aspects of an organization's risk profile to determine if capital is adequate on a case-by-case basis. Therefore, it is particularly important that complex SLHCs assess their capital adequacy and future capital needs in a systematic and comprehensive manner in light of their risk profiles and business plans.

Examiners will evaluate internal capital management processes to determine whether they meaningfully tie the identification, monitoring, and evaluation of risk to the SLHC's capital needs. OTS recognizes that internal capital adequacy assessment processes will vary depending on the nature, size and complexity of the enterprise. Examiners will place increasing reliance

on a holding company's internal assessment of capital adequacy based on their confidence in the SLHC's demonstrated ability to reflect risk in its own determination of capital needs. Consistent with OTS's current approach to evaluating capital adequacy by considering capital in a variety of different ways,¹ the SLHC's economic capital calculation will serve as an additional measure to consider.

OTS also received a couple of questions about how the revised ratings will work in the Basel environment. OTS acknowledges that there are open issues related to the adoption of the Basel framework and OTS will need to address these as they relate to SLHCs.

Organizational and Risk Management Comments

Two commenters suggested that the evaluation of risks faced by a holding company would be more meaningful if done in the context of the holding company's ability to manage those risks. These commenters believe that the risk component rating framework could be enhanced by clarifying how the interplay between the inherent risks identified in the "O—Organizational Structure" component and risk management controls in the "R—Risk Management" component connect to form an assessment of the holding company's residual risk. While OTS appreciates the concern noted, the final rating descriptions maintain a division of identifying the inherent risk within the Organizational Structure component and evaluating the risk management controls within the Risk Management component. In the same way that OTS considers both Capital and Earnings in evaluating the financial condition of a holding company enterprise, OTS will evaluate two components to assess the residual risk within the holding company enterprise. OTS believes there is value in separately identifying the inherent risks within a corporate enterprise. The Organizational Structure component evaluates the overall activities and underlying risk to understand what is in the corporate enterprise and the resulting exposures. OTS recognizes that effective risk management will mitigate many of the risks identified. Examiners will reflect the net or residual risk after considering the "O" and the "R" components, as well as the financial components, in the composite rating.

¹ The OTS Holding Companies Handbook guides examiners to consider tangible capital, GAAP equity, and to calculate a regulatory proxy measure that give "capital-like" regulatory treatment for certain items such as trust preferred securities and other hybrid instruments.

One of the comments also asked OTS to clarify how examiners will conduct the risk management rating assessment of the SLHC if the enterprise were to include the subsidiary institution as part of its enterprise risk management program. OTS recognizes that larger, more complex SLHC enterprises will have an enterprise-wide risk management (ERM) program. ERM promotes a consolidated vision of corporate goals, objectives, and strategies, and it makes sense to include the subsidiary institution in such a program. An effective ERM program must include taking an entity level portfolio review of risk. While an institution may be part of a SLHC's ERM program, this does not change OTS's expectation that the institution's board of directors and management will oversee, and be accountable for, the institution's risk management function.

Proposed Text of the Savings and Loan Holding Company Rating System

Holding Company Rating System

The holding company rating system is used to assess a holding company's Capital, Organizational Structure, Risk Management, and Earnings. Using this system, OTS comprehensively and uniformly evaluates all holding company enterprises, focusing supervisory attention on the holding company enterprises that are complex or exhibit financial and operational weaknesses or adverse trends. The rating system:

- Identifies problem or deteriorating holding company enterprises.
- Categorizes holding company enterprises with deficiencies in particular areas.
- Assesses the aggregate strength of the SLHC industry.

Each holding company enterprise receives a composite rating based on the evaluation factors. Examiners will assign component ratings to all complex or high-risk holding companies; they may assign component ratings to noncomplex and low risk holding companies at their discretion. Examiners will disclose the composite ratings and any component ratings assigned in the report of examination.

Examiners will assign a composite and component ratings based on a 1 to 5 numeric scale. A "1" rating is the highest rating, indicating the strongest performance and practices and least degree of supervisory concern. A "5" rating is the lowest rating, indicating the weakest performance and the highest degree of supervisory concern. In most cases, a composite rating of "4" or "5" will result in formal enforcement action.

In addition, a rating of "4" or "5" will be treated as "Unsatisfactory" as that term is used in OTS regulations and guidance (for example, see 12 CFR 502.29 for purposes of determining the condition component in a holding company's assessment calculation or 12 CFR 563.555 in defining a savings and loan holding company that is in troubled condition).

Examiners will use the following descriptions to assign composite and component ratings to SLHCs.

Description of the Rating System Elements

Composite Rating

The composite rating is the overall assessment of the holding company enterprise as reflected by its organizational structure, risk management, capital and earnings. The composite rating encompasses both a forward-looking and current assessment of the consolidated enterprise, as well as an assessment of the relationship between the companies in the enterprise. The composite rating is not a simple numeric average of the CORE components; rather, the composite rating reflects OTS's judgment of the relative importance of each component to the operation of the holding company enterprise. Some components may receive more weight than others depending on the SLHC's activities and risk profile. Assignment of a composite rating may incorporate any factor that significantly affects the overall condition of the holding company enterprise, although generally the composite rating is closely related to the component ratings assigned.

Composite 1. A holding company enterprise in this group is sound in almost every respect and generally has components rated 1 or 2. Any weaknesses are minor, and the board of directors and management can correct them in the normal course of business. The enterprise is able to withstand economic, financial, and risk exposure changes because of an effective organizational structure, solid risk management practices, more than sufficient capital and strong earnings. Cash flow is more than sufficient and adequately services debt and other obligations. This holding company enterprise exhibits strong performance and risk management practices relative to its size, complexity, and risk profile.

Composite 2. A holding company enterprise in this group is fundamentally sound but may have modest weaknesses. The board of directors and management are capable and willing to correct any weaknesses.

Generally, no component rating should be more severe than 3 for this holding company enterprise. The organizational structure, risk management practices, capital and earnings create stability, and this holding company enterprise is capable of withstanding business fluctuations. Cash flow is adequate to service obligations. Overall, risk management practices are satisfactory relative to the enterprise's size, complexity, and risk profile.

Composite 3. A holding company enterprise in this group raises some degree of supervisory concern in one or more of the component areas, with weaknesses that range from moderate to severe. The magnitude of the deficiencies is generally not severe enough to rate a component more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. The holding company enterprise's capital structure and earnings leave it less resistant to adverse business conditions. The effectiveness of the organizational structure and risk management practices may be less than satisfactory relative to the enterprise's size, complexity, and risk profile. However, there is only a remote threat to the holding company enterprise's continued viability.

Composite 4. A holding company enterprise in this group has serious financial or managerial deficiencies that result in unsatisfactory performance. The supervisory concerns, which management and the board are not satisfactorily addressing, range from severe to critically deficient. A holding company enterprise in this group generally does not have sufficient capital and earnings to withstand adverse business fluctuations. The effectiveness of the organizational structure and risk management practices are generally unacceptable relative to the enterprise's size, complexity, and risk profile. The enterprise may place undue pressure on subsidiaries to meet its cash flow by upstreaming imprudent dividends or fees. Unless there is prompt action to correct these conditions, future viability could be impaired.

Composite 5. The magnitude and character of the risk management or financial weaknesses of a holding company enterprise in this category

could lead to insolvency without immediate aid from shareholders or supervisory action. The volume and severity of problems are beyond the board and management's ability or willingness to control or correct. The effectiveness of the organizational structure and risk management practices are inadequate relative to the enterprise's size, complexity, and risk profile. The inability to prevent liquidity or capital depletion places the holding company enterprise's continued viability in serious doubt.

Capital Adequacy (C) Component Rating

C reflects the adequacy of an enterprise's consolidated capital position, from a regulatory perspective and an economic capital perspective, as appropriate to the holding company enterprise. During OTS's review of capital adequacy, OTS will consider the risk inherent in an enterprise's activities and the ability of capital to absorb unanticipated losses, support business activities including the level and composition of the parent company and subsidiaries' debt, and support business plans and strategies.

Capital Rating 1. A rating of 1 indicates that the consolidated holding company enterprise maintains a more than sufficient amount of capital to support the volume and risk characteristics of its business lines and products; to provide a significant cushion to absorb unanticipated losses; and to fully support the level and composition of borrowing. In addition, the enterprise has more than sufficient capital to support its business plans and strategies, it has the ability to enter capital markets to raise additional capital as necessary, and it has a strong capital allocation and planning process.

Capital Rating 2. A rating of 2 indicates that the consolidated holding company enterprise maintains sufficient capital to support the volume and risk characteristics of its business lines and products; to provide a sufficient cushion to absorb unanticipated losses; and to support the level and composition of borrowing. In addition, the enterprise has sufficient capital to support its business plans and strategies, it has the ability to enter capital markets to raise additional capital when necessary, and it has a satisfactory capital allocation and planning process.

Capital Rating 3. A rating of 3 indicates that the consolidated holding company enterprise may not maintain sufficient capital to support the volume and risk characteristics of certain business lines and products; the unanticipated losses arising from the activities; or the level and composition of borrowing. In addition, the enterprise may not maintain a sufficient capital position to support its business plans and strategies, it may not have the ability to enter into capital markets to raise additional capital as necessary, or it may not have a sufficient capital allocation and planning process. The capital position of the consolidated holding company enterprise could quickly become insufficient if there is deterioration in operations.

Capital Rating 4. A rating of 4 indicates that the capital level of the consolidated holding company enterprise is significantly below the amount needed to ensure support for the volume and risk characteristics of certain business lines and products; the unanticipated losses arising from activities; and the level and composition of borrowing. In addition, the weaknesses in the capital position prevent the enterprise from supporting its business plans and strategies, it may not have the ability to enter into capital markets to raise additional capital as necessary, or it has a weak capital allocation or planning process.

Capital Rating 5. A rating of 5 indicates that the level of capital of the consolidated holding company enterprise is critically deficient. Immediate assistance from shareholders or other external sources of financial support is required.

Organizational Structure (O) Component Rating

The O component is an assessment of the operations and risks in the holding company enterprise. In the O component, OTS evaluates the organizational structure, considering the lines of business, affiliate relationships, concentrations, exposures, and the overall risk inherent in the structure.

OTS's analysis under the O component considers existing as well as potential issues and risks. OTS pays particular attention to the following types of risk in assigning the O rating:

Type of risk	Description
Credit/Asset	Credit risk arises from the potential that a borrower or counterparty will fail to perform on an obligation. Asset risk is the risk related to market changes or performance of a financial asset.
Market	Market risk is the risk to a financial institution's condition resulting from adverse movements in market rates or prices, such as interest rates, foreign exchange rates, or equity prices.

Type of risk	Description
Liquidity	Liquidity risk is the potential that an institution will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding (funding liquidity risk) or that it cannot easily unwind or offset specific exposures without significantly lowering market prices because of inadequate market depth or market disruptions (market liquidity risk).
Operational	Operational risk arises from the potential that inadequate information systems, operational problems, breaches in internal controls, fraud, or unforeseen catastrophes will result in unexpected losses. Transaction risk arises from problems with service or product delivery. This risk is a function of internal controls, information systems, employee integrity, and operating processes.
Legal/Compliance	Legal risk arises from the potential that unenforceable contracts, lawsuits, or adverse judgments can disrupt or otherwise negatively affect the operations or condition of a banking organization. Compliance risk is the risk to earnings or capital arising from violations of, or nonconformance with, laws, rules, regulations, prescribed practices, or ethical standards.
Reputation	Reputation risk is the potential that negative publicity regarding an institution's business practices, whether true or not, will cause a decline in the customer base, costly litigation, or revenue reductions.
Country/Sovereign	Country risk arises from the general level of political, financial, and economic uncertainty in a country, which impacts the value of the country's bonds and equities. Sovereign risk is the risk that a central bank will impose foreign exchange regulations that will reduce or negate the value of foreign exchange contracts. It also refers to the risk of government default on a loan made to a country or guaranteed by it.
Contagion/Systemic	Contagion entails the risk that financial difficulties encountered by a business line or subsidiary of a holding company could have an adverse impact on the financial stability of the enterprise and possibly even on the markets in which the constituent parts operate. Systemic risk is defined by financial system instability, potentially catastrophic, caused or exacerbated by idiosyncratic events or conditions in financial intermediaries. Impacted areas include: market value of positions, liquidity, credit-worthiness of counterparties and obligors, default rates, liquidations, risk premia, and valuation uncertainty.
Concentration	The exposure to losses due to a concentration (assets, liabilities, off-balance-sheet) at the subsidiary, business line, and/or enterprise level.
Intra-Group Transactions	Exposures to risk that result from transactions between affiliates.
Strategic And Execution	Strategic and execution risk is the risk to earnings or capital arising from adverse business decisions or improper implementation of those decisions. This risk is a function of the compatibility of an organization's strategic goals, the business strategies developed to achieve those goals, the resources deployed against these goals, and the quality of implementation. The resources needed to carry out business strategies are both tangible and intangible. They include communication channels, operating systems, delivery networks, and managerial capacities and capabilities. Strategic risk focuses on more than an analysis of the written strategic plan. It focuses on how plans, systems, and implementation affect the enterprise's franchise value. It also incorporates how management analyzes external factors that impact the strategic direction of the company.
Insurance	
Pricing and Underwriting Risk	The risk that pricing and underwriting practices are inadequate to provide for the risks assumed.
Reserving Risk	The risk that actual losses or other contractual payments reflected in reported reserves or other liabilities will be greater than estimated.

Organizational Structure Rating 1. A rating of 1 indicates that the organizational structure, including the nature and level of risks associated with the affiliates' activities, poses minimal concern. Management controls and monitors intra-group exposures. Any concerns posed by strategic plans, the control environment, concentrations, legal or reputational issues, or other types of risk within the enterprise are minor, and management and the board can address them in the normal course of business.

Organizational Structure Rating 2. A rating of 2 indicates that the organizational structure exhibits minor weaknesses, but the nature and level of risks associated with the holding company's activities are unlikely to be material concerns. Intra-group exposures, including servicing agreements, are generally acceptable,

but isolated transactions or exposures may present limited cause for regulatory concern. Concerns posed by strategic plans, the control environment, concentrations, legal or reputational issues, or other types of risks within the enterprise are modest, and management and the board can address them in the normal course of business.

Organizational Structure Rating 3. A rating of 3 indicates that there are organizational structure weaknesses that raise supervisory concern. The nature and level of risks associated with the holding company activities are moderately likely to cause concern. Intra-group exposures, including servicing agreements, may have the potential to undermine the financial condition of other companies in the enterprise. Strategic growth plans, weaknesses in the control environment, concentrations, legal or reputational

issues, or other types of risk within the enterprise may cause regulatory concern. The enterprise may have one or more entities in the structure that could adversely affect the operation of other entities in the enterprise if management does not take corrective action.

Organizational Structure Rating 4. A rating of 4 indicates that there are weaknesses in the organizational structure of the enterprise, and/or the nature and level of risks associated with the holding company's activities are, or have a considerable likelihood of becoming, a cause for concern. Intra-group exposures, including servicing agreements, may also have the immediate potential to undermine the operations of companies in the enterprise. Strategic growth plans, weaknesses in the control environment, concentrations, legal or reputational

issues, or other types of risk within the enterprise may be of considerable cause for regulatory concern. The weaknesses identified could seriously affect the operation of one or more companies in the enterprise.

Organizational Structure Rating 5. A rating of 5 indicates that there are substantial weaknesses in the organizational structure of the enterprise, and/or the nature and level of risks associated with the activities are, or pose a high likelihood of becoming, a significant concern. Strategic growth plans, a deficient control environment, concentrations, legal or reputational issues, or other types of risk within the enterprise may

be of critical concern to one or more companies in the enterprise. The weaknesses identified seriously jeopardize the continued viability of one or more companies in the enterprise.

Risk Management (R) Component Rating

R represents OTS's evaluation of the ability of the directors and senior management, as appropriate for their respective positions, to identify, measure, monitor, and control risk. The R rating underscores the importance of the control environment, taking into consideration the complexity of the enterprise and the risk inherent in its activities.

The R rating includes an assessment of four areas: board and senior management oversight; policies, procedures, and limits; risk monitoring and management information systems; and internal controls. These areas are evaluated in the context of inherent risks as related to the size and complexity of the holding company's operations. They provide a consistent framework for evaluating risk management and the control environment. Moreover, a consistent review of these four areas provides a clear structure and basis for discussion of the R rating.

Risk management element	Description
Governance/Board and Senior Management Oversight.	This area evaluates the adequacy and effectiveness of board and senior management's understanding and management of risk inherent in the holding company enterprise's activities, as well as the general capabilities of management. It also considers management's ability to identify, understand, and control the risks within the holding company enterprise, to hire competent staff, and to respond to changes in risk profile or changes in the holding company's operating sectors.
Policies, Procedures, and Limits	This area evaluates the adequacy of policies, procedures, and limits given the risks inherent in the activities of the consolidated enterprise and its stated goals and objectives. OTS's analysis considers the adequacy of the enterprise's accounting and risk disclosure policies and procedures.
Risk Monitoring and Management Information Systems.	This area assesses the adequacy of risk measurement and monitoring, and the adequacy of the holding company's management reports and information systems. Includes a review of the assumptions, data, and procedures used to measure risk and the consistency of these tools with the level of complexity of the enterprise's activities.
Internal Controls	This area evaluates the adequacy of internal controls and internal audit procedures, including the accuracy of financial reporting and disclosure and the strength and influence of the internal audit team. Includes a review of the independence of control areas from management and the consistency of the scope coverage of the internal audit team with the complexity of the enterprise.
Insurance	
Reinsurance	Reinsurance is purchased by insurance companies to transfer risk. It provides a means to transfer risk for specific lines of business or geographic territories to provide catastrophe protection or to stabilize or reduce volatility in underwriting results.

Risk Management Rating 1. A rating of 1 indicates that management effectively identifies and controls all major enterprise risks. Management is fully prepared to address risks emanating from new products and changing market conditions. The board and management are forward-looking and active participants in managing risk. Management ensures that appropriate policies and limits exist and that the board understands, reviews, and approves them. Policies and limits are supported by risk monitoring procedures, reports, and management information systems that provide management and the board with the information and analysis necessary to make timely and appropriate decisions in response to changing conditions. Risk management practices and the enterprise's infrastructure are flexible and highly responsive to changing

industry practices and current regulatory guidance. Staff has sufficient expertise and depth to manage the risks assumed. Internal controls and audit procedures are sufficiently comprehensive and appropriate to the size and activities of the holding company. There are few noted exceptions to the enterprise's established policies and procedures, and none is material. Management effectively and accurately monitors and manages the enterprise consistent with applicable laws, regulations, and guidance, and in accordance with internal policies and procedures. Risk management processes are fully effective in identifying, monitoring, and controlling risks.

Risk Management Rating 2. A rating of 2 indicates that the enterprise's management of risk is largely effective, but exhibits some minor weaknesses.

Management and the board demonstrate a responsiveness and ability to cope successfully with existing and foreseeable risks in the business plans. While the enterprise may have some minor risk management weaknesses, management and the board have recognized and are resolving these problems. Overall, board and senior management oversight, policies and limits, risk monitoring procedures, reports, and management information systems are satisfactory and effective. Risks are controlled and do not require additional supervisory attention. The holding company enterprise's risk management practices and infrastructure are satisfactory, and management makes appropriate adjustments in response to changing industry practices and current regulatory guidance. Staff expertise and depth are generally appropriate to

manage the risks assumed. Internal controls may display modest weaknesses or deficiencies, but they are correctable in the normal course of business. The examiner may have recommendations for improvement, but the weaknesses noted should not have a significant effect on the condition of the enterprise.

Risk Management Rating 3. A rating of 3 signifies that there are moderate deficiencies in risk management practices and, therefore, there is a cause for additional supervisory attention. One or more of the four elements of sound risk management is not acceptable, which precludes the enterprise from fully addressing one or more significant risks to its operations. Certain risk management practices need improvement to ensure that management and the board are able to identify, monitor, and control all significant risks. In addition, the risk management structure may need improvement in areas of significant business activity, or staff expertise may not be commensurate with the scope and complexity of business activities. Management's response to changing industry practices and regulatory guidance may not be sufficient. The internal control system may be lacking in some important aspects, leading to continued control exceptions or failure to adhere to written policies and procedures. The risk management weaknesses could have adverse effects if management does not take corrective action.

Risk Management Rating 4. A rating of 4 represents deficient risk management practices that fail to identify, monitor, and control significant risk exposures in material respects. There is a general lack of adequate guidance and supervision by management and the board. One or more of the four elements of sound risk management is deficient and requires immediate and concerted corrective action by the board and management. The enterprise may have serious identified weaknesses that require substantial improvement in internal control, accounting procedures, or adherence to laws, regulations, and supervisory guidance. The risk management deficiencies warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the condition of the holding company enterprise.

Risk Management Rating 5. A rating of 5 indicates a critical absence of effective risk management practices in identifying, monitoring, or controlling significant risk exposures. One or more of the four elements of sound risk

management is wholly deficient, and management and the board have not demonstrated the capability to address these deficiencies. Internal controls are critically weak and could seriously jeopardize the continued viability of the enterprise. If not already evident, there is an immediate concern about the reliability of accounting records and regulatory reports and the potential for losses if corrective measures are not taken immediately. Deficiencies in the enterprise's risk management procedures and internal controls require immediate and close supervisory attention.

Earnings (E) Component Rating

E reflects the consolidated holding company enterprise's overall financial performance, including measures such as the quality of consolidated earnings, profitability, and liquidity. OTS's review of this area considers the level, trend, and sources of earnings on a consolidated level as well as for material legal entities or business lines. OTS also assesses the ability of earnings to augment capital and to provide ongoing support for an enterprise's activities.

Within this component, OTS also considers the liquidity of the enterprise. This rating reflects the consolidated holding company enterprise's ability to attract and maintain the sources of funds necessary to achieve financial efficiency, support operations, and meet obligations. OTS evaluates the funding conditions for each of the material legal entities in the holding company structure to determine if any weaknesses exist that could affect the funding profile of the consolidated enterprise.

Earnings Rating 1. A rating of 1 indicates that the consolidated holding company enterprise's overall financial performance is solid. The quantity and quality of earnings for material business lines and subsidiaries are sufficient to make full provision for the absorption of losses and/or accretion of capital in light of asset quality and business plan objectives. The enterprise has strong liquidity levels along with well-developed funds management practices. The parent company and subsidiaries have reliable and sufficient access to sources of funds on favorable terms to meet present and anticipated liquidity needs.

Earnings Rating 2. A rating of 2 indicates that the consolidated holding company enterprise's financial performance is adequate. The quantity and quality of the earnings for major business lines and subsidiaries are generally adequate to make provision

for the absorption of losses and/or accretion of capital in light of asset quality and business plan objectives. The enterprise maintains satisfactory liquidity levels and funds management practices. The parent company and subsidiaries have access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses in funds management practices may be evident, but management and the board can correct those weaknesses in the normal course of business.

Earnings Rating 3. A rating of 3 indicates that the consolidated holding company enterprise's financial performance exhibits modest weaknesses. Major business line and subsidiary earnings are not fully adequate to make provisions for the absorption of losses and the accretion of capital in relation to the business plan objectives. The financial performance of this enterprise may reflect static or inconsistent earnings trends, chronically insufficient earnings, or less than satisfactory asset quality. This enterprise's liquidity levels or funds management practices may need improvement. The enterprise may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices at the parent company or subsidiary levels. However, these deficiencies are correctable in the normal course of business with sufficient board and management attention.

Earnings Rating 4. A rating of 4 indicates that the consolidated holding company enterprise's financial performance is weak. Major business line or subsidiary earnings are insufficient to provide for losses and the necessary accretion of capital. The enterprise may exhibit erratic fluctuations in net income, poor earnings (and the likelihood of a further downward trend), intermittent losses, chronically depressed earnings, or a substantial drop from previous performance. The liquidity levels or funds management practices of this holding company enterprise may be deficient. The enterprise may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs at the parent company or subsidiary levels.

Earnings Rating 5. A rating of 5 indicates that the consolidated holding company enterprise has poor financial performance and one or more business lines or subsidiaries are experiencing losses. In addition, such losses, if not reversed, represent a distinct threat to the enterprise's solvency through

erosion of capital. Further, the liquidity levels or funds management practices are critically deficient and may threaten continued viability. The enterprise requires immediate external financial assistance to meet maturing obligations or other liquidity needs.

Dated: December 14, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7-24742 Filed 12-19-07; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-

463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will conduct a telephone conference call meeting from 1 p.m. to 3 p.m. on January 7, 2008, at VA Central Office, 1722 I Street, NW., Room 900, Washington, DC. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of veterans and to enhance development of tests and treatments for diseases particularly relevant to veterans.

At the January 7 meeting, the Committee will review recommendations of the Hereditary Non-polyposis Colorectal Cancer Advisory Working Group and the Endocrine Tumors Advisory Working

Group. Chairs of the two groups will summarize the work of their panels.

A ten minute period will be reserved at 1:30 p.m. Eastern Time for public comments. Members of the public may also submit, at the time of the meeting, a 1-2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information, to include details regarding telephone access to the meeting, should contact Dr. Sumitra Muralidhar at sumitra.muralidhar@va.gov.

Dated: December 13, 2007.

By Direction of the Secretary:

E. Phillip Riggan,

Committee Management Officer.

[FR Doc. 07-6118 Filed 12-19-07; 8:45 am]

BILLING CODE 8320-01-M



Federal Register

**Thursday,
December 20, 2007**

Part II

Department of Labor

**Occupational Safety and Health
Administration**

**29 CFR Parts 1910 and 1915
General Working Conditions in Shipyard
Employment; Proposed Rule**

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1910 and 1915**

[Docket No. OSHA-S049-2006-0675 (formerly OSHA Docket No. S-049)]

RIN 1218-AB50

General Working Conditions in Shipyard Employment**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rule.

SUMMARY: OSHA proposes to revise the standards on general working conditions in shipyard employment. The proposed revisions would update existing requirements to reflect advances in industry practices and technology. The proposal also would cross reference general industry standards either that are already applicable to shipyard employment or that OSHA intends to apply. Finally, OSHA proposes to add provisions that would provide protection from hazards not addressed by existing standards, including provisions on the control of hazardous energy (lockout/tagout).

DATES: Comments and requests for hearings must be submitted (postmarked, sent or received) by March 19, 2008.

ADDRESSES: You may submit comments, identified by Docket No. OSHA-S049-2006-0675, by any of the following methods:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

Fax: If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-S049-2006-0675, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the

docket number for this rulemaking (Docket No. OSHA-S049-2006-0675). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, plus additional information on the rulemaking process, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read or download comments and materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA-S049-2006-0675 at <http://www.regulations.gov> or the OSHA Docket Office at the address above. All comments and submissions in response to this **Federal Register** notice are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web page. All comments and submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

For information on reading or downloading exhibits referenced in this **Federal Register** notice, see the "References and exhibits" and "Public Participation" headings in the **SUPPLEMENTARY INFORMATION** section of this document.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's Web page at <http://www.osha.gov>

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Kevin Ropp, OSHA, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

For general and technical information: Dorothy Dougherty, Director, OSHA, Directorate of Standards and Guidance, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background
- II. Regulatory History
- III. Pertinent Legal Authority
- IV. Summary and Explanation of the Proposed Standard

- V. Summary of the Preliminary Economic and Initial Regulatory Flexibility Analyses
- VI. Environmental Assessment
- VII. Federalism
- VIII. Unfunded Mandates
- IX. OMB Review under the Paperwork Reduction Act of 1995
- X. State Plan Standards
- XI. Public Participation
- XII. Authority and Signature
- XIII. The Proposed Standard

References and Exhibits

In this **Federal Register** notice, OSHA references documents in Docket No. OSHA-S049-2006-0675 (formerly OSHA Docket No. S-049) as well as documents in the following OSHA rulemakings and advisory committee proceedings, which OSHA is incorporating by reference into the docket of this rulemaking:

- The proceedings of the Shipyard Employment Standards Advisory Committee (SESAC) (Docket Nos. SESAC-1988 through SESAC-1993);
- The proceedings of the Maritime Advisory Committee for Occupational Safety and Health (Docket Nos. MACOSH-1995 through MACOSH-2005);
- The General Industry Lockout/Tagout rulemaking record (Docket Nos. S-012, S-012A and S-012B);
- The Shipyard Employment Standards rulemaking record (Docket No. S-024); and
- The Field Sanitation rulemaking record (Docket No. H-308).

References to documents in Docket No. OSHA-S049-2006-0675. In this **Federal Register** notice, references to documents in Docket No. OSHA-S049-2006-0675 (formerly OSHA Docket No. S-049) are given as "Ex." followed by the number of the document. These exhibits are posted in both Docket No. OSHA-S049-2006-0675 (which is available at <http://www.regulations.gov>) and OSHA Docket No. S-049 (which is available at <http://dockets.osha.gov>). The referenced exhibits are also available for inspection and copying at the OSHA Docket Office (see **ADDRESSES** section).

References to documents in the dockets incorporated by reference. In this **Federal Register** notice, references to documents in the dockets listed above that OSHA is incorporating by reference are given as the docket number followed by the document number. Thus, the reference to "Docket H-308, Ex. 1" means Exhibit 1 in the Field Sanitation rulemaking docket. For access to exhibits in OSHA Docket H-308 and the other dockets above that OSHA is incorporating by reference, go to OSHA's Web page at <http://www.osha.gov>

dockets.osha.gov or the OSHA Docket Office (see **ADDRESSES** section).

I. Background

OSHA is proposing to revise and update the existing standards in subpart F of 29 CFR part 1915 that address hazardous working conditions in shipyard employment. These standards cover many diverse working conditions in shipyard employment, including housekeeping, lighting, utilities, work in confined or isolated spaces, lifeboats, sanitation and medical services and first aid.

OSHA also proposes to add new requirements to subpart F to protect employees from hazardous working conditions not currently addressed by subpart F. These proposed additions include the control of hazardous energy (lockout/tagout), safe operation and maintenance of vehicles, accident prevention signs and tags and servicing of multi-piece and single piece rim wheels.

OSHA adopted the existing subpart F standards in 1972 (37 FR 22458 (10/19/1972)) pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*). Section 6(a) permitted OSHA, within two years of the passage of the OSH Act, to adopt as an occupational safety or health standard any national consensus and established Federal standards. The provisions in subpart F were adopted from existing Federal regulations promulgated under Section 41 of the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 941) as well as national consensus standards.

OSHA believes the revisions and additions to subpart F that it proposes are necessary and appropriate to protect the safety and health of shipyard employees. OSHA's reasons for the necessity of the proposed standard are discussed below.

Hazards

Working in shipyards is one of the riskiest occupations in the United States. Shipyard employees are at risk

due to the nature of their work, which includes a wide variety of industrial operations, such as steel fabrication, welding, abrasive blasting, burning, electrical work, pipefitting, rigging and stripping and coating applications. They also operate complex or heavy equipment such as cranes and powered industrial trucks. The hazards associated with these work activities are heightened because they are often performed outdoors in all kinds of weather, onboard vessels, in confined or enclosed spaces below deck, on scaffolds and on busy and crowded docks filled with equipment and material. The safe coordination of these work activities is also complicated by the fact that most shipyards are multi-employer worksites where shipyard employees, ship's crew, contractors and subcontractors work side-by-side and often on the same ship's systems at the same time. The combination of these hazards presents a significant risk of injury to shipyard employees whether they are working on vessels or at landside operations. As this section illustrates, OSHA believes the proposed rule will significantly reduce those risks.

Accident, Fatality and Injury Data

OSHA examined several data sources to identify and characterize the risks shipyard employees face from the hazards this proposal addresses. These data show, for example, that the shipyard industry has one of the highest rates and severity of workplace injury of all private sector industries.

Fatalities. To identify shipyard fatalities, OSHA reviewed accident data from OSHA's Integrated Management Information System (IMIS) accident database (fatal and serious injury requiring hospitalization) and the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries (CFOI). According to the IMIS data, there were 231 fatal shipyard accidents during the years 1987–2002, which is an average of 15 shipyard fatalities each year (Ex. 13). This estimate is consistent with CFOI,

which reported 155 shipyard fatalities from 1992–2002 or an average of 14 fatalities per year. According to CFOI data, during most of those years the fatality rate in shipyard employment was about twice the rate for all private industry combined, which further demonstrates the hazardous nature of work in shipyard employment. As discussed below, many of those shipyard fatalities involved the types of hazards this rulemaking addresses.

Injuries and illnesses. To estimate the number of shipyard injuries and illnesses, OSHA used the BLS annual survey of employers, which produces statistical estimates of occupational injuries and illnesses by industry and specific characteristics (www.bls.gov). From 1992–2002, BLS data show that the occupational injury and illness rate for shipyard employment declined from 34.2 per 100 full-time employees in 1992 to 16.6 in 2002. Lost workday injury and illness rates showed a similar trend, declining from 16.9 in 1993 to 9.3 in 2002 (See Table 1). However, despite these improvements, the industry's injury and illness rates continue to be more than three times the average private sector rate of 5.3 for injuries and illnesses combined and 2.8 for lost workday cases (Table 1).

Using the median number of days away from work per case as an indicator of severity, the injuries and illnesses shipyard employees experienced were, on average, more severe than those in the private sector as a whole as well as in the manufacturing and construction sectors. In 2002, for example, the median days away from work in the shipbuilding and repair industry was 15 days per lost workday case, more than double the private sector median of seven (Table 1). In addition, a higher percentage of lost workday cases in shipyards involved lengthy recovery periods. For example, more than one-third (34%) of shipyard lost workday cases resulted in more than 30 days away from work compared to one-quarter of private sector cases (Table 1).

TABLE 1.—2002 INJURY AND ILLNESS DATA COMPARISONS

Industry	Injury and illness rate per 100 full-time employees	Lost workday (LWD) injury and illness rate per 100 full-time employees	Median days away from work	Percentage of LWD cases involving more than 5 days away from work	Percentage of LWD cases involving more than 30 days away from work
Shipbuilding and Repair	16.6	9.3	15	62.2	34.1
Total Private Sector	5.3	2.8	7	55.2	25.1
Manufacturing	7.2	4.1	8	56.7	26.0
Construction	7.1	3.8	10	58.4	28.9

(Source: BLS)

Need for Agency Action

A detailed examination of OSHA and BLS databases indicates that a significant percentage of shipyard fatalities and injuries have resulted from the types of hazardous working conditions the proposed rule addresses, particularly hazardous energy. OSHA believes that eliminating or controlling these hazardous conditions will reduce the risks that shipyard employees face on a daily basis. This section discusses the types of fatalities and injuries that could have been prevented if the proposed additions and revisions to subpart F had been in place. OSHA's preliminary economic analysis, summarized in Section V, estimates that the proposed rule would have prevented at least 17.8 of the fatalities reported in the IMIS database from 1987 through 2002.

Lockout/tagout. The most extensive provisions in the proposal address the control of hazardous energy. Exposure to hazardous energy has resulted in many injuries to shipyard employees. According to a study by the National Shipbuilding Research Program (NSRP), during a five-year period there were 10 hazardous energy-related injuries annually at the seven participating shipyards. (See Ex. 11, NSRP "Review of Current and Best Practices for Hazardous Energy Control (Tagout) in Shipyards.") The report concluded that in almost every case, the injury was the result of multiple failures in the system, such as failure to identify all hazardous energy sources and to properly verify deenergization of all sources (Ex. 11, p. 6). This report suggests that the proposed comprehensive lockout/tagout program and energy control procedures would be effective in preventing these types of injuries.

Hazardous energy exposure also has resulted in the death of a number of shipyard employees. According to BLS data for 1992–2002, almost one-quarter of shipyard fatalities were types that are often associated with hazardous energy. BLS CFOI data showed that at least 10 shipyard fatalities (6.3%) resulted from contact with electrical current and 24 fatalities (16%) occurred because of contact with objects and equipment, such as being caught in equipment that suddenly starts up. BLS injury data showed that an even greater percentage of injuries were associated with those types of accidents. In 2002, for instance, 30 percent of shipyard injuries involving days away from work resulted from contact with an object or equipment and almost two percent

resulted from being caught in equipment.

OSHA's IMIS fatal accidents database also confirms that a significant number of shipyard deaths have resulted from hazardous energy. From 1987–2002, the IMIS data reported 14 (6%) shipyard fatalities related to the sudden release of hazardous energy. (See also, Ex. 11, National Shipbuilding Research Program (NSRP), "Review of Current and Best Practices for Hazardous Energy Control (Tagout) in Shipyards.") A review of the IMIS shipyard fatality abstracts indicates that the proposed lockout/tagout provisions could have prevented the vast majority (9) of those hazardous energy deaths (see Section V). The following are some of the shipyard fatalities that the proposed lockout/tagout provisions could have prevented. (The summary and explanation of proposed § 1915.89 also discusses a number of fatalities that could have been prevented by the proposed lockout/tagout provisions).

A shipyard employee working on a 480-volt distribution center was fatally electrocuted when the circuit was not properly deenergized and locked out before the task was started. In a similar case, an employee was electrocuted installing a fan on an HVAC chiller because the fan circuit was not deenergized. Instead of verifying that the circuit was deenergized, the employee had relied on a helper to open the circuit breaker to deenergize the unit. However, the helper opened the wrong breaker. In both cases, there was no indication in the IMIS abstract that the employer had a lockout/tagout program or had established written energy control procedures, such as procedures for deenergizing power sources and verifying isolation. The lockout/tagout proposal would have required both.

In another case in the IMIS database, an employee, who was assigned to perform maintenance on a high-voltage electric transformer, was fatally electrocuted when an oil switch to the transformer was left open. According to a NIOSH Fatality Assessment and Control Evaluation Program (FACE) investigation of the accident, the high-voltage transformer provided power to numerous shipboard activities, but the employee's electrical experience had been primarily on low-voltage equipment (Ex. 14). The investigation revealed that the power panels were not labeled and no signs, tags or locks had been used on either the oil switch or circuit breaker. In addition, there may have been stored energy remaining in the conductors, but no tests were conducted to verify deenergization.

Under the proposed lockout/tagout provisions, this employer would have been required to have an energy control program and control procedures in place to ensure that employees properly deenergize circuits, verify isolation and apply lockout or tagout systems before starting work (proposed § 1915.89(b)(1), (2) and (4)).

The investigation also found that, although employees received general safety training, there was no indication that the victim had received training on servicing high-voltage equipment and the supervisor had no electrical training. Moreover, even when the victim accidentally turned off the wrong power source earlier in the workshift, leaving the dry dock in the dark, the employee was not provided with refresher training. Had the proposed lockout/tagout provisions been in place, it would have ensured that any shipyard employee servicing high-voltage equipment was an "authorized employee" who had been trained to recognize hazardous energy sources and know the specific means and procedures necessary to isolate and control such energy safely (proposed § 1915.89(b)(7)). The proposed provisions also would have ensured that employees receive additional training "whenever the employer has reason to believe, that there are * * * deficiencies in the employee's knowledge or use of the energy control procedures" (proposed § 1915.89(b)(7)(iii)).

The proposed lockout/tagout provisions addressing multiple employer worksites (proposed § 1915.89(e)(2)) and group lockout/tagout (proposed § 1915.89(e)(3)) also could have prevented several shipyard fatalities reported in the IMIS database. In one of those cases, an electrician who was modifying a switchboard was fatally electrocuted when a ship's crew member, who was not familiar with the operation of the switchboard breaker, inadvertently energized the circuit. The proposed provisions would have ensured that the shipyard employer and ship's officer or master shared information about their respective lockout/tagout programs. The proposal also would have ensured that when more than one person is servicing equipment on a system, that a primary authorized employee is designated to ascertain the exposure status of individual group members and coordinate affected work forces to ensure that each member of the group is fully protected (proposed § 1915.89(e)(3)).

Finally, the lockout/tagout section of this proposal includes an in-depth

discussion of the application of the lockout/tagout standard while servicing commercial vessels, such as fish processing vessels.

Motor vehicle safety equipment, operation and maintenance. OSHA is proposing several provisions aimed at reducing the number of shipyard employees killed and injured in motor vehicle incidents. According to CFOI data, 27 shipyard employees were killed in transportation incidents (highway and non-highway) from 1992–2002, which represents 18.5 percent of all fatalities during that period. OSHA's IMIS fatal accidents data indicated that 12 employees were killed in motor vehicle incidents in shipyards from 1987–2002. Motor vehicle accidents also account for a significant number of injuries. From 1992–2001, for instance, BLS reported that 208 shipyard employees were injured in transportation accidents that were serious enough to involve days away from work.

OSHA believes that the proposed motor vehicle safety provisions could have prevented a significant number of those deaths and injuries. For example, a review of the IMIS database shows that the proposed safety belt requirement (proposed § 1915.93(b)(1) and (2)) could have prevented the death of a shipyard employee who was operating a mobile crane to lift metal plates from a floating dock. The employee was killed when the crane overturned and he fell from the cab into the river and drowned. Had the employee been wearing a safety belt, as the proposed rule requires, he would have remained safely within the cab when it overturned. OSHA also believes the proposed safety belt provision would prevent employees from being crushed or pinned trying to jump free of a tipping vehicle, one of the major causes of industrial vehicle fatalities. In 2001, for example, BLS reported that 28 percent (35) of all private industry forklift fatalities (123) involved tipovers or falls from a moving forklift.

The proposed provisions to protect pedestrians and bicyclists in shipyards from being hit by motor vehicles (proposed § 1915.93(c)(3)) could have prevented several shipyard fatalities and injuries reported in the IMIS database. For example, a shipyard employee riding a bicycle as part of "his regularly assigned tasks" was killed when a bus traveling on the same shipyard road collided with him. A shipyard employee walking on a pier was killed when a straddle lift truck ran over him. While pulling onto the main road on the pier, the lift truck driver made a wide arc in order to avoid hitting a forklift truck

moving a large container and hit a pedestrian who he had not seen. In another incident, a shipyard employee suffered fractured ribs and had to have his spleen removed when he was hit by a forklift as he was walking along the side of the road in the shipyard. All of these accidents may have been prevented if the employers had established dedicated pedestrian/bicycle lanes or provided employees with reflective vests, two of the options the proposal includes to protect employees walking and bicycling in shipyards from being hit by motor vehicles (proposed § 1915.93(c)(3)(i) and (ii)).

Medical services and first aid. The proposed rule includes revisions to the existing provisions on medical services and first aid, including revisions addressing the content of first aid training and location of first aid providers and kits in shipyards (proposed § 1915.88). OSHA believes that the proposed provisions will improve the chances that injured shipyard employees will survive if an accident or health crisis (e.g., cardiac or respiratory failure) occurs and are necessary to reduce fatality rates in the shipyard industry. A review of the IMIS database for 1987–2002 indicates that as many as 13 fatalities involving cardiac or respiratory arrest may have been prevented had the proposed first aid provisions been in place.

Accounting for employees at the end of workshifts. Existing shipyard standards require that employers frequently check on employees who are working in confined spaces or alone in an isolated work location (§ 1915.94). The proposal adds to the existing standard a provision requiring employers also to account for these employees at the end of the workshift (proposed § 1915.84(b)). The purpose of both the existing and proposed provisions is to ensure that employees remain safe, go home safe at the end of their workshifts and are promptly rescued if they are injured. OSHA believes it is necessary to account for these employees at the end of their workshifts, in part, because shipyards are commonly comprised of many work locations that often are spread out over a large area. If an employee is injured while working alone at a distant work location, he may not be able to summon help. If the employer does not account for an injured employee at the end of the workshift, that employee could die from his injuries. The IMIS database includes a number of fatalities in which the employees' bodies were not discovered until hours or days later.

A review of the IMIS database, from 1987 to 2002, indicates that there were at least 13 fatalities that may have been prevented had the proposed provisions been in effect. The following are a few cases from that IMIS database. At approximately 10 p.m. during an evening workshift, a shipyard employee using a forklift truck to move a heavy tool box on a wet dock is presumed to have fallen through an opening in the dock and drowned when he got out of the forklift to check on the load. According to the abstract there were no eye witnesses to the accident. There is also no indication as to when the employer first noticed the employee was missing. However, the abstract says that the employee's body was not removed from the water until the next day.

In another case, the employee was working alone applying a patch over a pipe opening prior to the time he went missing. There is no indication as to when the employer discovered the employee was missing and no indication whether the employee was checked on during or at the end of his workshift. Approximately one week later his body was discovered under the water adjacent to the vessel on which he had been working.

Finally, a shipyard employee was working on an accommodation ladder on the MV Cape Henry at Pier 27 in San Francisco. It is presumed that he fell off the ladder or the vessel into the water. Nine days later his body was discovered floating in Fisherman's Wharf. Again, there is no indication in the abstract whether the employer regularly checked on employees or accounted for them at the end of the workshift.

Clarifications. In addition to the shipyard fatalities and injuries discussed above, OSHA believes that other provisions in the proposal could also prevent employees from being injured or killed. A number of proposed provisions clarify existing requirements, which may help increase employer understanding of and compliance with those requirements and thereby reduce employee exposure to serious hazards.

Based on the data and discussion above and other information in the rulemaking record, OSHA believes that there continues to be a significant risk of death and injury due to hazardous working conditions in shipyards. As discussed, OSHA believes that the proposed revisions, additions and clarifications of subpart F are reasonable and necessary and will substantially reduce that risk for shipyard employees.

II. Regulatory History

The standards in subpart F have remained essentially unchanged since

they were adopted in 1972 from established Federal occupational safety and health standards issued under the LHWCA (33 U.S.C. 941).

In 1982, the Shipbuilders Council of America and the American Waterways Shipyard Conference requested that OSHA: (1) revise and update the existing shipyard standards, including subpart F; and (2) consolidate into a single set of shipyard standards those general industry standards that apply to shipyards, particularly landside operations. In response to these recommendations, OSHA established the Shipyard Employment Standards Advisory Committee (SESAC) in November 1988. The purpose of SESAC, which included representatives from industry, labor and professionals in the maritime community, was to provide guidance and technical expertise to OSHA about revising the shipyard standards. SESAC met from 1988 until 1993 to develop recommendations and provide technical expertise in developing draft regulatory language for revising the shipyard safety standards. On April 29, 1993, SESAC unanimously approved final draft recommendations for revising subpart F to submit to OSHA. (Docket SESAC 1993-2, Ex. 102X, p. 257) (Detailed discussion on SESAC comments and specific recommendations are presented in the Summary and Explanation section below.)

In 1995, OSHA established the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) under section 7 of the OSH Act (29 U.S.C. 656) to advise the Agency on issues relating to occupational safety and health standards in the shipyard and marine cargo handling (longshore) industries. On September 8, 1995, MACOSH discussed and approved the recommendations and draft regulatory language that SESAC developed and made additional recommendations, which are discussed in the Summary and Explanation section below (Docket MACOSH 1995-1, Exs. 2; 102X, pp. 25, 26).

While OSHA is continuing to move toward a single set of standards for the shipyard industry, OSHA has included in part 1915 cross references to applicable general industry standards rather than reprinting those standards in this part. The proposal, for instance, includes cross references to general industry standards addressing accident signs and tags and servicing multi-piece and single piece wheels.

III. Pertinent Legal Authority

The purpose of the OSH Act is to "assure so far as possible every working

man and woman in the nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to issue and enforce occupational safety and health standards. (See 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of the OSH Act's enactment); 655(b) (authorizing promulgation of standards pursuant to notice and comment); and 654(d)(2) (requiring employers to comply with OSHA standards)). A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment" (29 U.S.C. 652(8)).

A standard is reasonably necessary or appropriate within the meaning of section 3(8) of the OSH Act if it substantially reduces or eliminates significant risk; is economically feasible; is technologically feasible; is cost effective; is consistent with prior Agency action or is a justified departure; is supported by substantial evidence; and is better able to effectuate the Act's purposes than any national consensus standard it supersedes (29 U.S.C. 652). (See 58 FR 16612, 16616 (3/30/1993)).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute v. OSHA (ATMI)*, 452 U.S. 490, 513 (1981); *American Iron and Steel Institute v. OSHA (AISI)*, 939 F.2d 975, 980 (D.C. Cir 1991).

A standard is economically feasible if industry can absorb or pass on the cost of compliance without threatening its long term profitability or competitive structure. See *ATMI*, 452 U.S. at 530 n. 55; *AISI*, 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI*, 453 U.S. at 514 n. 32; *International Union, UAW v. OSHA ("LOTO II")*, 37 F.3d 665, 668 (D.C. Cir. 1994).

Section 6(b)(7) of the OSH Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions (29 U.S.C. 655(b)(7)).

All safety standards must be highly protective. (See, 58 FR 16614-16615; *LOTO II*, 37 F.3d at 668.) Finally,

whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired" (29 U.S.C. 655(b)(5)).

IV. Summary and Explanation of the Proposed Standard

As mentioned above, OSHA proposes to revise and update the standards in subpart F to reflect advances in technology and industry practice and to add requirements that would provide employees with protection from hazardous working conditions not currently addressed by the existing OSHA standards. This section explains the revisions and additions OSHA proposes, including what action these revisions would require or prohibit and how they differ from the existing standards. This section also discusses the purposes for these changes and why they are necessary, and how they will provide employees with protection from hazardous working conditions in shipyards.

Many of the provisions OSHA proposes were recommended by SESAC. They represent, to a large extent, industry best practices at the time SESAC reviewed subpart F. However, where changes in industry practices and technology have occurred since SESAC finished its review, OSHA has updated the proposed provisions to reflect those advances. In addition, the Agency has added or amended some provisions for easier comprehension and to better protect employees.

A number of the provisions in subpart F were adopted in 1972 from existing Federal and national consensus standards in effect at the time (e.g., housekeeping, sanitation, medical services and first aid). Since then, those consensus standards have been revised and updated, several times in some cases. OSHA has carefully reviewed the relevant consensus standards and, where appropriate, proposes to incorporate applicable requirements of updated and revised standards.

OSHA proposes to consolidate a number of provisions to more clearly indicate that they apply to shipyard employment and to make them easier to understand and follow. First, the proposal consolidates requirements in part 1915 (e.g., housekeeping, sanitation, medical services and first aid) for which there are also requirements in general industry (part 1910) that shipyard employers must follow. Although as a general rule part 1915 standards prevail over any different general industry standard, general industry standards apply to shipyard employment where part 1915 standards do not address a particular

hazard or condition. For example, a number of provisions in the general industry sanitation standard (e.g., potable water, toilet facilities, vermin control) apply to shipyard employment because the shipyard sanitation standard (§ 1915.97) does not address these issues. OSHA believes that putting all of the sanitation requirements applicable to shipyard employment into one section will make it easier for

employers to understand and comply with the requirements.

Second, the proposal cross references several general industry standards that already apply to shipyard employment (e.g., § 1910.144 Safety Color Code for Marking Physical Hazards). Finally, the proposal consolidates into one section (§ 1915.80) the scope and application provisions for subpart F and clarifies that the proposal intends to apply the

general working condition provisions to all sectors of shipyard employment (i.e., ship repair, shipbuilding, shipbreaking and related employment).

As a result of the consolidation, the section numbers in subpart F would be changed. To prevent confusion, the following table (Table 2) lists the proposed and corresponding existing provisions, if there is one that applies:

TABLE 2.—TABLE OF PROPOSED PROVISIONS AND CORRESPONDING EXISTING PROVISIONS

Title of provision	Proposed rule	Existing rule applicable to shipyard employment
Scope and application	§ 1915.80	Each section of subpart F has a scope and application provision
Housekeeping	§ 1915.81	§ 1915.91 and § 1910.141
Lighting	§ 1915.82	§ 1915.92
Utilities	§ 1915.83	§ 1915.93
Work in confined or isolated spaces	§ 1915.84	§ 1915.94
Vessel radar and radio transmitters	§ 1915.85	§ 1915.95
Lifeboats	§ 1915.86	§ 1915.96
Medical services and first aid	§ 1915.87	§ 1915.98 and § 1910.151
Sanitation	§ 1915.88	§ 1915.97 and § 1910.141
Control of hazardous energy (lockout/tagout)	§ 1915.89	§ 1910.145
Safety color code for marking physical hazards	§ 1915.90	§ 1910.144
Accident prevention signs and tags	§ 1915.91	No existing rule
Retention of DOT markings, placards and labels	§ 1915.92	§ 1915.100
Motor vehicle safety equipment, maintenance, and operation	§ 1915.93	No existing rule
Servicing multi-piece and single-piece rim wheels	§ 1915.94	No existing rule
Definitions	§ 1915.95	No existing rule

OSHA proposes to retain a number of provisions from the existing standards with only minor editorial and technical changes. OSHA believes, and SESAC agreed, that these provisions are necessary to provide employees with adequate protection from certain hazardous working conditions in shipyards. This section does not address those provisions at length. Rather, the discussion in this section focuses on the proposed revisions and additions, one of the most important being the control of hazardous energy.

Finally, OSHA proposes to delete some provisions from subpart F, in most cases because the hazards these requirements address are not present in shipyard employment. For example, the existing provision § 1910.141(f) requires that where working clothes are provided by the employer and get wet or are washed between shifts, the employer must ensure that the clothing is dry before reuse. However, information indicates that the provision is no longer necessary for shipyard employment because employers now provide disposable protective clothing.

Where possible, OSHA has expressed the proposed requirements in performance language. In many cases, OSHA replaced outdated specifications with language that provides employers

with greater flexibility in determining the most effective strategies for controlling the hazards in question. The proposal provides employers with objective criteria, where appropriate, to assist them in complying with the proposed requirements. For example, OSHA proposes to replace the list of items that first aid kits must contain, which was adopted more than 30 years ago and which SESAC said in 1993 was outdated, with flexible performance-based language and criteria employers must consider in determining the adequacy of those supplies. OSHA believes this approach contemplates changes in control strategy and allows for advances in technology and industry practice, thereby reducing the need to revise the standard when those changes occur.

OSHA requests comment on all aspects of the proposed rule. In order to develop the most thorough and useful record possible, OSHA requests interested persons to provide comments on the questions raised throughout the preamble and to provide data and reasons to support those comments.

Section 1915.80 Scope and Application

Each section in existing subpart F contains its own scope and application

provision. Although most of those provisions indicate that the section applies to shipbuilding, ship repairing, and shipbreaking, some state that the section, or part(s) of it, is limited to certain shipyard operations. OSHA proposes to eliminate duplication of these provisions by consolidating them into one scope and application section that is applicable to the entire subpart. In addition, as SESAC recommended (Docket SESAC 1992-1, Ex. 100X, pp. 110-112), OSHA proposes to apply every section of subpart F uniformly to all of shipyard employment. "Shipyard employment" is defined in § 1915.4(i) to mean "ship repairing, shipbuilding, shipbreaking, and related employment."

The proposal also adds language to clarify OSHA's longstanding position that subpart F applies to shipyard employment "regardless of geographic location" of the shipyard activity. OSHA believes this is necessary to ensure that shipyard employers fully understand that the proposed subpart F requirements apply wherever employees are performing "shipyard employment" activities. (OSHA recently added the same language to the Fire Protection in Shipyards Standard, § 1915.501(b) (69 FR 55668 (9/15/2004)). Thus, if employees are performing shipyard employment activities, including but

not limited to performing them onboard vessels and vessel sections and in landside facilities on navigable waters, the proposed requirements would apply. Likewise, if employees are performing shipyard employment activities at a location that is not contiguous to a vessel, the proposed requirements also would apply.

The proposal also clarifies that subpart F applies to any employer, regardless of whether the employer owns the vessel or shipyard, whose employees perform shipyard employment activities. The existing policy will continue to apply under the revised rule. OSHA notes that the proposed change does not affect the Agency's existing multi-employer policy. Thus, if a contractor or subcontractor is hired to perform shipyard employment activities, the proposed provision would apply when employees are performing those activities. On the other hand, the proposal would not apply where the contractor's employees perform non-shipyard employment activities. For example, the proposal would apply to a contractor whose employees are installing ductwork on vessel sections or fabricating sheet metal in a shipyard facility, but would not extend to duct or sheet metal work done for other employers and customers (e.g., installing heating ductwork for an employer commercial building). Similarly, the proposal does not extend to outside contractors or employers who are at the shipyard but not performing shipyard employment activities, such as vending equipment suppliers or companies servicing portable toilet facilities. OSHA also notes that the proposal is not intended to cover inland manufacturing of boats or manufacturing of parts used to perform shipyard employment activities, which are more accurately characterized as general industry manufacturing activities covered by Part 1910 standards (Exs. 16–9, OSHA Shipyard Employment "Tool Bag" Directive, CPL 02–00–142; Ex. 19, Letter to John McKnight, National Marine Manufacturers Association (8/3/2001)).

The proposed consolidation of the scope provisions will simplify the subpart. It eliminates duplicative provisions and allows OSHA to remove from each section references to specific shipyard operations. (This discussion of the consolidation of the scope and application provisions eliminates the need to repeat, in the Preamble discussion of each section, that the scope and application provisions are being deleted from each section). It also ensures that employees will be provided

necessary protection wherever the hazards that the proposed requirements are intended to address are present. To the extent that the hazard is not present in a particular area of shipyard employment, the proposed requirement would not apply. For example, the provisions in proposed § 1915.85 Vessel Radar and Radio Transmitters would not apply if a vessel's radar is not being repaired or does not emit any radiation.

The revisions OSHA proposes would make this subpart consistent with the scope and application of other subparts in part 1915 that OSHA has revised, including subpart I Personal Protective Equipment in Shipyard Employment (61 FR 26322 (05/24/1996)) and subpart B Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (59 FR 37816 (07/25/1994)).

Section 1915.81 Housekeeping

OSHA proposes to retain and combine the housekeeping requirements applicable to shipyards (§ 1910.141(a)(3) and § 1915.91) and proposes to reorganize and simplify the provisions to make them easier to understand. For example, the proposal groups together similar requirements. The proposal also simplifies the language in the existing housekeeping section. Throughout the proposed section OSHA uses the term "walking and working surfaces" in place of the list of the specific areas and surfaces contained in the existing section. In proposed § 1915.95, OSHA defines "walking and working surfaces" to mean any surface on which employees gain access or perform their job duties or upon which employees are required or allowed to walk or work in the workplace. The definition contains examples of areas and surfaces that the term "walking and working surfaces" covers and includes all of the areas and surfaces listed in the existing housekeeping section. OSHA believes that using the umbrella term should make the housekeeping section easier to understand.

Proposed paragraphs (a) through (i) establish specific requirements to ensure walking and working surfaces are free of hazards while paragraphs (j) and (k) minimize the risk of fire or combustion in shipyard work areas. OSHA also proposes to add requirements to this section including provisions on housekeeping procedures and combustible scrap.

Paragraph (a)—In paragraph (a) OSHA proposes to retain the existing requirement that the employer maintain good housekeeping conditions to ensure that walking and working surfaces do not create a hazard for employees and

that these conditions are maintained at all times. Because of the numerous hazardous materials and substances in use in shipyard operations, OSHA believes it is necessary to require shipyard employers to develop and implement good housekeeping practices to protect employees from harm. As noted above, shipyards experience many injuries, such as slips and falls, which an effective housekeeping program will help to reduce.

Paragraphs (b) and (c)—In paragraph (b) OSHA proposes to retain, with minor editorial revisions, the existing requirement (§ 1915.91(a)) that employers ensure that walking and working surfaces have adequate space for work and passage. To ensure that space is adequate, OSHA proposes in paragraph (c) to retain the existing requirement (§ 1915.91(a)) that employers ensure walking and working surfaces such as aisles and passageways be kept clear of tools, materials and equipment not in use. Specifically, the proposal requires that equipment not necessary to perform the job in progress not be stored or located in an area that could interfere with walking and working surfaces. This provision is consistent with a SESAC recommendation (Docket SESAC 1992–3, Ex. 104X, pp. 110–112) that only tools, materials, and equipment "necessary to complete the job in progress" be allowed to be kept out. OSHA agrees with SESAC that all other tools, materials, and equipment need to be stored or located so that they do not interfere with walking and working surfaces and create hazards such as tripping, slipping or falling. MACOSH also supported the proposed addition (Docket MACOSH 1995–1, Ex. 100X, pp. 63–64). Slips, trips and falls frequently result in injuries in shipyards. As stated above, according to the BLS data for 2002, slips, trips and falls accounted for 19 percent of all injuries and illnesses involving days away from work in ship and boat building and repairing. In addition, floors, walkways, or ground surfaces were cited as the source for 801 injuries.

Paragraph (d)—In proposed paragraph (d), OSHA is retaining the existing requirement (§ 1910.141(a)(3)(ii)) that employers ensure that the floor or deck of every work area is maintained, so far as practicable, in a dry condition. Where wet processes are used, OSHA is also retaining the existing requirement that drainage be maintained and that employers provide false floors, platforms, mats or other dry standing places. Shipyard employment involves many wet processes, including gas-freeing, painting, hydroblasting and

cleaning. This provision is necessary to prevent employees from being exposed to contaminated water and from standing for prolonged periods of time in water, both of which may result in adverse health effects. However, OSHA also recognizes that in some instances it may not be possible for employers to provide a dry standing place. Therefore, OSHA proposes to retain the existing language that employers need only provide dry standing places to the extent that it is practicable to do so. Where it is not, the proposal retains the existing requirement that employers are responsible to provide any waterproof footwear that may be necessary for performing wet processes. Wearing waterproof boots while performing wet processes will protect employees from hazards associated with working in standing water that may contain contaminants and will help to prevent slips and falls.

Paragraph (e)—In paragraph (e), OSHA proposes to combine and simplify four existing requirements to keep walking and working surfaces clear of debris, including solid or liquid wastes, and other objects that may create a safety or health hazard for employees, such as protruding nails, splinters, loose boards, and unnecessary holes and openings. Existing § 1915.91(a) requires that staging platforms, ramps, stairways, walkways, aisles and passageways on vessels or dry docks be kept clear of debris. Existing § 1915.91(b) requires that working areas on and immediately surrounding vessels, dry docks, graving docks and marine railways be kept free of debris. Existing § 1910.141(a)(4)(ii) requires that all sweepings, solid or liquid wastes, refuse, and garbage shall be removed in such a manner as to avoid creating a menace to health and as often as necessary or appropriate to maintain the place of employment in a sanitary condition. In addition, existing § 1910.141(a)(3)(iii) requires that in order to facilitate cleaning, every floor, working place, and passageway shall be kept free from protruding nails, splinters, loose boards, and unnecessary holes and openings. The proposal, by using the term “walking and working surfaces”, ensures that all areas in the shipyard are kept clear. Keeping walking and working surfaces clear will also help to ensure that employees have adequate room to move safely to and from work areas and throughout the workplace. OSHA intends that the term “debris” continue to include bolts, nuts, and welding rod tips as well as other objects and material that could create a safety or health hazard to employees,

such as scrap metal, broken equipment, liquid wastes, tools, and empty containers.

Paragraph (f)—In paragraph (f) OSHA is proposing to retain, with only minor changes, the existing requirement (§ 1915.91(d)) that the employer maintain free access to exits, fire-alarm boxes, and fire-fighting equipment. OSHA proposes to add fire-call stations to this list based on SESAC’s recommendation that access to this equipment is also essential for the protection and safe evacuation of employees (SESAC 1992–3, Ex. 104X, p. 117).

Paragraph (g)—In paragraph (g) OSHA is proposing to retain the existing requirement (§ 1915.91(c)) that slippery conditions on walkways or working surfaces shall be eliminated as they occur. The proposal also makes more explicit OSHA’s position that ice and snow are included among the types of slippery conditions that employers must eliminate under the existing standard by adding language that such accumulations must be removed as they occur. OSHA believes this clarifying language is important since members of SESAC raised questions about whether the existing standard covers these conditions (Docket SESAC 1992–3, Ex. 104X, pp. 117–119). OSHA requests comment on this issue.

Paragraph (h)—In paragraph (h) OSHA proposes to retain the existing provision (§ 1915.91(b)) that construction material be stacked in a manner that does not create a hazard (e.g., trip) to employees. The proposal includes only non-substantive editorial changes.

Paragraph (i)—In paragraph (i) OSHA is proposing to retain the existing requirement (§ 1915.91(a)) that hoses and electrical service cords be hung over or placed under walking and working surfaces, or be covered by crossovers to prevent injury to employees and damage to the hoses and cords. The proposal contains only minor editorial changes for clarity.

Paragraph (j)—In paragraph (j) OSHA proposes to retain the existing requirements (§ 1915.91(e)) that flammable substances such as paint thinners, solvents, rags and waste be stored in covered fire-resistant containers when not in use.

Paragraph (k)—Proposed paragraph (k) adds a requirement that combustible scrap be removed from the work area as soon as possible to reduce fire hazards. Shipyards have many small fires that are often due to the accumulation of combustible scrap materials. If combustible scrap is allowed to accumulate in areas where hot work

such as welding and cutting are performed, sparks generated by that work could ignite the scrap. Fire prevention helps eliminate the hazards created by the presence of combustible materials. OSHA recently published a fire prevention standard (29 CFR Part 1915, subpart P) that contains fire prevention measures that must be taken before and during hot work (69 FR 55668–55708, (9/15/2004)). The proposed requirement would reduce fire hazards further and improve fire protection in shipyards.

Section 1915.82—Lighting

This section proposes minimum requirements for illumination throughout shipyard employment. Many of the proposed provisions are retained from the existing requirements in § 1915.92. However, the proposal reorganizes them for clarity into the following three paragraphs: (a) General Requirements; (b) Temporary Lights; and (c) Handheld Portable Lights.

Paragraph (a) General Requirements—Proposed paragraph (a) sets forth requirements that apply to lighting in all areas of shipyard employment. The proposed general requirements would apply regardless of whether permanent or temporary lights are used. The lighting intensity levels that would be required by table F–1 would not apply to emergency lighting or portable handheld lights.

In paragraph (a)(1) OSHA is proposing to establish minimum illumination requirements for specific areas and work activities in shipyard employment to ensure that employers have lighting that allows employees to safely perform work tasks. For instance, proposed Table F–1 specifies that general landside areas such as corridors and walkways that employees pass through would be required to have an illumination intensity of at least five lumens (foot candles). However, OSHA believes that higher illumination levels (i.e., 10 lumens) are necessary to work safely in landside areas such as machine and carpentry shops. In these areas employees may be using hazardous tools and equipment and performing precision work. Likewise, higher illumination levels (i.e., 10 lumens) are necessary in warehouses since it may be necessary for employees to read warning labels on flammable or hazardous substances and to safely operate lift trucks and other equipment.

According to the IMIS database, there have been four fatalities that may have been prevented had the employees been working in an area that was provided with adequate illumination. In one incident, an employee stepped into an

unguarded opening in the floor of a dark cargo deck and fell almost 20 feet to his death at the bottom of the cargo hold. At the time of the accident, the employee was walking across the dark deck towards an open doorway, which provided the only illumination of the area. In another case, an employee climbing down a ladder in an elevator shaft that was dimly lit, fell 50 feet to his death. It is unclear whether the employee could even see the bottom of the 130-foot shaft as he was descending. In another case, an employee was electrocuted when he was performing electrical repair work at night in a poorly illuminated area. An accident investigation found there was "inadequate lighting" at the location where the employee was working (Ex. 14). Although the investigation confirmed that the controlling circuit breaker was closed, another switch was found in an open position, possibly because there was not enough light to read the switch. The existing rule specifies that work areas must be "adequately illuminated" (§ 1915.92(a)). The proposed rule clarifies the existing requirement by setting forth specific illumination levels for various shipyard work locations (proposed § 1915.82 Table F-1). Had the employee's work location been lit to the proposed levels, the employee may have been able to see that the oil switch was still open and close it prior to starting his repair work.

SESAC recommended that OSHA add specific illumination requirements to this section (Docket SESAC-1992-1, Ex. 100X, 1992, p. 113), and the Agency agrees that the table provides useful and simple assistance for employers. The illumination specifications in proposed Table F-1 are drawn from illumination tables in the Construction Illumination (§ 1926.56) and Hazardous Waste Operations (§ 1910.120) standards, and in the national consensus standard for industrial lighting (Ex. 3-8, ANSI/IESNA RP-9-01-2001 Recommended Practice for Lighting in Industrial Facilities). The proposal revises and simplifies the tables from those standards to make Table F-1 more applicable to shipyard employment conditions and activities.

OSHA is proposing that each area of the workplace be illuminated according to the following intensities. In general areas, such as exits, accessways, stairs and walkways, the area must be illuminated with at least 3 lumens on vessels and vessel sections and 5 lumens on landside. In areas such as landside tunnels, shafts, vaults, pumping stations and underground work areas, and all assigned work areas on any vessel or vessel section, the area

must be illuminated to at least 5 lumens. Landside work areas such as machine shops, electrical equipment rooms, carpenter shops, lofts, tool rooms, warehouses, outdoor work areas, changing rooms, showers, sewerer toilet facilities and all eating, drinking and break areas must be illuminated to 10 lumens. First aid stations, infirmaries and offices must be illuminated to 30 lumens.

OSHA notes that the Longshoring standard, 29 CFR 1918.92(a), requires generally that illumination for cargo transfer operations be of a minimum light intensity of five lumens. Where work tasks require more light to be performed safely, supplemental lighting must be provided. That approach does not provide the guidance that SESAC requested while proposed Table F-1 provides for those situations in which supplemental lighting may be necessary. OSHA does not intend to require that employers provide additional lighting where natural light provides the necessary illumination level. However, where natural light does not provide the required level (e.g., at dusk), the employer must provide additional lighting and Table F-1 specifies the appropriate minimum levels of illumination.

OSHA solicits comments on the proposal as well as alternative approaches such as the one used in the Longshoring Standard or the requirements of the ANSI/IESNA standard. Are the proposed lighting intensities adequate? Does the table adequately address all areas of shipyard employment? If not, what areas need to be added?

In paragraph (a)(2), OSHA proposes to retain unchanged the existing requirement (§ 1915.92(e)) that matches and open flame devices may not be used as sources of light. OSHA proposes to place this provision with the general requirements to reinforce its intent that matches and open flames are not to be used for light for any purpose, including emergencies, or anywhere in the shipyard, regardless of whether permanent, temporary or handheld portable lighting is available. Using matches and open flame devices, such as burning torches, for lighting or heat is not safe or practical for a number of reasons. They are unreliable, could be blown out easily, could endanger employees by creating a fire hazard, and do not provide adequate lighting intensities.

SESAC also recommended adding a requirement that only a "qualified person" be permitted to replace or cap unguarded, damaged bulbs that have exposed filaments (Docket SESAC 1991,

Ex. 100X, p. 84). OSHA has not adopted this suggestion, because the Agency believes that the existing and other proposed standards address this hazard. The existing and proposed provisions requiring temporary lights to be either completely recessed or equipped with guards reduces the electrical hazard created by an exposed light bulb filament, and the electrical safe work practices of § 1910 subpart S that apply to temporary lights powered from landside sources address the hazards to employees repairing the temporary lights.

OSHA requests comment on this recommendation, and whether it is needed, in light of other existing and proposed regulatory provisions that deal with lighting, electrical safety, and guarding of temporary lights.

Paragraph (b) Temporary Lights— Proposed paragraph (b) retains, with minor editorial changes, the existing provisions on temporary lights (§ 1915.92(f)), including light guards, grounding, insulation, and splicing.

Proposed paragraph (b)(1) is similar to the existing requirement (§ 1915.92(b)(1)) that temporary lights that do not have bulbs that are "deeply" recessed must have guards to prevent accidental contact. Guarding of non-recessed bulbs is necessary to protect employees from being burned, or cut by broken bulbs, and to prevent combustible materials from igniting. However, paragraph (b)(1) proposes to require that temporary lights be guarded if they are not "completely" recessed. The existing provision only requires guarding if lights are not "deeply" recessed. Unless a temporary light is completely recessed, there is a risk that the light could be damaged or broken, thus creating a hazard for employees (e.g., electrical, laceration, burn). A guard is necessary to control those hazards. OSHA believes the proposed language provides employers with clearer and more accurate guidance on when the hazards this provision addresses are present and must be controlled. OSHA requests comment on the proposed provision. What is your current practice? Should OSHA require that all temporary lights be guarded?

Paragraph (b)(2) proposes that employers equip temporary lights with electric cords "with sufficient capacity to carry the electric load." The existing standard (§ 1915.92(b)(2)) requires the use of "heavy duty" electric cords. The OSHA Construction Electrical standards are similar to the existing standard, requiring that cords for portable tools and appliances be designed for "hard or extra-hard usage" (§ 1926.405(a)(2)(j)). The construction standard includes a

note listing various types of hard or extra-hard cords that meet the National Electrical Code (ANSI/NEPA 70, Article 400, Table 400–4).

OSHA believes the proposed language more accurately identifies the type of cord employers must provide to ensure employees are not exposed to electrical hazards, and thus, provides greater protection for employees. The fact that a cord is “heavy duty” does not necessarily mean that it has sufficient capacity to carry the electric load. In addition, OSHA believes the proposal provides employers with greater flexibility in meeting the requirements of the standard. The proposal ensures that employers may use whatever type of cord is sufficient to safely carry the electric load.

Proposed paragraph (b)(3) retains unchanged the existing requirements (§ 1915.92(b)(2)) that connections and insulation used on temporary lights be maintained in a safe condition. Implicit in this provision is the requirement that the employer check to see that connections and insulation are in proper working order and replace them when they are broken, cracked or damaged.

In paragraph (b)(4), OSHA proposes to clarify the existing requirement (§ 1915.92(b)(2)) to prohibit temporary light stringers, as well as temporary lights, from being suspended solely by their electric cords, unless they are designed by the manufacturer to be used in that way. When any type of lights and wiring are not suspended properly, placing them under tension the manufacturer did not design the electric cord to take, the cord can fray, break, or become damaged.

Proposed paragraphs (b)(5) and (6) retain, with non-substantive changes, the existing requirements in § 1915.92(f). Proposed paragraph (b)(5) requires that lighting stringers not overload branch circuits. Proposed paragraph (b)(6) requires that branch circuits be equipped with over-current protection whose capacity does not exceed the rated current carrying capacity of the cord used. OSHA believes that both measures are necessary to provide an adequate measure of safety from electrical and fire hazards associated with circuit overloading.

Proposed paragraph (b)(7) revises the existing standard by requiring that splices have insulation that “exceeds” that of the cable. The existing provision allows the use of splices where the insulation is “equal” to that of the cable. OSHA believes the revisions are necessary to ensure that employees are fully protected from electrical hazards if

splices are used. When a splice is necessary on an electrical cord, the current may create a surplus of energy or “hot spot” at the splice junction that is greater than the current for which the cord was designed. Requiring that the rated capacity of the insulation exceed the capacity of the cable ensures that employees will be protected if they touch or come into contact with the splice. The additional insulation capacity also ensures that hot spots do not start burning or ignite combustible materials in the area.

OSHA requests comment on the proposed revision. Does the proposed requirement provide sufficient protection for employees? Is weather a factor in determining what insulation to use? In your establishment and industry, what practices are followed regarding insulation of splices? Should OSHA propose a more specific requirement, for example that splices have insulation at 1½ times greater than that of the cable?

Proposed paragraph (b)(8) retains the existing requirement (§ 1915.92(c)) that exposed, non-current-carrying metal parts of temporary lights be grounded. It also retains the requirement that grounding be provided either through a third wire in the cable that contains the circuit conductors or through a separate wire that is grounded at the source of the current. OSHA also proposes to include the existing provision requiring that grounding be done in accordance with the requirements of § 1915.132(b) subpart H, Tools and Related Equipment.

Paragraph (c) Handheld Portable Lights—Proposed paragraph (c) addresses the use of handheld portable lights in work areas that do not have permanent or temporary lighting or such lighting is not working or is not readily accessible.

To ensure that employees do not enter unlighted or dark areas, paragraph (c)(1) requires that the employer provide employees with handheld portable lights and ensure that such lights are used whenever employees enter those areas. The proposal simplifies the current requirements (§ 1915.92(d) and (e)), by combining them into one provision and clarifying that the requirement is applicable to all unlighted areas in shipyards, regardless of whether they are on vessels, vessel sections or landside.

In response to a MACOSH recommendation (Ex. 1–2), proposed paragraph (c)(1) also clarifies in objective terms the existing prohibition that employees not enter “dark spaces” without handheld portable lights. The proposal replaces that term with the

requirement that employers provide and ensure handheld portable lights are used to enter or work in any area that (1) does not have permanent or temporary lighting, (2) where such lighting is not working, or (3) where such lighting is not readily accessible. “Readily accessible,” for purposes of this provision, means that the light switch or other means of activation is located in close proximity to the entrance to the area. For example, where an employee would have to travel across a long work area or climb steps in the dark to turn on permanent lights, those lights are not readily accessible. In such cases, the employee would have to use a handheld portable light to enter the area. OSHA requests comment on the proposed provision. In your establishment, when are employees provided with and required to use handheld portable lights to enter an area? Are there other situations where handheld portable lights are needed?

In three different fatalities reported in the IMIS database, employees who were working in areas where the lighting was not working, fell to their deaths walking in dark areas. In one instance, an employee who was trying to restore power to the temporary lighting stepped off of the coaming and fell approximately 25 feet to the bottom of the hold.

Proposed paragraph (c)(2) is similar to the existing requirement (§ 1915.92(d)) that where temporary lighting from sources outside the vessel or vessel section is the only means of illumination, the employer shall ensure that handheld portable lights are available to provide illumination for safe movement of employees. This provision is needed because temporary lighting could fail, making it difficult and hazardous for employees exiting an area of the vessel. The proposal requires that the employer ensure that the portable lights are handheld so employees are able to take the lights with them to light their way as they move about and exit the space safely. The proposal also makes explicit that the employer must ensure that handheld portable lights are readily available in the immediate area where employees are working. Implicit in the proposal is the obligation that the employer provide handheld portable lights in numbers that are adequate to ensure that all employees are able to move about and exit the area safely. OSHA requests comment on the proposed provision. Should OSHA apply this provision to any area where landside or shore-based lighting provides the only illumination? Should OSHA include an exception to the rule when natural sunlight suffices?

Proposed paragraph (c)(3) retains and simplifies the existing requirement (§ 1915.92(e)) on the use of handheld portable lights in any area that is not gas-free. In such areas, the proposal would require that the employer ensure that only “explosion-proof, self-contained” handheld portable lights are used (or other equipment approved by a nationally recognized testing laboratory (NRTL)). Although the existing standard requires the same, stakeholders must go to another section of part 1915 (§ 1915.13(b)(9)) to find out what type of lights they must provide when the area is not gas-free. The proposal adds the language from the cross-referenced section, thus eliminating the need to look to the other section. The proposal also carries forward the note to existing § 1915.13(b)(9) that equipment approved by a NRTL for the class and division of the location to be used will meet the requirements of this paragraph. (OSHA notes that the proposed requirement would apply in non-gas-free areas regardless of whether proposed paragraphs (c)(1) and (c)(2) also apply.)

Section 1915.83 Utilities

The proposed section on utilities retains, with minor clarifications, the existing requirements of § 1915.93 and reorganizes them for clarity into four paragraphs: (a) Steam supply systems; (b) Steam hoses; (c) Electric shore power; and (d) Heat lamps. SESAC recommended retaining these provisions and did not propose any changes (Docket SESAC 1992–3, Ex. 104X, pp. 88–96). The Agency agrees that these provisions are necessary to protect employees from hazards associated with unchecked release of steam and with excessive wearing, tearing, and chafing of steam hoses that could compromise the integrity of components.

Paragraph (a) Steam Supply System—Proposed paragraph (a) requires that the employer ensure that the vessel’s steam piping system has a safe working pressure prior to supplying steam from an outside source to the vessel.

In paragraph (a) OSHA proposes to delete the existing requirement that employers must ascertain the steam system working pressure from “responsible vessel’s representatives, having knowledge of the condition of the plant.” In its place, OSHA proposes to provide employers with greater flexibility in determining the most effective way to meet the requirements of this provision, while keeping employers responsible for ensuring that the steam system is safe before supplying steam from an outside source.

Employers are free to ascertain the critical information from a responsible vessel’s representative, a contractor or any other person who is qualified by training, knowledge or experience to make that determination.

In paragraphs (a)(1) through (3), OSHA proposes to simplify the existing requirements (§ 1915.93(a)(1)) for outside systems that supply steam to a vessel’s steam piping system. Proposed paragraph (a)(1) requires that a pressure gauge and a relief valve be installed at the point where the steam hose of the outside steam source joins a vessel’s steam piping system. Proposed paragraph (a)(2) requires that the relief valves of outside steam systems be set to relieve excess steam and be capable of relieving steam at a pressure that does not exceed the safe working pressure of the vessel’s steam piping system in its present condition. Proposed paragraph (a)(3) requires that there must not be any means of disconnecting the relief valve from the system that it protects.

In paragraph (a)(4), OSHA proposes to revise the existing requirement (§ 1915.93(a)(1)) on visibility and accessibility of pressure gauges and relief valves of steam supply systems by adding a requirement that such gauges and valves also be “kept in legible condition.” OSHA believes this addition will address concerns SESAC members raised that gauges and valves often cannot be read because they are too dirty to be readable or the print is too small (Docket SESAC 1992–2, Ex. 102X, pp. 94–96). OSHA agrees that gauges must be visible, accessible and legible in order to determine accurately whether the working pressure of the steam supply system is safe.

In paragraph (a)(5), OSHA proposes to add a requirement that relief valves be positioned or placed in a location where they will not cause injury if they are activated. For example, orienting or positioning the relief valve to vent away from employees is one way to protect them from being scalded and burned if a valve is tripped by high pressure.

Paragraph (b) Steam Hoses—Proposed paragraph (b) retains, with some revisions, the existing requirements for steam hoses (§ 1915.93(a)(2)–(4)). Proposed paragraph (b)(1) requires that the employer ensure that all steam hoses and fittings have a safety factor of at least five—which is the same safety factor as in the existing standard (§ 1915.93(a)(2)).

In paragraph (b)(2), OSHA proposes to revise the existing requirement (§ 1915.93(a)(3)) on hanging steam hoses in bights. The existing rule requires that the weight of the steam hoses must be “relieved by appropriate lines” to

prevent chafing. The proposal requires that “short bights” be used when hanging steam hoses. OSHA believes the proposed language more clearly and directly specifies the measures necessary to prevent chafing and reduce tension on the hose and its fittings. SESAC recommended this change (Docket SESAC 1992–3, Ex. 104X, p. 123) because they said the use of short bights better protects steam hoses from damage.

Proposed paragraphs (b)(3) and (b)(4) retain and divide into separate provisions the existing requirements to protect steam hoses from damage and to protect employees from injury from steam hoses (§ 1915.93(a)(4)). In paragraph (b)(3), OSHA proposes that steam hoses be protected from damage. Steam hoses can be damaged when equipment and material are moved through walking and working areas. Employees could be seriously injured if a damaged hose suddenly releases steam.

Proposed paragraph (b)(4) revises the existing requirement that steam hoses and temporary piping passing through walking or working areas be shielded to protect employees from injury due to accidental contact. The existing provisions only require shielding of steam hoses and piping that pass through “normal work areas” (§ 1915.93(a)(4)). The proposed language expands coverage and provides employees with greater protection because it ensures that hoses and piping passing through areas and spaces where employees walk or pass through to reach work areas are also shielded to protect employees.

Paragraph (c) Electric Shore Power—In paragraph (c) the Agency proposes to retain, with minor revisions, the existing requirements (§ 1915.93(b)) addressing the actions employers must take prior to energizing a vessel’s circuits when electricity is supplied from a landside power source. OSHA believes that the proposed performance language improves the clarity of the requirements. For example, the proposal changes the paragraph title to “Electric Shore Power” from “Electric Power” to emphasize that the provisions address the actions that are necessary to protect employees from the hazards of remote power carried by electric cables or wires onto a vessel, which differ from other electrical hazards such as hand-held powered tools.

Proposed paragraph (c)(1) retains unchanged the existing requirement (§ 1915.93(b)(1)(i)) that, prior to energizing the vessel’s circuits, employers ensure the vessel is grounded if it is in dry dock.

In paragraph (c)(2), OSHA proposes to revise the existing requirement (§ 1915.93(b)(1)(ii)) to require that, prior to energization, employers ensure that circuits are in safe condition. The proposal also deletes the existing language requirement that employers ascertain such information from a “responsible vessel’s representative.” OSHA believes the proposal provides employers with greater flexibility to determine the most effective procedure for checking the safety of circuits.

In paragraph (c)(3), OSHA proposes to retain unchanged the existing requirement (§ 1915.93(b)(1)(iii)) that circuits to be energized must be equipped with overcurrent protection that does not exceed the rated current-carrying capacity of the conductors.

Paragraph (d) Heat Lamps—Proposed paragraph (d) would require that all heat lamps, including the face, be equipped with surround-type guards to prevent contact with the bulb, which could result in employee burns or the igniting of combustible material. The proposal expands the existing requirement (§ 1915.93(c)), which is limited to infrared heat lamps and does not fully address contact hazards since it does not require that the lamp face be guarded. OSHA believes these changes are necessary because shipyards use a variety of heat lamps and because fires are a significant source of accidents onboard vessels. In addition, employees can be seriously burned if they come in contact with a lamp face, which the guarding will prevent.

Section 1915.84 Work in Confined or Isolated Spaces

The proposal retains, with revisions, the existing requirements (§ 1915.94) to protect employees working in confined spaces or alone in isolated locations. The proposal also retains the existing exception in § 1915.51(c)(3) for welding, cutting and heating in confined spaces where, under certain conditions, an employee must be stationed outside the confined space to maintain communication and render aid if necessary. After reviewing the existing rule, SESAC recommended retaining the requirements (Docket SESAC 1992–2, Ex. 102X, p. 99). OSHA agrees with SESAC that these provisions are necessary to reduce employee deaths in shipyard employment.

Since 1987, thirteen fatalities have been reported in the OSHA IMIS database where employees were working alone in isolated areas in shipyards and were not discovered until after they had died from their injuries (Ex. 13). Following are some of those incidents.

- In 2002, an employee was working alone in the plenum on the starboard side of the A/B deck on a Navy vessel. Management stated that no one had checked on him often enough to notice he was missing until someone noticed his body floating in the water nearby.

- In 2000, an employee was working on the accommodation ladder on the MV Cape Henry when he apparently fell and drowned. He was not found for 11 days.

- In 2000, a crew was working on a cargo transfer crane barge welding metal grommets under the crane tracks on the deck of the barge. One employee climbed into a hold and was overcome by lack of oxygen. The employee was eventually found and later died.

- In 1998, a five-man crew was working on a barge, refitting it for use on the Panama Canal. One of the employees was working alone on the port side of the vessel installing the pilot house when he fell into the water. The remainder of the crew did not know that the employee had been missing until they found him dead in the water at a later time.

- In 1995, an employee was working alone as a shipyard dock watchman when he apparently fell from the gangway between the ship and the dock wall to the bottom of the dry dock. The unconscious employee was not found until the relief watchman came on duty and summoned help. The emergency team who arrived found the employee suffering from head and limb fractures and internal injuries. The employee later died of those injuries.

- In 1993, an employee was killed working alone while welding an overhead lap of steel plate to the underside of a vessel in dry dock. While standing on a concrete dry dock apron, approximately 14 feet wide by 49 feet long, the employee apparently walked off the end of it into the water and drowned. A coworker had gone home to take care of personal business, and there was no one there to rescue the employee.

- In 1992, two employees were cutting bulkheads using a torch in a small compartment on a drilling rig. The hose failed just inside the manways and ignited, trapping both employees inside the compartment until the end of the shift, about one hour. There were no scheduled checks on these employees, and one employee died as a result.

Paragraph (a)—Proposed paragraph (a) retains the requirement that the employer make frequent checks during each workshift to ensure the safety of any employee working in a confined space or alone in an isolated location. There are many ways employers can

comply with this requirement. One method is using two-way radios. Another is frequent visits by the employer or employer’s designee to the confined space or the isolated area. If visits to the work area are used, it is essential that the employer have a visual check of the employee rather than relying on power tool noise. Some power tools can continue to run even after an employee is injured or disabled.

Paragraph (b)—In paragraph (b) OSHA proposes to add a new requirement that the employer, at the end of each shift, account for each employee who is working in a confined space or alone in an isolated location. This provision would ensure that employers ascertain that each employee has returned safely from working in those areas, and if not, to take immediate action to locate the missing employee to render first aid or any other needed assistance. OSHA added this provision after reviewing shipyard fatality reports that indicated some injured employees were not discovered until long after their shifts had ended. OSHA recognizes that this provision may not prevent every fatality associated with confined spaces and isolated work areas, but the Agency believes it will help to increase survivability when an accident or injury occurs.

OSHA requests comment on the proposed provision. Specifically, OSHA requests comment on whether the section should be limited to employees working alone in either a confined or isolated space. Should OSHA address the hazards associated with working in confined spaces in subpart B confined and enclosed spaces instead of subpart F? In your establishment and industry, are employees working in confined spaces or alone in isolated spaces checked frequently during the workshift and accounted for at the end of the workshift? OSHA requests data and information on any injuries, fatalities, or near-misses that have occurred during the last five years due to an employee working in a confined space or alone in an isolated area. If any incidents have occurred, what measures have been instituted to ensure that employees working in these areas are safe?

OSHA also requests comment on whether the section should require that employers establish a system or some form of a signal to indicate when a single employee enters a confined space or a cofferdam to perform work. For example, should OSHA require employers to have a system where employees leave their picture identification (or some other easily identifiable flag) outside the entrance to

alert other employees that someone is inside working?

Section 1915.85 Vessel Radar and Radio Transmitters

The proposed section retains, with minor revisions, the existing requirements in § 1915.95 to protect employees from hazards (e.g., hazardous energy, radiation) associated with radar and radio transmitters onboard vessels. Although the scope of the proposed section is expanded to apply to shipbreaking, OSHA notes that it is very unlikely that radar and other radiation emitting equipment are still operational when shipbreaking operations are performed. Therefore, if the hazards this section seeks to address are not present, the requirements would not apply.

Paragraph (a)—Proposed paragraph (a) revises the existing requirement (§ 1915.95(a)) to ensure that no employee, whether radio repair technician or other employee, is allowed to work on the radar, radio transmitter, mast, king post, or other area closely located, unless the radar and radio transmitter are secured and made incapable of releasing hazardous energy or emitting radiation. Although the existing provision prohibits work in areas near the radar or radio transmitter unless the equipment is made incapable of emitting radiation, the provision does not address all the hazards of radio and radar transmitters including the energization of equipment. For example, an employee working aloft on a mast could be injured or even killed if a rotating radio antenna moves and strikes the employee.

Paragraph (b)—Proposed paragraph (b) revises the existing provision to require that prior to servicing, repairing or testing any radar or radio transmitter, the employer must ensure that hazardous energy is controlled in accordance with the proposed requirements of § 1915.89 Control of Hazardous Energy. The existing provision only requires that the equipment be “appropriately tagged” (§ 1915.95(a)). However, OSHA believes that more detailed lockout/tagout procedures are needed to ensure that employees are fully protected from the movement or start up of equipment and the release of hazardous energy. Tagging the equipment without complying with the rest of the proposed lockout/tagout program and procedures does not ensure that employees will be fully protected, especially those working in multi-employer worksites or in situations where ship’s crew are present.

The additional protections in proposed paragraphs (a) and (b) are

necessary for two reasons. First, any employee, including a repair technician, could be injured or killed if the radar or radio transmitter releases energy or if radiation is emitted from the radar system while the employee is working on or near that equipment. The proposed revision provides uniform protection for all employees working on or near such equipment. Second, this revision would ensure that employees servicing radar systems and radio transmitters follow the procedures for controlling hazardous energy sources (lockout/tagout) in proposed § 1915.89 to protect themselves and other employees working in the area. The Agency believes that shipyards generally follow these precautions currently, and thus this provision would not alter work practices in this area.

Paragraph (c)—Proposed paragraph (c) retains unchanged the existing provision (§ 1915.95(b)) requiring that the employer schedule testing of radar or radio at a time when (1) no work is in progress aloft, or (2) personnel can be cleared a “minimum safe distance” from the danger area. The proposal also retains the requirement that the employer follow the minimum safe distance established for the type, model, and power of the equipment. SESAC recommended retaining the existing provisions (Docket SESAC 1992–1, Ex. 100X, pp. 118–130; Docket SESAC 1992–2, Ex. 102X, pp. 97–99).

SESAC also recommended that OSHA include sonar testing and repair in this section (Docket SESAC 1992–1, Ex. 100X, pp. 118–130). OSHA requests comments on whether the testing and repair of sonar should be included. What are the potential hazards to employees in testing and repairing sonar? In your establishment and industry, have employees been injured, killed, or exposed to radiation while testing, repairing or working near sonar equipment? What precautions are taken to ensure that employees are protected from these hazards?

Section 1915.86 Lifeboats

The proposed section retains and revises the existing requirements (§ 1915.96) for working in or on lifeboats. Several lifeboat fatalities have occurred in the shipbuilding and repair industry. In 1993, for example, two employees being hoisted in a lifeboat were thrown into a river and drowned because the boat was not adequately secured. When the boat was released the hoist lines were not sufficient to bear the weight and shock of the falling lifeboat. In 2004, three employees being lifted onto a newly-constructed floating oil rig were dropped when the rig’s

sternhook failed, killing one employee and seriously injuring the two others. The proposal prohibits hoisting employees in lifeboats under any circumstances. Such a requirement would have prevented these accidents.

Paragraph (a)—Proposed paragraph (a) simplifies the existing provision (§ 1915.96(a)) to emphasize that the employer must ensure that before employees work in or on a lifeboat, either in a stowed or suspended position, that the lifeboat is secured independently of the releasing gear. Securing the lifeboat prevents it from falling if the releasing gear is accidentally tripped or the davits move. It also prevents lifeboats that are stowed on chocks from capsizing.

Paragraph (b)—Proposed paragraph (b) expands the protection afforded by the existing provision (§ 1915.96(b)) by prohibiting employees from being in a lifeboat at any time while it is being hoisted. The existing requirement only prohibits employees from being in lifeboats when they are hoisted “into the final stowed position.” As the discussion of fatal shipyard accidents shows, the hazards associated with the hoisting of lifeboats (e.g., falling) are present any time they are hoisted. The proposed provision will provide employees with protection whenever the hazard is present. OSHA requests comments on the proposed revision.

Paragraph (c)—Proposed paragraph (c) retains the existing requirement (§ 1915.96(c)) that the employer not permit employees to work on the outboard side of any lifeboat that is stowed on its chocks unless the lifeboat is secured to prevent it from swinging outboard. If the lifeboat is not secured prior to employees working on the outboard side of it, the lifeboat could swing out and strike the employee, causing him or her to fall.

Section 1915.87 Medical Services and First Aid

Proposed § 1915.87 sets out requirements for medical services, first aid, and lifesaving equipment. Shipyard employment has high accident rates. The provisions in this section are intended to prevent workplace accidents from resulting in fatality and serious injury by increasing the survivability of life-threatening injuries and mitigating the severity of injuries.

The proposal combines and revises, where necessary, the existing standards on medical services and first aid that are applicable to shipyards (§§ 1910.151 and 1915.98). OSHA adopted both standards, pursuant to section 6(a) of the OSH Act, from the established Federal occupational safety and health

standards in effect at the time. (The provisions in § 1910.151 apply to shipyards to the extent that the section addresses hazards and working conditions that § 1915.98 does not. See Ex. 16–9, OSHA’s Tool Bag Directive.)

Paragraph (a) General Requirement—In paragraph (a), OSHA proposes a general requirement that employers ensure that medical services and first aid for employees are “readily accessible.” For purposes of this section, readily accessible means that medical services and first aid are capable of being reached quickly when employees need them, or medical service and first aid can be brought quickly to the employee, and there are no obstacles to gaining quick access.

The purpose of this provision is twofold. First, it would establish uniform criteria applicable to all of the first aid and medical services specified in the section, ensuring that these services are available and close enough to the injured employee so effective intervention can be provided. Second, in the case of serious or life-threatening injury, it would require employers to have steps in place to ensure that additional emergency medical intervention is readily accessible. The provision also addresses SESAC’s concerns that first aid providers be able to reach injured employees quickly enough to render effective assistance.

Uniform criteria for all first aid and medical services are necessary because their components, primarily first aid providers and first aid supplies, are interrelated. They both must be readily accessible for intervention to be effective. It is not effective to require that first aid kits be situated at every work location without a parallel requirement to have trained employees at the work location who are capable of using those supplies. Conversely, on-site trained first aid providers cannot provide effective assistance if first aid supplies are too far away to be accessed quickly. Thus, establishing uniform criteria will help to ensure that the needed components of first aid and medical services are in place to provide effective intervention when needed. Uniform provisions will also help to simplify the section and make it easier to understand and comply with. Finally, the uniform criterion addresses inconsistency concerns that SESAC suggested exist in the current requirements. SESAC pointed out that the existing standard establishes different criteria for different types of first aid and medical services (Docket SESAC 1993–1, Ex. 100X, pp. 167–173). For example, SESAC pointed out that in existing § 1915.98(a) first aid rooms,

qualified attendants and trained first aid providers must be “close at hand” to any area of the shipyard while the first aid kits provision only requires that kits be furnished for and kept close to each vessel.

OSHA notes that employers will need to consider various workplace factors in determining whether first aid and medical services are readily accessible, such as the size and position of each work location; the number of employees working at the work location; the nature of the hazards to which employees may be exposed; and the distance between work locations and clinics (on-site or off-site), hospitals and rescue squads.

Applying these factors, accidents resulting in severe bleeding or electrical shock resulting in heart or breath stoppage must be treated within a very short time (optimally within three to four minutes) to increase the chances of a positive outcome. To the extent that these types of accident risks are present in shipyards, such as servicing electrical systems where there is a risk of energization or start up, the employer must ensure that necessary first aid is close enough to maximize the injured employee’s survivability. For example, where employees are at risk of electrical shock, it is necessary to have first aid providers located in that work area so cardiopulmonary resuscitation (CPR) can be started quickly.

With regard to the second purpose, the proposed provision would require employers to ensure ready accessibility to additional medical services such as rescue squads and ambulances. OSHA notes that some shipyards, primarily larger ones, already have taken these steps by establishing their own on-site medical clinics and ambulance or rescue squads. The proposed provision does not require shipyard employers to have on-site clinics, ambulance or rescue squads, but at a minimum, it requires employers to implement a system to ensure that emergency services such as local rescue squads or ambulance services are readily accessible when needed. The employer’s plan needs to factor in reasonably foreseeable delays, such as railroad tracks near the shipyard entrance that could be blocked when rescue squads need to access injured employees in the shipyard.

OSHA requests comment on this provision. In your establishment and industry, what measures are in place to ensure that first aid and medical services are readily accessible? Should the final standard specify a maximum time within which first aid and medical services must be available? For example, should the final standard specify that

employers must ensure that first aid and medical services are initiated within three to five minutes of the discovery or report of an injury?

Paragraph (b) Advice and Consultation—In paragraph (b), OSHA proposes to retain, with technical changes, the existing requirement in § 1910.151(a) that employers ensure that health care professionals are readily available for advice and consultation on matters of workplace health.

OSHA is proposing to replace two terms in the existing requirement. The term “plant health” would be changed to “workplace health,” to make the provision more appropriate to shipyards, and “health care professionals” would replace the term “medical personnel.” OSHA proposes to define health care professional to mean a physician or any other health care provider whose legally permitted scope of practice allows the provider to independently provide or be delegated the responsibility to provide some or all of the advice or consultation this section requires. The proposal would allow employers to consult with any health care professional (e.g., physician, osteopath, physician’s assistant, nurse, EMT, etc.) whose license, registration or certificate authorizes them to provide such assistance and advice. In some instances, a nurse or physician’s assistant at an on-site clinic may be able to provide the requested advice and consultation. Employers are also free to use local medical clinics or specialists. The key is that the health care professional must be readily available to provide advice and consultation when needed.

Paragraph (c) First Aid Providers—Proposed paragraph (c)(1) revises the existing provisions (§ 1915.98(a)) on the required number and location of first aid providers and updates the requirements on their qualifications to more fully address the needs and conditions present in shipyards. OSHA proposes that employers ensure there are adequate numbers of employees to render first aid at each work location during each workshift. Section 1915.98(a) currently requires that where a first aid room with a qualified attendant is not “close at hand,” there must be at least one employee “close at hand” to administer first aid. SESAC raised two concerns about this provision. They said the language “close at hand” was too vague. In addition, they expressed concern that first aid providers would not be able to reach injured employees quickly enough if they were not located at shipyard work locations. For example, some SESAC members said local emergency services

can be delayed in reaching shipyards due to traffic situations, such as being stopped at train crossings. To resolve these concerns, SESAC recommended that there be first aid providers at shipyard work locations regardless of whether first aid rooms or hospitals are located nearby (Docket SESAC 1993-1, Ex. 100X, pp. 166-173).

Based on SESAC's recommendation, OSHA proposes in paragraph (c)(1) that employers ensure that there are employees qualified to provide first aid at each work location during each workshift. OSHA agrees with SESAC that the proposed provision is necessary and will be effective in ensuring that first aid is provided quickly enough to maximize survivability and prevent permanent injury. The sooner life-threatening conditions are treated, the more likely that the outcome will be positive. The American Heart Association (AHA) found that when resuscitation and automatic external defibrillation are delivered within three to five minutes, reported survival rates from sudden cardiac arrest are as high as 48 to 74 percent (Ex. 8). Studies have shown that for each minute sudden cardiac arrest is not treated, the probability of reviving the heart decreases by 7 to 10 percent (Exs. 7, 8). These data indicate that having responders at the work location could significantly increase the survival rates for injured employees.

Having first aid providers at the work location can also "buy time" until off-site rescuers arrive. For example, performing CPR immediately can help to preserve heart and brain function until local emergency services are able to provide complete medical treatment, such as providing oxygen or using an automated external defibrillator (AED) to restore normal heart rhythm. According to IMIS, there were 13 fatalities in shipyards that were deemed "heart attack" or "coronary" within a 15 year period. Out of those 13, only 4 reports documented any basic life support, such as CPR or first aid, prior to rescue squads arriving on the scene. Even for injuries that are not immediately life threatening, timely first aid can reduce further injury and significantly aid recovery by, for example, immobilizing fractures, reducing blood loss or providing warmth for shock.

For example, the proposed provisions requiring trained employees at each work location to render first aid, including cardiopulmonary resuscitation (CPR), may have prevented the following shipyard fatalities. In one case, a shipyard employee was electrocuted while troubleshooting a

portable outlet box. The IMIS abstract indicates that coworkers summoned emergency medical personnel to the worksite, which appears to suggest that there was no one at the worksite trained to provide CPR to "buy time" until offsite emergency personnel arrived. There also is no indication how long it took for emergency personnel to arrive. When the personnel did arrive, they transported the injured employee to a hospital, but he died. Had the proposed provisions been in place, there would have been first aid providers at that work location to begin CPR immediately to preserve the employee's brain and heart function during those critical first minutes while offsite emergency personnel are summoned (proposed § 1915.88(c)(1)). Studies show that for each minute sudden cardiac care is not treated, the probability of reviving the heart decreases by as much as 10 percent (Ex. 7).

In another case, an employee began experiencing chest pain after climbing down a scaffolding stair tower for his lunch break. When he asked coworkers for help, they began walking him along the pier, presumably to an on-site infirmary. The employee collapsed while he was walking and died of a heart attack. Under the proposed provisions, there would have been trained employees who would have known to have the employee lie down rather walk to an infirmary. Moreover, these employees would have been able to start CPR, which would have maximized the employee's survivability potential. Similarly, a shipyard employee who collapsed while he was working in the engine room of a large ship may have survived had other employees working in the engine room or on the vessel been trained to render first aid. There is no indication in the IMIS abstract whether there were any trained first aid providers in the engine room or on the vessel to perform CPR.

The proposed requirement to ensure that during each workshift there are an adequate number of first aid providers (proposed § 1915.88(c)(1)) also may have prevented shipyard fatalities reported in the IMIS database. For example, during a "graveyard" shift, a shipyard employee working in the bottom of a vessel cofferdam died after he suffered cardiac arrest. There is no indication in the abstract whether any first aid providers attempted resuscitation or indeed whether there were any first aid providers at the shipyard during that workshift.

For purposes of this provision, the meaning of a shipyard "work location" will depend on the size, nature and location of the shipyard. OSHA does not

intend the term to mean a single work area. A shipyard may have hundreds of work areas and only one or a few employees may work in any one area. Rather, OSHA intends a shipyard work location to refer to a group of work areas that are clustered together and in near proximity to each other. For instance, work areas in a small, concentrated shipyard may constitute a single work location, even though some may be located on a vessel and others on landside. By contrast, a large shipyard that has multiple piers, docks, large vessels, and landside facilities is likely to be considered to have multiple work locations. This is because shipyard work areas are more likely to be spread across a large area, possibly miles apart, and some may be remotely located. In these shipyards, it is unlikely that a first aid provider located in one work area would be able to reach all work areas within the shipyard quickly enough to provide effective intervention.

Accordingly, OSHA believes that each group of clustered work areas must have an adequate number of first aid providers to ensure that timely intervention is provided for employees working at a work area within that group. By contrast, a single work area distantly located from other work areas may, of necessity, be considered a work location because first aid providers in other work areas would not be able to reach the area quickly enough to effectively aid an injured employee.

Additionally, OSHA is proposing to add a requirement that employers ensure the work location has first aid providers during each workshift. Many shipyards have multiple workshifts and employers must ensure that employees working in any of these workshifts will have effective first aid intervention if an injury occurs. Having first aid providers at each work location is especially important during those hours when on-site and off-site infirmaries and clinics are not open.

Proposed paragraph (c)(1) also includes the following objective factors employers must consider in determining how many providers are needed at each work location:

- The sizes and location of work locations in the shipyard;
- The number of employees at each work location;
- The nature of the hazards present at each work location; and
- The distance of each shipyard work location from clinics (on-site or off-site), rescue squads and hospitals.

OSHA believes that the addition of the objective factors not only will make the requirement easier for employers to understand and comply with, but also

will address SESAC's concern about the vagueness of the current language (Docket SESAC 1993-1, Ex. 100X, pp. 167-173). (A more detailed explanation of the objective factors is included below in the discussion of first aid supplies).

OSHA believes the proposed revision should not pose significant new burdens for shipyard employers since many already have multiple employees at each work location who are qualified to provide first aid. For instance, one SESAC member said that a significant number of employees in Boston area shipyards already receive first aid training:

[T]he employer would pick employees to go to the first aid training center, and after the training was over, he'd go back to the shop and other people would go, and it was a continual thing, and they'd be certified (SESAC 1992-2, Ex. 102X, p. 161).

OSHA requests comment on the proposed provision. In your establishment and industry, how many employees are trained to provide first aid? Are there trained providers at each work location and during all workshifts? Are the objective factors in the proposed standard appropriate for determining how many first aid providers employers should have at each work location? What additional factors, if any, should employers consider?

OSHA has recently developed and published a Best Practices Guide: Fundamentals of a Workplace First-Aid Program (Ex. 18). This document provides a discussion on the basics of assessing the risks and designing a first aid program that is specific to the worksite. Although this document addresses some basics, while developing a first aid program, employers need to keep in mind the additional factors specified in the proposal.

First aid provider training/qualifications. The importance of first aid training is immeasurable. Although some shipyard employees may have received training in the past, appropriate and up-to-date training is necessary to ensure that injured employees receive correct intervention. Lack of training can also result in a lack of treatment when it is needed. For example, in 2002, as an employee was standing on a scaffold to bolt a motor onto a crane located off of the main house. After descending from the scaffolding for his lunch break, the employee complained of chest pains and asked coworkers for help. They proceeded to walk the employee along the pier. The employee collapsed while he was walking and died of a heart

attack. Had the coworkers been trained in first aid and CPR, they would have known the correct steps to follow when an employee experiences the early signs and symptoms of a cardiac event.

Section 1915.98(a) currently requires that any person administering first aid be "qualified," but does not define the term. In paragraph (c)(2), OSHA proposes to make this intent clearer by stating that employees designated to provide first aid must have a "valid first aid certificate." The proposed language is drawn from a similar requirement in the Longshoring standard, which OSHA updated in 1997 (§ 1918.97(b)).

The proposal is designed to give employers maximum flexibility in developing a first aid training program that is appropriate for the types of working conditions and hazards in their workplaces. With one exception, CPR training, the proposal does not establish the specific content of the required first aid training program that employers must follow. As long as the certificate is issued by a responsible organization, such as the American Red Cross, the American Heart Association, or other equivalent organization, which requires successful course completion as evidence of qualification, the requirements of the proposal would be met. Likewise, the proposal does not specify a frequency for first aid refresher training. Whatever frequency the certifying organization requires for retaining certification, usually three years, would be allowed.

OSHA is considering including an appendix on the requirements of a first aid training program to ensure that employees are fully trained by qualified instructors. This appendix could be similar to that found in the Logging Operations standard (§ 1910.266), which includes a mandatory appendix that specifies the minimally acceptable first aid training program that employers must follow. Some of the required topics include respiratory arrest, cardiac arrest, lacerations/abrasions, shock, burns and loss of consciousness. Similarly, the Longshoring first aid standard (§ 1918.97) includes a non-mandatory appendix that lists the basic elements of a first aid training program. Along with topic areas such as shock, bleeding, poisoning and burns, this appendix also specifies the manner in which employees must receive training. For example, it recommends that trainees develop hands-on skills through the use of manikins, a course workbook, and adequate time for emphasis on situations likely to be encountered in the particular workplace.

OSHA requests comment on the proposed first aid training requirement. Should the final standard require that first aid providers have a valid first aid and CPR certificate? Should the final rule specify the areas in which first aid providers must be trained? Should OSHA include an appendix similar to that in § 1910.266 or 1918.97 in the final rule? If not, why not? If so, what should the program include? Should the program include hands-on exercises? Should the final rule include a requirement that whatever first aid training program and trainer/provider the employer uses, that the program and/or trainer be certified by a nationally recognized first aid organization? Please explain.

In your establishment and/or industry, what training and certification do first aid providers have and does it include CPR training? What organizations, if any, conduct the first aid training and certification? How frequently do first aid providers have refresher training?

Paragraph (d)—First Aid Supplies—In paragraph (d), OSHA proposes to revise the existing requirement on first aid supplies (§ 1915.98(b)). The proposed changes give employers more flexibility and assistance in tailoring the type, amount and location of supplies to the specific needs of their workplace. The proposal includes objective criteria, which are the same as those proposed for first aid providers, to assist employers in meeting the requirement. A non-mandatory appendix to this section references the most recent consensus standards regarding first aid supplies, consistent with the recently revised general industry standard (§ 1910.151).

Location of first aid supplies. In paragraph (d)(1), OSHA proposes to revise the existing standard to require that first aid supplies be provided "at each work location." (In proposed paragraph (d)(2), OSHA identifies objective criteria to assist employers in determining where to locate supplies in each work location so they will be readily accessible when needed). The existing standard requires that, under certain circumstances, first aid kits be furnished "for each vessel on which work is being performed" and be kept "close to the vessel" (§ 1915.98(a)). The general industry standard, which was revised in 1998, specifies that first aid supplies must be "readily available" (§ 1910.151(b); 63 FR 33450 (6/19/1998)).

The proposed revision gives employers more flexibility and guidance about where supplies need to be located. In addition, the proposal

clarifies OSHA's intent that first aid supplies need to be located at all work locations throughout the shipyard, those onboard and near vessels as well as those at landside work locations.

OSHA requests comment on this provision. In your industry and establishment, where are first aid kits located and what factors do you consider in determining where to locate them?

Number of first aid supplies. The existing standard (§ 1915.98(b)) requires that employers provide "sufficient" quantities of first aid supplies, but does not define the term. In paragraph (d)(1), OSHA proposes to revise the existing rule to require that employers provide "adequate" first aid supplies at each work location, and adds, in proposed paragraph (d)(2), objective criteria employers must follow in determining whether they have provided enough supplies to meet the needs of that work location. Of particular importance in determining the number of supplies is the number of employees who will be working at the specific location. OSHA requests comment on this provision. In your industry and establishment, how many first aid kits are provided and what factors do you consider in determining how many are needed?

Proposed paragraph (d)(1) also requires that employers maintain their first aid supplies so they remain adequate. This means that employers must ensure that not only are the number of first aid supplies adequate, but also that exhausted supplies are replaced. For purposes of this provision, maintain also means that first aid supplies must be kept in serviceable condition. A more detailed explanation of the proposed maintenance requirement is included below along with the discussion of the inspection of first aid supplies.

Contents of first aid kits. In paragraph (d)(2), OSHA proposes to revise the existing requirements on the contents of first aid kits (§ 1915.98(b)). The existing provision specifies a list of items that first aid kits must contain, a list that SESAC said was outdated (Docket 1992-1, Ex. 100X, pp. 161, 162). Based on SESAC's recommendation, in paragraph (d)(2), OSHA proposes to replace the list with a performance based approach.

The list of supplies in § 1915.98(b) was adopted more than 30 years ago, prior to adoption of the 1978 ANSI Z308.1 standard on workplace first aid kits and is inconsistent with the current ANSI standard (Ex. 3-2, ANSI Z308.1 (1998) Minimum Requirements for Workplace First Aid Kits). The list in § 1915.98(b) does not include all of the minimum content requirements for

basic first aid kits specified in the current ANSI standard and includes items that ANSI no longer recommends for general workplace kits (i.e., tourniquets and forceps) (Ex. 3-2, Table 5-1).

OSHA believes that adopting a performance-based approach on the contents of first aid kits will give employers maximum flexibility in tailoring their first aid supplies to the conditions and hazards present in their workplace. Adding objective criteria that employers must consider in determining the content of first aid kits provides a framework for assuring that first aid supplies will be appropriate and adequate for the shipyard work location.

Objective criteria. In paragraph (d)(2), OSHA proposes to add objective criteria to assist employers in determining whether the location, content and amount of first aid supplies are adequate and appropriate for shipyard work locations. The proposal includes the following four criteria that employers must consider:

- *The size and location of each shipyard work location.* The size of the shipyard work location is an important consideration. It is likely that large work locations are spread out and, as such, more first aid kits may be necessary to ensure they are readily accessible if an employee gets injured. Employers also need to consider the location of where employees are working throughout shipyards when determining the number, content and positioning of first aid kits. For example, remote work locations or other shipyard work locations that are farther away from rescue squads or hospitals may need to have more first aid supplies or a broader range of supplies to care for an injured employee until additional help arrives or the employee can be transported for more advanced care. Work locations that may be cut off by passing railcars also may need more first aid supplies in case access roads are blocked when an injury occurs. In addition, it would be necessary for vessels that are underway to have adequate first aid supplies onboard.

- *The number of employees at each work location.* In general, when there are more employees at a work location the employer would need to provide more first aid supplies to prepare for the possibility that an accident could result in multiple employee injuries, or that several accidents could occur within a short period of time.

- *The nature of hazards present at each work location.* Employers need to assess the specific needs and the nature of the hazards present in each work

location to ensure that first aid kits contain the types and quantity of supplies needed to effectively treat the injuries and illnesses that could be expected. For example, in shops where hot work is performed first aid supplies for burns would be necessary, and in outdoor areas first aid items for insect or animal bites may be needed.

- *The distance of each work location from hospitals, clinics, and rescue squads.* The distance—and therefore the time needed—to get to hospitals or clinics (on-site or off-site), and for rescue squads to respond is also an important factor in determining the location, amount and type of first aid supplies employers need to provide. A single first aid kit may be adequate for small work locations that are close to on-site infirmaries or local emergency services. However, additional kits and types of supplies may be necessary when medical services are farther away.

OSHA requests comment on the proposed provisions, including the objective factors employers would need to consider in determining the location, amount and types of first aid supplies to provide. What additional factors, if any, should employers consider? In your establishment and industry, what factors do you use in making determinations about first aid supplies?

Non-mandatory appendix. Section 1910.151 includes a recently revised non-mandatory appendix to provide information on the contents of first aid kits (70 FR 1112, 1141 (1/5/2005)). OSHA proposes to incorporate the § 1910.151 appendix, with revisions that update the appendix. The proposed appendix provides guidance to employers on the contents of first aid kits, assessing workplace risks, and OSHA's requirements for protecting first aid providers from possible exposure to bloodborne pathogens. In the proposal, OSHA is updating the reference to the ANSI Z308.1 standard on minimum requirements for workplace first aid kits. The proposed appendix references the 2003 ANSI standard (Ex. 3-16). The appendix to § 1915.87, which OSHA added in 1998 (70 FR 1141 (6/18/1998)), references the 1998 ANSI standard (Ex. 3-2). OSHA requests comment on whether the non-mandatory appendix should include other information on first aid supplies. If so, what should it include?

Maintenance and inspection of first aid supplies. In paragraphs (d)(1) and (3), OSHA proposes to revise the existing requirements on the maintenance and inspection of first aid supplies (§ 1915.98(b) and (c)). OSHA proposes to replace the existing maintenance and inspection provisions

with more flexible performance language.

With regard to maintenance of first aid supplies, the existing standard requires that first aid kits have a weatherproof container and that supplies are in individually sealed packages. Read together, proposed paragraphs (d)(1) and (d)(3) require that first aid supplies be maintained in "dry, sterile and serviceable condition." For purposes of this provision, OSHA would define serviceable condition to mean the state or ability of a device to operate as it was intended by the manufacturer to operate (proposed § 1915.95).

OSHA believes the proposed language provides employers with greater flexibility in tailoring the maintenance and packaging of first aid supplies to the specific conditions present in their work locations while at the same time ensuring that supplies remain useable. For example, first aid kits for use in outdoor and mobile work locations may need weatherproof containers to keep supplies dry, sterile and serviceable, but the same may not be necessary for first aid kits used in enclosed facilities. OSHA notes that individually packaged first aid supplies stored in weatherproof containers would typically be considered in compliance with the proposed requirements as would supplies maintained in accordance with the current ANSI Z308.1 standard (Ex. 3-2).

As mentioned, OSHA proposes to require that first aid supplies be kept in "serviceable condition." The purpose of the provision is to ensure that the first aid supplies remain effective. To ensure first aid supplies remain serviceable, employers would need to store them in accordance with manufacturer instructions (e.g., out of direct sunlight, not above a certain temperature) and replace supplies when their use date expires. Supplies that are maintained and operated in accordance with manufacturer instructions and recommendations would generally be considered in compliance with the serviceable condition requirement. Inherent in the proposed requirement to ensure that first aid supplies are in proper condition is the employer's obligation to replace supplies that are found to be deficient.

In regard to inspection of first aid supplies, the existing standard requires that first aid supplies be checked before being sent out on a job and at least weekly thereafter to ensure that expended items are replaced (§ 1915.98(c)). In paragraph (d)(3), OSHA proposes to replace that language with performance language that would

require employers to inspect first aid supplies at intervals that ensure they remain in "dry, sterile and serviceable condition." The proposal gives employers greater flexibility to determine what inspection procedures would be most effective for ensuring that supplies remain in appropriate condition and adequately replenished. For example, it would allow employers to opt for stocking work locations with a larger supply of first aid supplies and establish something other than a weekly maintenance and inspection schedule. It also would allow employers to use smaller, portable first aid kits, such as for mobile work crews, which may need to be inspected and restocked more frequently.

OSHA requests comment on the proposed maintenance and inspection requirements. In your establishment and industry, what maintenance and inspection procedures are followed to ensure that first aid supplies are in adequate supply and serviceable condition?

Paragraph (e)—Quick Drenching/Flushing Facilities—Section 1910.151(c) currently requires that quick drenching or flushing facilities ("quick drench facilities") be provided within the work area for immediate emergency use where the eyes or body may be exposed to "injurious corrosive materials." OSHA proposes in paragraph (e) to retain and expand the existing provision to require that quick drench facilities be provided where employees could be splashed with hazardous or toxic substances. Shipyard employees involved in operations such as cleaning, painting, and stripping operations are at risk of being splashed with solvents or other chemicals. Although these substances may not necessarily be corrosives, they can injure or burn the skin or eyes or be absorbed rapidly through the skin causing harmful effects.

The expanded coverage of the proposed provision is consistent with the scope of the current ANSI Z358.1 standard (Ex. 3-4, ANSI Z358.1 (1998)), American National Standard for Emergency Eyewash and Shower Equipment). The ANSI standard establishes minimum requirements for emergency eyewashes and showers for persons who have been exposed to "injurious" or "hazardous materials," which the standard defines as "any substance or compound that has the capability of producing adverse effects on the health and safety of humans."

Location of quick drench facilities. In paragraph (e), OSHA proposes to retain the existing requirement (§ 1910.151(c)) that a quick drenching facility be

located within each work area for immediate emergency use. For purposes of this paragraph, OSHA does not intend "work area" to mean the entire work location or workplace. Rather, work area means the immediate area where employees are working and potentially exposed to hazardous or toxic materials. Having quick drench facilities as close as possible to the hazard is necessary to ensure that hazardous substances can be removed quick enough to prevent injury or absorption and that facilities are directly accessible in those situations where the employee may be blinded by a hazardous substance. For example, where employees working in a paint shop are routinely exposed to solvents and other chemicals during mixing or cleaning operations, a quick drench facility needs to be located within the shop so employees do not have to go to another area in the shipyard to reach a quick drench facility.

In those work areas where it is impracticable to place permanent (i.e., plumbed) quick drench facilities, such as confined spaces, the employer would need to provide portable facilities. OSHA does not believe this should pose a problem for employers since many already have these portable facilities. The ANSI Z358.1 standard includes specifications for self-contained eyewash equipment as well as personal quick drench equipment that could be used in such locations (Ex. 3-3, ANSI Z358.1).

OSHA requests comment on whether the final rule should adopt the approach in the ANSI standard that quick drench facilities be located within a maximum distance (e.g., distance traveled in 10 seconds) of the hazard. In your establishment and industry, where are quick drench facilities located? How close to the immediate work areas are they located and generally how long does it take an injured employee to reach them? What type of quick drench facilities are provided for use in areas where a permanent (plumbed) facility cannot be placed?

Paragraph (f)—Basket Stretchers—In paragraph (f), OSHA is altering the requirements for basket stretchers. Paragraph (f) proposes that an adequate number of basket stretchers, or the equivalent, be readily accessible. OSHA also proposes that they be equipped with permanent lifting bridles that enable the stretcher to be attached to hoisting gear and be capable of lifting at least 5,000 pounds. In addition, these basket stretchers must be capable of securely restraining the injured employee and provide a blanket or other suitable covering. Finally, the basket

stretchers must be stored in a clearly-marked location, be protected from damage and be inspected to ensure they remain in a safe and serviceable condition.

Number of basket stretchers. In paragraph (f)(1), OSHA proposes to revise the existing requirements (§ 1915.98(d)) on the required number of basket stretchers used to remove injured employees from vessels. Section 1915.98(d) currently requires that employers provide at least one basket stretcher (or equivalent) “for each vessel on which ten (10) or more employees are working,” but does not require the employer to provide more than two stretchers “on each job location.” Employers are exempted from this requirement where ambulance services carry such stretchers. Where basket stretchers are required, they must be equipped with lifting bridles and a blanket, and kept close to the vessel.

SESAC members raised a number of concerns about the existing section. Members said the provision was unclear about whether a basket stretcher must be dedicated solely to a vessel or whether it could be used for all vessels located within a specific area (e.g., on the same pier) (Docket SESAC 1993–1, Ex. 100X, pp. 147–167). SESAC also said it was unclear what the term “job location” refers to (e.g., a pier, a vessel, or a work area onboard a vessel).

Several SESAC members said it was burdensome and unnecessary to require that basket stretchers be dedicated solely to one vessel and that there was no reason to provide more stretchers than were capable of being hoisted. SESAC members pointed out that since many shipyard locations have only one crane, and only one basket stretcher can be moved at one time, only one basket stretcher should be required. (Docket SESAC 1992–2, Ex. 104X, pp. 146–147; Docket SESAC 1993–1, Ex. 100X, pp. 155–158).

Other SESAC members said the provision was not protective enough. Specifically, they were concerned that the provision did not appear to require basket stretchers if fewer than 10 employees worked onboard a vessel, a cutoff that appeared arbitrary to them. They also said that OSHA should make explicit that the provision applies to vessel sections in addition to vessels (Docket SESAC 1993–1, Ex. 100X, pp. 142–143, 147).

Location of basket stretchers. In paragraph (f)(1), OSHA proposes a performance-based provision requiring that employers provide basket stretchers so they are readily accessible when work is being performed onboard a vessel or vessel section. The proposed

requirement recognizes that, in some situations, having just one basket stretcher at a location where work is being performed on vessels or vessel sections may be adequate to ensure ready accessibility. For example, as SESAC members stated, if a crane is capable of hoisting a basket stretcher from any one of several barges docked together, one stretcher may provide ready accessibility for that group of vessels. Likewise, where a shipyard crane mounted on railtracks can move back and forth to hoist a basket stretcher from one of several vessels or vessel sections, one stretcher may be adequate to remove injured employees from any of those vessels or vessel sections (Docket SESAC 1993–1, Ex. 100X, p. 155).

In other situations, however, one basket stretcher may not be adequate to ensure that one is readily accessible. In very large shipyards that have several work locations with hundreds, if not thousands, of employees working far apart on vessels and vessel sections, more than one basket stretcher may be needed to ensure that one is readily accessible to each work location. Some SESAC members also said additional stretchers should be provided where it is necessary to speed up removal of injured employees (Docket SESAC 1993–1, Ex. 100X, p. 159). Having additional stretchers allows first aid providers to ready other injured employees for removal while the first employee is being lifted to shore.

OSHA believes the proposed revision is a reasonable approach that will provide effective protection for employees. In certain circumstances, basket stretchers will need to be provided even when fewer than 10 employees are working onboard a vessel, an issue that concerned SESAC (Docket SESAC 1993–1, Ex. 100X, p. 147). At the same time, it gives employers flexibility to tailor their efforts to the specific conditions and equipment present at the work area.

OSHA requests comment on the proposed provision. In your establishment how many basket stretchers are provided and where are they located? Are basket stretchers provided for vessel sections and when fewer than 10 employees are working onboard a vessel or vessel section? If not, what measures are used to ensure that injured employees are removed safely and quickly in these situations?

Exception. In paragraph (f)(1), OSHA proposes to delete language in the existing rule (§ 1915.98(d)) stating that the requirement to provide basket stretchers does not apply where ambulance services are available and

carry such stretchers. OSHA believes this language is no longer necessary since the proposed language in paragraph (f)(1) ensures that basket stretchers are “readily accessible.” The proposal gives employers flexibility to provide their own stretchers or utilize the stretchers provided by local emergency squads if they are readily accessible. OSHA requests comment on whether local emergency squads are readily accessible to vessel work locations and whether they have basket stretchers that meet the proposed requirements. To what extent do shipyard employers rely on local emergency squads to provide basket stretchers?

Specifications for basket stretchers. In paragraph (f)(2), OSHA proposes to retain, with revisions, the existing specification requirements for basket stretchers (§ 1915.98(d)). Proposed paragraph (f)(2)(i) retains the existing requirement that basket stretchers have permanent lifting bridles to enable the stretcher to be attached to hoisting gear. OSHA proposes to add a strength requirement that basket stretcher bridles be capable of lifting at least 5,000 pounds (2,270 kg), which provides a safety factor of five. The proposed addition is based on requirements in the Marine Terminals and Longshoring standards, which were updated in 1997 (§§ 1917.26(d) and 1918.97(d)).

In paragraph (f)(2)(ii) OSHA proposes to add a requirement that basket stretchers have restraints that are capable of securely holding the injured employee while the stretcher is lifted or moved. This addition is also based on the Marine Terminals and Longshoring standards (§§ 1917.26(d)(4) and 1918.97(d)(4)). OSHA believes it is appropriate to apply the Marine Terminals and Longshoring provisions to shipyard employment because the use of basket stretchers and the working conditions are similar. The proposed changes should not pose a problem for shipyard employers because most basket stretchers already meet those criteria.

Finally, in paragraph (f)(2)(iii) OSHA proposes to retain the existing requirement that each basket stretcher have a blanket or other suitable covering to cover injured employees and protect them from environmental conditions.

OSHA requests comment on the proposed specifications for basket stretchers. The Marine Terminals and Longshoring standards also have specifications for stretchers and bridles to make vertical patient lifts (§§ 1917.26(d)(5) and 1918.97(d)(5)). OSHA requests comment on whether the final standard should include those additional specifications.

Storage of basket stretchers. In paragraph (f)(3), OSHA proposes to add a requirement that basket stretchers be stored in a clearly-marked location and in a manner that prevents damage and provides protection from environmental conditions. The proposed language is based on similar requirements in the Marine Terminals and Longshoring standards (1917.26(d)(7) and 1918.97(d)(7)).

The addition of this provision would accomplish two goals. First, requiring storage areas to be clearly marked helps to ensure that stretchers are easy to locate when they are needed. Second, storing stretchers so they are protected from damage and environmental conditions prevents deterioration of the equipment. OSHA requests comment on the proposed provision. In your establishment and industry, how are basket stretchers stored to protect them from damage and environmental conditions? How are storage areas marked to ensure easy access?

Inspection. Proposed paragraph (f)(4) would require the employer to inspect stretchers at intervals that ensure they remain in safe and serviceable condition. This is a flexible, performance-based measure similar to the requirement to inspect first aid supplies to ensure they are adequate. This proposed measure will assure that lifesaving equipment functions properly when needed in an emergency and is particularly important if basket stretchers are not used frequently.

Automated External Defibrillators (AEDs)

OSHA is raising for discussion the issue of whether shipyards should be required to have Automated External Defibrillators (AEDs). According to the American Heart Association, over 300,000 individuals die from cardiac arrest each year, with most occurring outside hospitals (Ex. 8). In 2001 and 2002, there were 6,628 work-related fatalities reported to OSHA—1,216 of these deaths were from heart attack, 354 from electric shock, and 267 from asphyxia (Ex. 6). Survival rates for out-of-hospital cardiac arrest are only one to five percent, but treatment of ventricular fibrillation (i.e., chaotic beating of the heart) with immediate defibrillation (i.e., within one minute) has achieved survival rates as high as 90 percent (Ex. 7). Fast and immediate defibrillation is the most critical step in treatment of cardiac arrest because it is the definitive therapy for ventricular fibrillation.

AEDs restore normal heart rhythm with electrical shock (defibrillation). AEDs have been shown to significantly increase survival rates where they are

used immediately (i.e., within three to five minutes). For example, in the first 10 months after Chicago's O'Hare and Midway Airports installed AEDs, 9 of 14 (64 percent) cardiac victims were revived and survived (Ex. 7).

In the past decade, there have been significant advances in AED technology, including advances in miniaturization and improvements in their reliability and safety. Today, AEDs are small, lightweight units in portable carriers; run on rechargeable batteries; analyze the heart rhythm; and automatically indicate when to shock with easy-to-follow audio prompts. These improvements have also greatly minimized the training needed to operate them. Many studies have shown that AEDs are nearly error-free and effective when used by non-medical first aid responders in the workplace (Ex. 7). The costs of AEDs have dropped dramatically in recent years. In 2001, for instance, AEDs cost \$3,000–\$4,500 on average. Now they are widely available for less than \$1,500 (Ex. 5). OSHA anticipates that AED costs will continue to decline as the use of AEDs increases.

OSHA's existing medical services and first aid standards do not require that AEDs be provided in workplaces or that employees be trained in their operation. However, many employers, concerned that local emergency services cannot respond quickly enough, have been equipping their workplaces with AEDs and training employees in their use.

OSHA requests comment on whether shipyards should be required to have AEDs as part of their first aid and medical services. If not, why not? If so, should the requirement apply to all shipyards or be limited to certain types of work or work locations (e.g., remote work areas, work where employees are exposed to electrical hazards, shiftwork)? What criteria should employers use to determine whether and how many AEDs should be provided and where they should be located? In your establishment and industry are AEDs provided? If not, why not? If so, how many are provided and what criteria were considered in making that determination? Who is trained and authorized to operate the AEDs?

Section 1915.88 Sanitation

Sanitation in shipyards is currently covered by a shipyard standard, § 1915.97, and is supplemented by a general industry standard, § 1910.141. (See Ex. 16–9, OSHA's Tool Bag Directive.) As part of its overall efforts to incorporate comprehensive shipyard requirements into Part 1915, the Agency is proposing to consolidate and update these provisions in a new standard on

sanitation, § 1915.88. The new proposed section carries forward many provisions that have applied to shipyards for several decades. At the same time, it reflects improvements in workplace sanitation that have been developed since the earlier standards were adopted.

Adverse health effects associated with the lack of appropriate sanitation facilities are well recognized and documented. They include communicable diseases, heat-related illness, health effects related to delay of urination and defecation, and effects associated with ingestion or absorption of hazardous or toxic substances. These health hazards were discussed at length in the preamble to the final Field Sanitation standard (52 FR 16050, 5/1/87). OSHA has updated this discussion and placed it in the docket as a reference document (Ex. 12).

OSHA recognizes that working conditions in shipyards are often less than ideal for sanitation. For example, some shipyards are in remote locations, without adequate piped water and sewer facilities. Much shipyard work is also performed outdoors, often in high temperatures and humidity. OSHA has previously developed sanitation standards to address these types of working conditions in marine terminals (§ 1917.127), field sanitation (§ 1928.110), longshoring (§ 1918.95), and construction (§ 1926.51). The Agency has used these standards as source documents for the present proposal. In addition to these sources, OSHA has also reviewed the most recent applicable ANSI sanitation standards—in particular, ANSI Z4.1–1995 (Ex. 3–6) and Z4.3–1995 (Ex. 3–7)—and incorporated relevant provisions into the proposed standard. (ANSI Z4.1 addresses general sanitation in workplaces, while ANSI Z4.3 covers non-sewered waste disposal systems.)

Most of the changes being proposed in § 1915.88 reflect changes in technology and sanitation practices that have developed since the original standards were adopted. For example, the proposal specifically addresses portable toilets and other portable sanitation facilities. The proposed standard is also more performance-oriented and flexible than the existing requirements.

As Table 3 makes clear, many of the changes being incorporated into proposed § 1915.88 are editorial in nature. This reflects the Agency's effort to merge most of the current requirements of § 1910.141 and § 1915.97 into a single set of sanitation requirements for shipyards. Table 3 provides an overview of the new proposed § 1915.88, a comparison to the

existing requirements, and a brief explanation of all proposed changes. The preamble discussion following Table 3 focuses on the relatively few

substantive changes being proposed, the Agency's rationale for these changes, and related issues. In addition, the discussion includes responses to

various SESAC recommendations, as appropriate.

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Table 3: Proposed Shipyard Employment Sanitation Standards: Existing Standards and Explanations

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
1915.88 (a) General Requirements		
1915.88(a)(1) The employer shall provide adequate and readily accessible sanitation facilities		New general provision; see discussion below.
1915.88(a)(2) The employer shall supply and maintain each sanitation facility in a clean, sanitary, and serviceable condition.	1910.141(d)(1); 1910.142(d)(10)	Combined current requirements, simplified and clarified.
1915.88(b) Potable water.		
1915.88(b)(1) The employer shall provide potable water for all employee health and personal needs and ensure that only potable water is used for these purposes.	1910.141(b)(1) 1910.141(b)(1)(i)	Current requirement simplified and clarified.
1915.88(b)(2) The employer shall provide potable drinking water in amounts that are adequate to meet the health and personal needs of each employee.		
1915.88(b)(3) The employer shall dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. The employer shall prohibit the use of shared drinking cups, dippers, and water bottles.	1910.141(b)(1)(iii) 1910.141(b)(1)(v) 1910.141(b)(1)(vi)	Current requirements, combined into one paragraph, simplified and clarified. The proposal expands the existing rule by permitting drinking water to be dispensed from single-use bottles as well as from covered containers or fountains. OSHA is aware that some employers provide bottled water in single-use size for employees who work in mobile crews and in areas where it is not possible to install water fountains, such as onboard vessels and vessel sections. Provided that this bottled water is not used more than once and not shared among employees, OSHA believes that this method of dispensing water is as effective in preventing contamination as dispensing water from water fountains or covered containers and gives employers greater flexibility in complying with this requirement.
1915.88(c) Non-potable water	1910.141(b)(2)	

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
<p>1915.88(c)(1) The employer may use non-potable water for other purposes such as firefighting and cleaning outdoor premises so long as it does not contain chemicals, fecal matter, coliform or other substances at levels that may create a hazard for employees.</p>	<p>1910.141(b)(2)(iii)</p>	<p>Current requirements, combined into one paragraph, simplified and clarified.</p>
<p>1915.88(c)(2) The employer shall clearly mark non-potable water supplies and outlets as "not safe for health or personal use."</p>	<p>1910.141(b)(2)(i)</p>	<p>Current requirement, combined into one paragraph, simplified and clarified.</p>
<p>1910.141(b)(2)(ii) Current provision on construction of non-potable water systems is not being carried forward in the proposal.</p>	<p>1910.141(b)(2)(ii)</p>	<p>Provision is not needed because State and local codes adequately address this hazard.</p>
<p>1915.88(d) Toilet facilities.</p>	<p>1910.141(c)</p>	
<p>1915.88(d)(1) General requirements. The employer shall ensure that sewer and portable toilet facilities:</p>	<p>1910.141(c)(1)(i)</p>	<p>Current requirement, separated into distinct requirements, simplified and clarified. The proposal would allow employers to supplement required sewer facilities with portable facilities and it would add requirements for the construction and maintenance of such facilities.</p>
<p>1915.88(d)(1)(i) Are separate for each sex, except as provided in (B) below;</p>		
<p>1915.88(d)(1)(i)(A) The number of toilet facilities provided for each sex shall be based on the maximum number of employees of that sex present at the workplace at any one time during a workshift. A single occupancy toilet room shall be counted as one toilet regardless of the number of toilets it contains.</p>		
<p>1915.88(d)(1)(i)(B) The employer does not have to provide separate toilet facilities for each sex where they will not be occupied by more than one employee at a time, can be locked from the inside, and contain at least one toilet.</p>		
<p>Current provision on sewage disposal method is not being carried forward in the proposal.</p>	<p>1910.141(c)(1)(iii)</p>	<p>Provision is not needed because hazards are adequately addressed by other proposed provisions.</p>

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes																
<p>1915.88(d)(1)(ii) Ensure privacy at all times. Where a toilet room contains more than one toilet, each toilet shall occupy a separate compartment with a door and walls or partitions between them that are sufficiently high to ensure privacy.</p>	<p>1910.141(c)(2)(i)</p>	<p>Current requirement simplified and clarified.</p>																
<p>1915.88(d)(2) Sewered toilet facilities. The employer shall provide at least the following number of sewered toilet facilities for each sex.</p>	<p>1910.141(c)(1)(i)</p>	<p>Current requirement simplified and clarified.</p>																
<table border="1"> <thead> <tr> <th data-bbox="607 159 730 835">Number of employees of each sex</th> <th data-bbox="607 835 730 1396">Minimum number of toilet facilities</th> </tr> </thead> <tbody> <tr> <td data-bbox="730 159 787 835">1 to 15</td> <td data-bbox="730 835 787 1396">1</td> </tr> <tr> <td data-bbox="787 159 836 835">16 to 35</td> <td data-bbox="787 835 836 1396">2</td> </tr> <tr> <td data-bbox="836 159 885 835">36 to 55</td> <td data-bbox="836 835 885 1396">3</td> </tr> <tr> <td data-bbox="885 159 933 835">56 to 80</td> <td data-bbox="885 835 933 1396">4</td> </tr> <tr> <td data-bbox="933 159 982 835">81 to 110</td> <td data-bbox="933 835 982 1396">5</td> </tr> <tr> <td data-bbox="982 159 1031 835">111 to 150</td> <td data-bbox="982 835 1031 1396">6</td> </tr> <tr> <td data-bbox="1031 159 1079 835">Over 150</td> <td data-bbox="1031 835 1079 1396">1 additional toilet facility for each additional 40 employees.</td> </tr> </tbody> </table>	Number of employees of each sex	Minimum number of toilet facilities	1 to 15	1	16 to 35	2	36 to 55	3	56 to 80	4	81 to 110	5	111 to 150	6	Over 150	1 additional toilet facility for each additional 40 employees.	<p>TABLE J-1</p>	<p>This provision is discussed in more detail below.</p> <p>OSHA is not proposing to change its current requirements for numbers of toilet facilities. Recent editions of applicable ANSI standards apply different ratios to determine the number of facilities for given numbers of employees. This issue is discussed in more detail below.</p>
Number of employees of each sex	Minimum number of toilet facilities																	
1 to 15	1																	
16 to 35	2																	
36 to 55	3																	
56 to 80	4																	
81 to 110	5																	
111 to 150	6																	
Over 150	1 additional toilet facility for each additional 40 employees.																	
<p>1915.88(d)(3) Portable toilet facilities. In addition to the required number of sewered toilet facilities, the employer may also provide portable toilet facilities. The employer shall ensure that each portable toilet facility is maintained in a clean, sanitary and serviceable condition; equipped with adequate venting; and, as necessary, lighting and heating.</p>		<p>These are new requirements for employers opting to provide supplemental portable toilet facilities. These requirements ensure that portable toilet facilities and supplies remain in clean, sanitary and serviceable condition. Requiring portable facilities to meet these conditions also will encourage their use and help to prevent adverse health effects associated with lack of appropriate sanitation facilities. The ANSI Z4.3 standard provides useful information on the frequency of servicing portable toilets to ensure that they remain clean and sanitary (Ex. 32-7). See discussion below.</p>																

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
<p>1915.88(d)(4) Exception for normally unattended work locations. The requirement to provide toilet facilities does not apply to normally unattended work locations and mobile work crews, provided that the employer ensures that employees have immediately available transportation to readily accessible sanitation facilities that are maintained in a clean, sanitary and serviceable condition and meet the requirements of this section.</p>	<p>1910.141(c)(1)(iii)</p>	<p>This provision combines and simplifies the current exceptions from requirements for toilet facilities. Nearby toilet facilities must be in clean, sanitary and serviceable condition, and meet the other requirements of the section. See additional discussion below.</p>
<p>1915.88(e) Handwashing facilities</p>		
<p>1915.88(e)(1) The employer shall provide handwashing facilities at or adjacent to each toilet facility.</p>		<p>This provision requires handwashing facilities to be available near all toilet facilities, whether sewer-connected or portable.</p>
<p>1915.88(e)(2) The employer shall ensure that each handwashing facility:</p>		
<p>1915.88(e)(2)(i) Is equipped with either hot and cold or lukewarm running water and soap, or with waterless skin cleansing agents that are capable of disinfecting the skin or neutralizing the contaminants to which the employee may be exposed; and</p>	<p>1910.141(d)(2)(ii) 1910.141(d)(2)(iii)</p>	<p>The proposal incorporates the existing requirements for handwashing facilities and expands them to allow the use of waterless cleaners. Information and studies in the record have demonstrated the efficacy of waterless cleaners. (Exs. 2-20; 2-22; 2-23; 2-24.) See additional discussion below.</p>
<p>1915.88(e)(2)(ii) If the facility uses soap and water, it is supplied with clean, single-use hand towels stored in a sanitary container, and a sanitary means of disposing of them, clean individual sections of continuous cloth toweling, or an air blower.</p>	<p>1910.141(d)(2)(iv)</p>	<p>Current requirement simplified and clarified.</p>
<p>1915.88(e)(3) Exception for normally unattended work locations. The requirement to provide handwashing facilities does not apply to normally unattended work locations and mobile work crews, provided that the employer ensures that employees have immediately available transportation to readily accessible sanitation facilities that are maintained in a clean, sanitary and serviceable condition and meet the requirements of paragraphs (e)(1) through (e)(2) of this section.</p>	<p>1910.141(c)(1)(ii)</p>	<p>This provision combines and simplifies the current exceptions from requirements for handwashing facilities. Nearby handwashing facilities must be equipped with waterless cleaning agents or soap, water (i.e., hot and cold or lukewarm) and hand towels or warm air blowers. Nearby facilities also must be maintained in a clean, sanitary and serviceable condition. See additional discussion below.</p>

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
<p>1915.88(e)(4) The employer shall inform each employee engaged in the application of paints or coatings or in other operations where hazardous or toxic materials can be ingested or absorbed about the need for removing surface contaminants by thorough washing of hands and face at the end of the workshift and prior to eating, drinking, or smoking.</p>	<p>1915.97(b)</p>	<p>Current requirement, simplified and clarified. The proposal adds a new term, "hazardous or toxic substances," which is defined to include environmental contaminants.</p>
<p>1915.88(f) Showers.</p>	<p>1910.141(d)(3)</p>	<p>Current requirements, combined into a single provision, simplified and clarified.</p>
<p>1915.88(f)(1) When showers are required by an OSHA standard, the employer shall provide one shower for each 10, or fraction of 10 employees of each sex, who are required to shower during the same shift.</p>	<p>1910.141(d)(3)(i) 1910.141(d)(3)(ii)</p>	<p>Current requirements, combined into a single provision, simplified and clarified.</p>
<p>1915.88(f)(2) The employer shall ensure that each shower is equipped with soap, hot and cold water, and clean towels for each employee who uses the shower.</p>	<p>1910.141(d)(3)(iii) 1910.141(d)(3)(iv) 1910.141(d)(3)(v)</p>	<p>Current requirements, combined into a single provision, simplified and clarified.</p>
<p>1915.88(g) Changing rooms. When an employer provides protective clothing to prevent employee exposure to hazardous or toxic substances, the employer shall provide the following:</p>	<p>1910.141(e)</p>	<p>Current requirement simplified and clarified. Proposal also expands existing standard to require employers to provide changing rooms whenever they provide protective clothing regardless of whether an OSHA standard requires the use of such clothing. This is a new requirement for shipyard employment. See additional discussion below.</p>
<p>1915.88(g)(1) Changing rooms that provide privacy for each sex; and</p>	<p>1910.141(e)</p>	<p>Current requirement simplified and clarified.</p>
<p>1915.88(g)(2) Storage facilities for street clothes and separate storage facilities for protective clothing.</p>	<p>1910.141(g) 1910.141(g)(1) 1910.141(g)(2) 1910.141(g)(4) 1915.97(c)</p>	<p>Current requirements, combined into a single provision, simplified and clarified. Proposal also expands the existing standard to prohibit eating, drinking, smoking or storing food where hazardous or toxic substances, as defined in proposed § 1915.95, may be present.</p>
<p>1910.141(f) Clothes drying facilities. Current provision is not being carried forward in the proposal.</p>	<p>1910.141(f)</p>	<p>Other provisions in the proposed section adequately addressed the hazards.</p>

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
<p>1915.88(i) Waste disposal.</p> <p>1915.88(i)(1) The employer shall provide waste receptacles that meet the following requirements:</p> <p>1915.88(i)(1)(i) Each receptacle is constructed of materials that are corrosion resistant, leak-proof, and easily cleaned or disposable;</p> <p>1915.88(i)(1)(ii) Each receptacle is equipped with a solid tight-fitting cover, unless it can be kept in clean, sanitary and serviceable condition without the use of a cover;</p> <p>1915.88(i)(1)(iii) Receptacles are provided in numbers, sizes, and locations that encourage their use; and</p> <p>1915.88(i)(1)(iv) Each receptacle is emptied as often as necessary to prevent it from overflowing and in a manner that does not create a hazard for employees. Waste receptacles for food shall be emptied at least every day, unless unused.</p> <p>1910.141(a)(4)(ii) Current provision on removing all refuse and garbage in a manner to avoid creating a health menace and as often as necessary to maintain sanitary conditions is not being carried forward in the proposal.</p> <p>1915.88(i)(2) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage that could endanger their safety and health.</p> <p>1915.88(i)(3) The employer shall ensure that employees working beneath or on the outboard side of a vessel are not contaminated by drainage or waste from overboard discharges.</p>	<p>1910.141(a)(4) 1910.141(a)(4)(i) 1910.141(g)(3)</p> <p>1910.141(a)(4)(ii) 1915.97(d)</p>	<p>Current requirements, separated into distinct provisions, simplified and clarified.</p> <p>Proposed 1915.81(e) incorporates the requirements of the current provision. See previous discussion in the housekeeping section.</p> <p>Current requirement simplified and clarified.</p>

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
<p>1915.88(j) Vermin control.</p>	<p>1910.141(a)(5) Vermin control.</p>	<p>§1910.141(a)(5) covers "every enclosed workplace." This proposal will include all workplaces within shipyard employment.</p>
<p>1915.88(j)(1)</p>	<p>§1910.141(a)(5)</p>	<p>Current requirement, separated into distinct provisions. Retains current requirement that employers need only to take "reasonably practicable" steps to prevent harborage of vermin.</p>
<p>To the extent reasonably practicable, the employer shall clean and maintain the workplace in a manner that prevents the harborage of vermin such as rodents, insects and birds.</p>		
<p>1915.88(j)(2)</p>		
<p>Where vermin are detected, the employer shall implement and maintain an effective control program.</p>		
<p>§1915.95 Definitions</p>		
<p>Portable toilet facility. A non-sewered facility for collecting and containing urine and feces. A portable toilet facility may be either flushable or non-flushable. For purposes of this section, portable toilet facilities do not include privies.</p>	<p>1910.141(a)(1) Current terminology and definitions.</p>	<p>Proposed new and revised definitions are discussed further in the explanation of proposed §1915.95.</p>
<p>Potable water. Water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141).</p>		<p>See discussion below.</p>
<p>Sanitation facilities. Facilities, including supplies, maintained for employee personal and health needs such as potable drinking water, toilet facilities, handwashing facilities, showers (including quick drenching/flushing) and changing rooms, food preparation and eating areas, first aid stations, and on-site medical service areas. Sanitation supplies include soap, waterless cleaning agents, single-use drinking cups, drinking water containers, toilet paper, and towels.</p>	<p>"Potable water"</p>	<p>Current definition updated. See explanation of proposed §1915.95.</p>
	<p>"Personal service room"</p>	<p>Current term "personal service room" replaced with updated "sanitation facilities" definition.</p>

Proposed Sanitation Standards	Currently Applicable General Industry and Shipyard Standards	Explanation of Proposed Changes
<p>Sewered toilet facility. A fixture maintained for the purpose of urination and defecation that is connected to a sanitary sewer, septic tank, holding tank (bilge), or on-site sewage disposal treatment facility and that is flushed with water.</p>	<p>"Toilet facility" "Toilet room" "Urinal" "Water closet"</p>	<p>Proposal updates and, where appropriate, combines and incorporates current definitions. OSHA is proposing not to include the terms "water closet" and "toilet room" from §1910.141(a)(2). A water closet, which the existing standard defines as a toilet facility that is flushed with water, was the term used in ANSI Z4.1-1968, which was the basis for §1910.141 (Ex. 3-5). The current ANSI standard, ANSI Z4.1-1995, however, no longer makes a distinction between toilets that are flushed with water versus other types of flushing solutions. OSHA also proposes to delete the definition of the term toilet room because its meaning is self-evident. Other listed terms would not be included because the revised definitions incorporate all relevant information.</p>
<p>Vermin. Includes insects, birds, and other animals, such as rodents and feral cats, which may create safety and health hazards for employees. The proposal does not carry these definitions.</p>	<p>Other definitions currently in 1910.141(a)(1) "Nonwater carriage toilet facility," "Number of employees" "Toxic material" "Wet process"</p>	<p>New definition proposed. These terms are either not used in the proposed sanitation requirements or do not need to be defined.</p>

Most of the changes in this proposal are adequately discussed in Table 3. However, some provisions require additional discussion and explanation. The following section provides additional discussion concerning these elements of the proposal and raises specific issues for public comment.

Paragraph (a)—General Requirements—Paragraph (a) incorporates a series of general requirements for the accessibility, adequacy, and maintenance of sanitation facilities in shipyards. It simplifies the existing standards and makes them apply more uniformly throughout the shipyard. The proposal also uses a new term, “sanitation facilities” (defined in § 1915.95), to cover the wide range of elements that employers provide for the “health and personal needs of employees.” Sanitation facilities include drinking water, toilets, handcleaning facilities, showers, changing rooms, and eating and drinking areas. The term also includes the supplies for those facilities, such as drinking cups, toilet paper, towels, soap, and waterless cleaning agents.

A sanitation facility cannot meet the employee’s health needs unless it meets all the requirements addressing accessibility, adequacy and maintenance. For instance, if toilets are provided but are all located too far away, employees may have to refrain from using facilities, or from drinking during the workshift so they will not need to use them. Employees may do the same thing if toilets, particularly portable ones, are dirty, not serviced regularly, or require a long wait. These actions can result in significant adverse health effects (Ex. 12).

Proposed paragraph (a)(1) requires that sanitation facilities be (1) readily accessible, and (2) adequate for the number of employees at the work premises. Employers must provide sanitation facilities that meet both requirements in order to be considered in compliance.

Readily accessible. Unlike the sanitation standards for marine terminals, longshoring, and field sanitation (§§ 1917.127, 1918.127, 1928.110, respectively), the current sanitation standards for shipyards do not directly address the accessibility of sanitation facilities. Paragraph (a)(1) of proposed § 1915.88 remedies this omission, using performance-oriented language. Ready access to sanitation facilities helps to protect employee health and reduce the risk of adverse health effects. For example, lack of ready access to drinking water can result in dehydration, which can be

fatal, especially in hot and humid working conditions. Ready access to sanitation facilities will also increase the likelihood of their use, reducing the risks associated with delayed use.

In order for sanitation facilities to be considered “readily accessible,” employees must be able to reach the facilities quickly whenever they need to use them, and there must be no obstacles to gaining quick access. OSHA recognizes that whether sanitation facilities are readily accessible depends on the type of sanitation facility, the sizes and locations of worksites, and physical characteristics of the shipyard. In small shipyards, sanitation facilities may be readily accessible if they are located in one area. However, where worksites are large and spread out, toilets, handwashing facilities and drinking water located in only one location would likely not be considered readily accessible.

Sanitation facilities also must be readily accessible to shipyard employees who work onboard vessels. Where employees work on a small vessel, sanitation facilities may be readily accessible if they are located dockside. However, where employees work on a large vessel, they may not be able to get to facilities quickly enough if such facilities are located only on the dock. Sanitation facilities may need to be located on deck or in various places throughout the vessel to ensure employees have ready access when they need to use them. When the ship’s toilet and handwashing facilities are not available to shipyard employees working onboard vessels (e.g., the ship is being built or systems are turned off during repair) the employer needs to make other arrangements to ensure that such facilities are readily accessible.

Whether sanitation facilities are readily accessible is also related to how frequently they must be used during a workshift. For example, drinking water supplies, especially during hot and humid summer weather, must be at or close to the employee’s immediate work area. Employees who perform heavy manual labor, work with heat-producing equipment, or must spend time in spaces that are not well ventilated or air-conditioned need to have enough drinking water close at hand to prevent dehydration. On the other hand, changing rooms and eating areas that are used only once or twice during a workshift may not need to be as close to the work area.

OSHA notes that other sanitation standards specify maximum distances for locating sanitation facilities relative to employee work areas. For example, the OSHA Field Sanitation standard

requires that toilet facilities be located within a one-quarter-mile walk of each employee’s place of work (§ 1928.110(c)(2)(iii)). ANSI Z4.1 requires that potable water and sewered toilet facilities be located within 200 feet of any place where employees are regularly engaged in work (Ex. 3–6, §§ 5.1.1 and 6.1.2).

On July 29, 1998, a shipyard employee was finishing up a workshift where he was operating grinding and sanding equipment on two decks of a ship. He clocked out at 2:30 p.m., got a ride to his supervisor’s office to get some information, and was driven back to the wet dock. He was walking to the bike area when he became dizzy and fell to his knees. His supervisor picked him up and gave him water and a cold compress. He was transported to the first aid station, where he was given oxygen and ice packs were placed on his head and under his arms. When he later collapsed, emergency medical technicians ventilated and defibrillated him. He died later at a hospital from heat exhaustion and heat stroke, possibly from not having enough drinking water readily accessible at his work location. The existing drinking water requirements specify that employers provide potable water “in all places of employment” (§ 1910.141(b)(1)), but do not identify where water supplies must be located in those workplaces. The proposed rule clarifies the existing requirements by specifying that employers must provide adequate and “readily accessible” drinking water in amounts that meet the health and personal needs of each employee at the worksite (proposed § 1915.87(a)(1) and (b)(2)). In the summary and explanation of § 1915.87, OSHA also identifies factors that employers need to consider in determining how much drinking water they must supply and where it must be located. These factors include size and location of worksites, frequency of use, and environmental conditions such as hot weather. Had the proposed clarifications been in place, it would have been clearer that the shipyard employer needed to ensure that the employee had adequate drinking water accessible at their work location on the vessel.

OSHA requests comment on the proposed requirement for location of sanitation facilities. In particular, OSHA requests comment on whether the final rule should contain more specific requirements for the location of sanitation facilities, especially toilet facilities. For example, should the final rule specify maximum distances, maximum walking times (e.g., 5 or 10

minutes), or other objective criteria for determining where sanitation facilities must be located in the workplace? Should different specifications be developed for specific types of sanitation facilities? OSHA seeks information on where sanitation facilities are located and what criteria are used to make this determination.

Serviceable Condition. Paragraph (a)(2) proposes to add language making more explicit OSHA's longstanding policy that employers supply and maintain sanitation facilities in clean, sanitary and serviceable condition. The current general industry standard specifies that employers must keep all places of employment clean (§ 1910.141(a)(3)(i)). The proposal clarifies that this requirement applies to sanitation facilities at workplaces. The proposal also retains existing language on maintaining sanitary conditions from the current lavatory requirements (§ 1910.141(d)(1)).

Paragraph (a)(2), adds a proposed requirement for employers to maintain sanitation facilities in "serviceable condition," which OSHA proposes to define (in § 1915.95) as the state or ability of a device to operate as it was intended by the manufacturer to operate. OSHA is including this new proposed provision primarily because the proposed rule allows the use of portable toilet facilities. Portable toilet facilities that are not properly serviced can become unsanitary and overflow, thereby exposing employees to contaminants or causing them to avoid using the facilities. While OSHA is not specifying detailed servicing requirements in the proposed rule, the Agency notes that ANSI Z4.3 contains useful information on servicing practices for portable toilets (Ex. 3–7).

OSHA requests comment on this provision. OSHA seeks information on the measures in place to ensure that sanitation facilities and supplies are maintained in clean, sanitary and serviceable condition. How often are sanitation facilities inspected, cleaned, and restocked? Are there different procedures and/or schedules for portable toilet facilities as opposed to other sanitation facilities?

Paragraph (b) Potable water— Proposed § 1915.88(b)(3) would expand the existing rule to allow employers to provide drinking water in single use bottles. OSHA requests comment on the proposal. Where and to what extent are single use drinking water bottles used in your shipyard?

OSHA is also considering adding a requirement to the final standard requiring employers to ensure that drinking water is "suitably cool," a

requirement from OSHA's Field Sanitation standard (§ 1928.110(c)(1)(ii)). The preamble to that standard explained that when employees work in hot and humid temperatures, the temperature of drinking water needs to be low enough to encourage them to drink and to cool their core body temperature (52 FR 16087). Some shipyard employees also work in very hot and humid environments. Cool water could help promote adequate hydration and reduce the risk of heat-related illnesses. OSHA requests comment on this issue. OSHA seeks information on the measures that have been implemented to ensure that drinking water is cool, especially for employees working on board vessels or in hot and humid weather.

Paragraph (d) Toilet Facilities— Proposed paragraph (d) adopts the existing requirements on sewerated toilets and as noted in Table 3, the proposal would add a new paragraph (d)(3) to cover portable toilet facilities, which are not addressed by § 1910.141(c).

Because of the proposed additions for portable toilets, OSHA proposes to replace the existing term "toilet facility" with the terms "sewered toilet facility" and "portable toilet facility." These terms are used in the current ANSI Z4.1 and Z4.3 standards, respectively (Ex. 3–6, § 2.4; Ex. 3–7, §§ 2 and 5). OSHA proposes to define these terms in § 1915.95. "Sewered toilet facility" would be defined to mean a fixture that is connected to a sanitary sewer, septic tank, holding tank (e.g., bilge), or on-site sewage disposal treatment facility and that is flushed with water. In contrast, "portable toilet facility" would be defined to mean a non-sewered toilet that may be either non-flushable, or flushable with water or a non-water flushing solution. Most portable toilet facilities used in shipyards are non-flush chemical toilet facilities.

Paragraph (d)(2) Sewered toilet facilities—*Minimum number of sewerated toilet facilities.* Proposed paragraph (d)(2) would retain the existing requirements of § 1910.141 for the minimum number of sewerated toilet facilities employers must provide for men and women. While the required numbers of facilities vary depending on the total number of employees at the work site, the basic requirement is commonly referred to as a ratio of one toilet for every 15 employees, and OSHA will use that terminology. OSHA adopted this requirement (Table J–1 of § 1910.141) from the 1968 ANSI Z4.1 standard through notice and comment rulemaking in 1973 (38 FR 10930, 10931 (5/3/1973)). It has been part of the general industry standards since that

time. By contrast to the OSHA standard, the current ANSI standard has a different table of ratios (Table 4, ANSI Z4.1–1995), with a basic ratio of 1 toilet per 9 employees. In the three decades since OSHA adopted its standard, nearly 90 percent of the States, at either the State or local level, have adopted the 2003 International Plumbing Code (IPC 2003), which incorporates the requirements of the ANSI Z4.1–1995 standard (one toilet per 9 employees).

TABLE 4.—ANSI Z4.1–1995

Number of employees	Minimum number of stools
1 to 9	1.
10 to 24	2.
25 to 49	3.
50 to 74	4.
75 to 100	5.
Over 100	1 for each additional 30 persons.

OSHA requests comment on the proposal to retain the 1:15 toilet ratio from the existing standard. Should OSHA adopt the 1:9 ratio in the current ANSI Z4.1 and IPC 2003 standards? Would such adoption significantly improve OSHA's protection of employee health, and in what manner? What costs, if any, would result? If OSHA were to adopt the ANSI/IPC table, should its application be limited in any way, such as to facilities built after a certain date (e.g., the date the ANSI or IPC standards were adopted)?

Questions have been raised about whether toilet facilities are distributed adequately throughout shipyards. As noted earlier, the field sanitation and ANSI standards establish more specific requirements for location of toilet facilities relative to the location of the employee, 1/4 mile and 200 feet, respectively (§ 1928.110(c)(2)(iii); ANSI Z4.1, § 5.1.1 (Ex. 3–6)). OSHA requests comment on whether the final rule should contain specific requirements for the location of toilet facilities in shipyards. If not, why not? If so, what specifications should OSHA use? Should the same or different specifications apply for both sewerated and portable toilets? Please explain.

Portable toilet facilities. As discussed in Table 3, proposed § 1915.88(d)(3) would allow employers to supplement the required numbers of sewerated toilet facilities with either sewerated or portable toilet facilities. OSHA's Marine Terminals, Longshoring, Construction, and Field Sanitation standards all permit the use of portable toilet facilities (§§ 1917.127(a)(1)(iv); 1918.95(a)(1)(iv); 1926.51(c)(3);

1928.110(b); see also ANSI Z4.1 §§ 2.9 and 6.4).

OSHA believes that allowing the use of portable toilet facilities in this manner will enhance employee safety and health and will not result in any adverse effects. This provision is justified by the significant improvements in portable toilet technology in recent years. Portable toilet facilities now contain the type of equipment necessary to provide for employee health needs at levels approaching that of the existing standard. For example, many portable toilet facilities are now manufactured with handwashing facilities that include hand towels, waste receptacles, and either running water or waterless cleaning agents. In addition, some portable facilities have flushable toilets (Ex. 2-3).

Allowing the use of portable toilet facilities will encourage employers to provide more facilities than the minimum required by the standard. It will enable them to provide such additional facilities without incurring construction expenses and inconvenience. OSHA believes that by allowing employers to also provide portable toilets, employers would be more likely to provide toilets in numbers that are closer to the 1 to 9 ratio in the ANSI Z4.1 and Z4.3 standards (Exs. 3-6; 3-7).

Permitting the use of portable toilets would allow and encourage employers to provide facilities in those work locations where it is extremely difficult if not impracticable to have sewage carriage systems. For example, employers could provide them on vessels, in dry docks, and in work locations where local plumbing or building codes prohibit installation of sewage systems. Allowing the use of portable toilet facilities also gives employers more flexibility in responding to changing workplace conditions. For example, it allows employers to respond quickly when work moves from location to location within the shipyard.

Finally, OSHA believes that allowing portable toilet facilities will enhance employee safety and health because it makes these facilities more accessible and thus more likely to be used. As mentioned, this is particularly important in work areas onboard vessels, where a significant portion of shipyard employees work and where sewered facilities may not be practicable.

OSHA requests comment on the proposed requirements for portable toilet facilities. What additional requirements, if any, should the final

rule include in order to ensure that portable toilet facilities provide a level of service close to that provided by sewered toilet facilities?

OSHA is considering adding a provision that would require employers to provide portable toilet facilities in certain areas where it is unlikely sewered facilities could be installed such as in those areas of the workplace where there is a lack of water or the temporary nature of the work makes installing sewered toilet facilities impracticable. These work areas may include work onboard vessels and vessel sections and in dry docks. OSHA requests comment on whether the final rule should require employers to provide portable toilet facilities in these types of situations. If not, why not? If so, in what situations should they be required? How many portable toilets, at a minimum, should employers be required to provide? For instance, should OSHA adopt the ratios (i.e., toilets per employees) established in the ANSI Z4.3 standard?

OSHA requests comment on the use of portable toilet facilities in shipyards. When and where are portable toilet facilities used? What factors determine how many to provide and when and where to provide them?

Exemption. In paragraphs (d)(4) and (e)(3), OSHA proposes to combine and retain provisions exempting employers from providing toilet and handwashing facilities for mobile crews and for employees working in normally unattended worksites, provided that these employees have immediately available transportation to readily accessible sanitation facilities that meet the requirements of this section. The availability of vehicles at a worksite does not necessarily mean that the employees at that worksite are a "mobile crew." OSHA has interpreted the term "mobile crew" to be limited to employees who continually or frequently move from jobsite to jobsite on a daily or hourly basis and to exclude employees who report to a worksite for days, weeks, or longer (Ex. 2-21; OSHA letter of interpretation to Nicolas Mertz, June 7, 2002).

For the purposes of these exceptions, "immediately available transportation" means that the vehicle is already at the specific worksite or can be summoned quickly enough so employees are able to get to facilities quickly. OSHA has interpreted "nearby" facilities as being within ten minutes of the employees work area (Ex. 2-21). Nearby toilet facilities must be in clean, sanitary and serviceable condition, and adequate for the number of employees who need to use them. Nearby handwashing facilities

would have to be equipped with waterless cleaning agents or soap, water (i.e., hot and cold or lukewarm), and hand towels or warm air blowers.

OSHA requests comment on the proposed exemption. Should OSHA limit these exemptions in any way? For example, with the increasing availability of waterless cleaning agents, should OSHA require that mobile crews be provided with such supplies? What measures do shipyards currently use to ensure that mobile crews have immediate access to transportation to nearby toilet facilities?

Paragraph (e) Handwashing Facilities—Location of handwashing facilities. In paragraph (e)(1), OSHA proposes to add a requirement that handwashing facilities be located "at or adjacent to each toilet facility," sewered and portable toilet facilities alike. This provision is necessary, in major part, to ensure that employees' health needs are met in those worksites where portable toilet facilities are or will be used. Some portable toilet facilities are not equipped with handwashing facilities and separate or stand-alone facilities are not always placed next to or close to portable toilets. This is particularly true onboard vessels and vessel sections. Often, employees must go to landside facilities, which may be located a significant distance away, to clean their hands. As a result, employees may not clean their hands when they are exposed to contaminants, after using a portable toilet, or before eating, drinking, or smoking, which puts them at risk of adverse health effects.

OSHA believes the proposed performance language gives employers flexibility in complying and should not pose problems, even at worksites where there is a lack of piped water or sewer lines. Many portable toilet facilities manufactured today contain either handwashing facilities or waterless cleaning agents. In addition, portable, stand-alone hand cleaning facilities are available and can be placed adjacent to portable toilet facilities. A single stand-alone handwashing facility may be able to serve several portable toilet facilities that are placed in one location. OSHA requests comment on the proposal.

Hand cleaning agents. OSHA proposes in paragraph (e)(2) to revise the existing requirements (§ 1910.141(d)(2)(ii) and (iii)) to allow handwashing facilities to be equipped with either (1) soap and hot and cold or lukewarm running water, or (2) waterless cleaning agents. The existing standard, as well as most of OSHA's other sanitation standards, requires that handwashing facilities have soap and running water (§§ 1910.141(d)(2)(ii) and

(iii), 1910.142(f)(3), 1917.127(a)(1)(i) and (ii), 1918.95(a)(1)(i) and (ii), 1928.110(b)). However, the Bloodborne Pathogens standard permits the use of alternatives (e.g., antiseptic hand cleaners) in limited circumstances (§ 1910.1030(d)(2)(iii) and (iv)).

OSHA has not proposed that the use of waterless cleaning agents be limited to those situations in which the lack of water or the temporary nature of the installation makes running water impracticable. OSHA does not believe the limitation is necessary since it is likely that waterless agents will be used most often in conjunction with portable toilet facilities. Whatever cleaning agents are used, the employer will be responsible for ensuring that they are effective in disinfecting the skin or removing the contaminants to which employees are exposed. In addition, the employer must select waterless agents that will not result in absorption of contaminants, sensitization of the skin, or other adverse health effects.

In OSHA's rulemaking on Bloodborne Pathogens, a number of organizations, including the Association for Professionals in Infection Control (APIC), the American Red Cross, Johns Hopkins University, and the American Society of Microbiology, supported allowing the use of waterless cleaners in those situations in which water was not available (56 FR 64004, 64116–17 (12/6/1991)). The National Institute for Occupational Safety and Health (NIOSH) said antiseptic hand cleaners and disposable disinfectant towelettes also were effective alternatives for soap and water for employees working in areas where there is a lack of running water (56 FR 64116). Based on the evidence in the record, OSHA accepted the use of alternative hand cleaning methods as an interim measure when soap and water are not feasible (e.g., firefighters, EMTs, police, paramedics). As noted in Table 3 above, the present record contains several studies conducted since that time, all of which further support the efficacy of waterless cleansers. Recent studies also show that waterless cleaners such as alcohol-based hand rubs reduce the number of bacteria on the hand more effectively than soap and water (Ex. 2–24). Alcohol gels, for instance, have been found to have excellent immediate antimicrobial effects and may reduce skin irritation that can occur from frequent washing with soap and water (Ex. 2–22). However, in certain circumstances they may accelerate the absorption of contaminants through the skin.

A number of shipyard operations are done at worksites where it may be difficult to provide running water and

soap. Therefore, based on recent information and evidence, OSHA believes there is a practical need to allow the use of waterless cleaning and decontamination products in shipyards.

OSHA requests comment on the proposal to allow the optional use of waterless cleaning agents. In your establishment, to what extent are waterless cleaning agents used? If waterless cleaners are used, have they been received favorably by employees, and have employees experienced any problems with the cleaners (e.g., allergic reaction)?

Paragraph (j) Vermin control—OSHA proposes to revise the application of the existing requirement (§ 1910.141(a)(5)) on vermin control to make the provision more appropriate to shipyard employment. The existing requirement to clean and maintain the workplace in a manner that prevents the harborage of vermin only applies to “enclosed” workplaces. Proposed paragraph (j)(1) would extend its application by requiring the employer to take those steps necessary to control vermin throughout the shipyard. Thus, employers would need to expand their vermin control efforts to include outdoor worksites. Evidence in the record shows that employees working at outdoor worksites, as well as in enclosed spaces, need to be protected from the hazards associated with exposure to vermin (Ex. 2–12). For example, employees working near water are at risk of disease if mosquito populations are not adequately controlled. In addition, birds and rodents can transmit disease directly and through their feces (see <http://www.hhs.gov> and <http://www.cdc.gov> for information on vermin related diseases).

At the same time, OSHA recognizes that it is not possible to prevent all vermin, especially birds and insects, from entering outdoor worksites. Therefore, the proposal retains the existing provision requiring employers to take only those steps that are “reasonably practicable” to prevent the harborage of vermin.

In paragraph (j)(2), OSHA proposes to retain unchanged the existing requirement (§ 1910.141(a)(5)) that employers implement and maintain an effective control program where vermin are detected. OSHA proposes to define “vermin” to include insects, birds, and other animals, such as rodents and feral cats (proposed § 1915.95).

OSHA requests comment on the proposed vermin control provisions. What vermin are present and what types of controls are used to prevent their harborage in shipyard worksites?

Section 1915.89 Control of Hazardous Energy (Lockout/Tagout)

In § 1915.89, OSHA proposes to add requirements addressing the control of hazardous energy (lockout/tagout) during the servicing of machines, equipment and systems. The approach OSHA is proposing to adopt is that of the general industry standard (§ 1910.147), with minor revisions. (The general industry standard does not apply to shipyard employment.) The following discussion covers the need for a comprehensive lockout/tagout rule in shipyards, why OSHA is proposing to adopt the general industry approach, the requirements of the general industry standard, and the differences between proposed § 1915.89 and § 1910.147. In addition, this section includes an in-depth discussion of the application of the lockout/tagout standard while servicing commercial vessels, such as fish processing vessels. While OSHA welcomes comments on any and all aspects of the proposed standard, the discussion also includes specific issues for which OSHA is seeking comment on the proposal.

The need for a comprehensive lockout/tagout standard in shipyards. OSHA believes that a comprehensive rule protecting shipyard employees from hazardous energy during servicing, maintenance and repair operations is needed for several reasons. First, information in the record indicates that potential hazardous energy exposures are present throughout shipyard employment, on vessels and vessel sections as well as in landside operations (Exs. 9, 11). Servicing operations, which include activities such as constructing, installing and repairing equipment, are some of the riskiest operations in shipyard employment. For example, employees servicing ship's systems face considerable risk of injury from energization of those systems because they are often large and complex, and frequently have multiple power sources. That risk is compounded further when ships' crews and outside contractors also work onboard the vessel, which is a common occurrence.

There are numerous injuries and fatalities in shipyard employment that would be prevented by an effective lockout/tagout program. According to 2002 data from the BLS annual survey of occupational injuries and illnesses, in 30.3 percent of the shipyard injury and illness cases involving days away from work, the case resulted from contact with an object or equipment, and 1.8 percent of the cases resulted from being caught in equipment. According to BLS

CFOI data from 1993–2002, 10 shipyard fatalities (6.3%) resulted from contact with electrical current and 31 fatalities (19.5%) occurred because of contact with objects and equipment. OSHA's IMIS database also indicates that there have been numerous fatalities in shipyards that the proposed (lockout/tagout) provisions could prevent. Some of these fatalities are discussed below.

- In 2000, one employee was killed when he was crushed by a steering mechanism. Four employees were repairing the steering mechanism on a tow boat, which functions from electricity and hydraulics. The electricity was deenergized and secured, but the residual energy from the hydraulics was not relieved and rendered safe. The proposed provisions for stored energy may have prevented this fatality.

- In 1999, an employee installing a support cable was electrocuted when he came into contact with the energized high-voltage line that he was servicing. A secondary switch that should have been locked open to deenergize an electrical panel had been left closed. The proposed procedures to isolate and verify deenergization may have prevented this accident.

- In 1998, a shipyard employee was killed and another seriously injured when an elevator was energized while they were working under the edge of the flight deck on an aircraft carrier. Movement of the elevator during servicing could have been prevented if the elevator energy isolating device had been locked or tagged out.

- In 1996, an employee was killed and another was burned while checking a hydraulic power unit. The hose of the test gauge came in contact with an exposed, energized conductor in the motor start panel, which caused the hose to rupture and ignite the hydraulic fluid. Under the proposed lockout/tagout provisions, this accident could have been prevented because all systems would have been deenergized and deenergization would have been verified.

- In 1996, an employee was killed while working inside a 480-volt electrical cabinet. The disconnecting means for the cabinet were not properly identified, and the cabinet was not

tested before work began. By following the proposed provisions for applying lockout/tagout devices and verification of isolation, this fatality may have been prevented.

- In 1990, an employee was killed while replacing an electric motor on a crane because the crane's brake was not locked. When the crane motor was unbolted, its drum and gear started spinning due to stored energy in the crane's cables and weights. The employee was struck with flying parts and killed. The proposed provisions would have ensured that before beginning work the energy would have been isolated, the machine deenergized, and the deenergization verified.

Second, the proposal is needed because the comprehensive general industry lockout/tagout standard exempts "maritime employment" from its scope (§ 1910.147(a)(1)(ii)). In the preamble to the final general industry standard, OSHA explained that shipyard employment was excluded not because working conditions were less hazardous, which the discussion above demonstrates, but rather because the unique nature of this industry and the means to minimize injury to employees required additional analysis and consideration, which had not been adequately addressed during the lockout/tagout rulemaking (FR 36644, 36657–58 (9/1/1989)). As a result, OSHA had insufficient information about hazardous energy in shipyard employment and about whether the general industry approach would address those hazards effectively. OSHA said it would continue to review information on hazardous energy in shipyard employment, evaluate the need to initiate rulemaking, and determine whether the general industry rule, or an appropriate modification of that rule, would provide optimal protection for shipyard employees. OSHA also said the Agency would present these matters to SESAC for consideration as part of the committee's review of shipyard standards. In 1993, after discussing the issues at length, SESAC recommended that OSHA adopt a comprehensive lockout/tagout standard (Docket SESAC 1993–3, Ex. 104X).

Third, a lockout/tagout rule is needed because the existing lockout/tagout provisions currently applicable to shipyard employment (§§ 1910.331–.335, 1915.162–.164, 1915.181) do not provide comprehensive or adequate protection for shipyard employees. For example, most of the existing provisions in part 1915 only address a limited number of servicing operations onboard vessels and do not address hazardous energy in landside operations. Conversely, the applicable general industry electrical safety requirements (§§ 1910.331–.335) apply only to landside operations and when shore-based electrical installations provide power for use aboard vessels, and do not cover qualified persons working on a vessel's permanently installed electrical system.

The requirements in the existing applicable provisions also are not as protective as the comprehensive procedures and requirements in the general industry standard. The existing provisions in part 1915 establish specific, but isolated, practices for controlling hazardous energy and none establish a comprehensive program for addressing those risks. For example, none of the existing part 1915 provisions require written lockout/tagout procedures, employee training, verification of deenergization or isolation, or periodic inspection, all of which the general industry standard requires (see Table 5).

The existing applicable lockout/tagout provisions also do not provide a consistent approach. As Table 5 shows, the provisions have a range of different approaches for shutting off, isolating and securing or otherwise protecting employees from reenergization. For example, when employees work on ship's boilers they must tagout and provide a second isolation of the energy, while employees working on electrical machinery must tagout and check the energy at the point of work. The proposed shipyard lockout/tagout standard would establish uniform minimum procedures that shipyard employers would have to follow in all shipyard servicing operations to protect their employees.

TABLE 5.—COMPARISON OF GENERAL INDUSTRY AND SHIPYARD LOCKOUT/TAGOUT STANDARDS

Source/standard	Means required to secure energy isolating device	Second isolation required when tagout device used?	Layers of isolation required	Number of isolations under employee "control"*	Deenergization verification required?	Required to check energy at point of work?	Employee training required?	Written procedure required?	Periodic inspection required?
§ 1910.147** General Industry lockout tagout.	Lock	Not Applicable	1	1	Yes	Yes	Yes	Yes	Yes.
Part 1910 Subpart S Electrical.	Tag	Usually	Usually 2	0 Or 1	Yes	Yes	Yes	Yes	Yes.
§ 1915.162 Ship's Boilers	Tag	Yes	2	1	Yes	Yes	Yes	No	No.
§ 1915.163 Ship's Piping Systems.	Lock & Tag	Yes	2	1	No	No	No	No	No.
§ 1915.164 Ships' Propulsion Machinery.	Tag	Yes	2	2	No	No	No	No	No.
	Lock & Tag	Yes	2	2	No	No	No	No	No.
	Lock & Tag	Yes	1	1	No	No	No	No	No.
Electrical Breaker	Tag	Yes	1	1	No	No	No	No	No.
Electrical Fuse	Tag	Yes	2	1	No	No	No	No	No.
	Tag	Yes	1	2	Yes	Yes	No	No	No.

* Employee "control" means either a lock or an employee-made isolation layer.

** Only § 1910.147, which exempts maritime employment, requires a comprehensive lockout/tagout program.

Why OSHA is proposing to adopt the general industry approach? Based on a review of the information and consultations with SESAC, the Agency is proposing to adopt, with limited modifications, the same approach and requirements as the general industry lockout/tagout standard. OSHA believes this approach is appropriate for several reasons. First, the general industry standard has provided effective protection for affected employees. A lookback review of the general industry standard, conducted pursuant to Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Section 5 of Executive Order (E.O.) 12866 concluded that the standard had been effective in reducing fatalities (65 FR 38302 (6/20/2002)). The review also concluded that the standard did not impose a significant impact on small business.

In addition to these analyses, commenters who participated in the lookback review, including companies (e.g., Bell Atlantic and Kodak), unions (e.g., United Auto Workers, United Steel Workers of America, and the International Brotherhood of Electrical Workers), employer groups (e.g., Organization Resources Counselors, Inc.), and professional societies (e.g., the American Society of Safety Engineers), stated that the standard had been effective in saving lives and preventing injuries. Most comments supported continuation of the standard because it had been effective in achieving its employee protection goals (65 FR 38304).

Second, many shipyard employers already have implemented lockout/tagout programs modeled on the general industry standard, and have reported that these programs have been effective in reducing the risk of harm associated with servicing operations. In addition, SESAC recommended using the proposed general industry approach as the framework for a recommended lockout/tagout rule for shipyards (Docket SESAC 1993-3, Ex. 104X, p).

Third, OSHA believes that the comprehensive energy control procedures, which are the cornerstone of the general industry standard, are particularly appropriate for addressing the types of workplace conditions and hazardous energy that are present in shipyard employment. The comprehensive procedures consist primarily of steps for deenergization, isolation of equipment from energy sources, and verification of deenergization before servicing operations are begun. OSHA believes that isolation of equipment from the energy sources in combination with adherence to established deenergization

and energization procedures, and not just the application of locks or tags, is what ensures that employees are adequately protected (54 FR 36655). Locks and tags are applied after machines or equipment have been isolated. If equipment is not properly isolated and the procedures for deenergization and verification are not followed, neither application of a lock nor a tag will fully ensure employees are protected. This is especially true where systems, such as ship's systems, are complex, have several energy sources, or are serviced at the same time by many employees or crews who may work for different employers.

The comprehensive isolation and deenergization procedures in the general industry standard are also important where systems are not capable of being locked out, which is the situation for many ship's systems since shipyard employers do not own the ship's systems they service. In addition, the procedures the standard requires address conditions that are commonly present in shipyards, including multiple employer worksites and group servicing operations by multiple crews. Because of the range of workplace factors present in shipyard servicing operations, OSHA believes the comprehensive energy procedures in the general industry standard are necessary and appropriate to ensure that shipyard employees are adequately protected. Moreover, adopting the standard's employee training requirements will help to ensure that employees understand and adhere to the energy control procedures.

Fourth, OSHA believes that the general industry standard is appropriate because shipyard employment also includes landside operations, which are quite similar to general industry worksites. Landside facilities, such as metal fabrication shops, machine shops, electrical shops, sheet metal shops, and paint shops, are analogous to general industry shops performing the same types of work. Thus, the general industry requirements are readily applicable and appropriate for those operations.

Fifth, OSHA believes the general industry standard will be effective in controlling hazardous energy in complex shipyard work environments and in servicing complex ship's systems because the standard has proven effective under the same types of complex conditions found in general industry. The general industry lockout/tagout standard has been applied to approximately one million facilities, including complex chemical plants, petroleum refineries, nuclear power

plants and motor vehicle assembly operations (65 FR 38303). The standard has been used to protect employees manufacturing sophisticated transportation equipment, such as train locomotives, aircraft and space vehicles. The general industry standard has also been applied in the manufacturing of complex military equipment, such as tanks, weapons systems and guided missiles.

Similar to ship's systems, some equipment and systems used in general industry have multiple sources and types of energy, back-up energy sources, and separate circuits for critical power needs (e.g., lighting). In addition, servicing operations in various general industry workplaces involve systems that may be located far away from system energy sources, just as energy sources of ship's systems are often located landside. Both general industry and shipyard servicing operations often involve contractors, work on equipment and systems the employer does not own, and have great variations in the equipment and systems being serviced.

Even though there may be some unique conditions in shipyards, OSHA believes that the flexibility of the general industry standard ensures that it will be effective in controlling hazardous energy in shipyard servicing operations. OSHA requests comment on the proposal to apply the general industry lockout/tagout standard to shipyard employment. Are there any unique conditions in shipyards that make the general industry standard incompatible or inapplicable to shipyard employment? If so, please describe those conditions. The performance-based approach of the general industry standard gives employers flexibility in determining the type of energy control procedures that would most effectively protect shipyard employees who are servicing particular machines, equipment and systems. This flexibility will also allow shipyard employers to tailor their energy control procedures so they adequately address specific conditions that may have unique applications in shipyard servicing operations.

Adopting a lockout/tagout rule for shipyards that is consistent with the general industry requirements has several advantages. Colleges and safety and health training providers have trained large numbers of safety and health professionals on the general industry standard. Having similar standards for shipyards would help to ensure that there are adequate numbers of trained safety and health professionals available to help shipyard employers as they implement the

standard. It would also ensure that the numerous lockout/tagout publications and outreach materials OSHA has developed for the general industry standard are useable and immediately available to help shipyards comply with the provisions and protect their employees. Moreover, it would mean that the materials NIOSH, the states, and private organizations have developed for the general industry standard could be easily applied to shipyards.

Control of Hazardous Energy Onboard Commercial Vessels. OSHA proposes to include language in both proposed § 1915.89 and existing § 1910.147 to clarify several issues concerning the application of the hazardous energy standards to servicing operations onboard commercial vessels. In large part, these proposed additions are in response to recent events that have raised concerns about how OSHA covers the serious hazards associated with servicing of equipment and systems on fish processing vessels.

Fish processing vessels, often called "floating fish factories," are commercial vessels that eviscerate, clean and prepare fresh, frozen and canned seafood. Generally, fish processing vessels perform the same operations and use the same types of equipment as landside fish processing plants; they just do so at sea. These vessels usually set anchor in fishing grounds for weeks or months at a time, processing fish and seafood that fishing boats unload onto them (Ex. 16-1). Some vessels, known as catcher/processors, also catch the seafood they process (Exs. 16-1 through 16-3). Fish processing equipment onboard these vessels, as in landside facilities, is specific to the type of seafood being processed. Thus, at the end of each fishing season when the vessel returns to port new equipment is installed to process fish that will be caught during the next fishing season (Ex. 16-2).

OSHA estimates that there are about 200 U.S. fish processing vessels operating in and traveling through U.S. territorial waters (Exs. 16-1; 16-4). While the number of employees working on fish processing vessels is difficult to ascertain, OSHA estimates that each vessel employs about 100 to 120 processing employees, who live on the vessel throughout the season, for a total of approximately 2,500 employees (Ex. 16-2).

The need to address the hazards associated with servicing fish processing equipment was brought to OSHA's attention by a serious accident onboard a fish processing vessel working in the Bering Sea. On October 16, 2005, an employee, who was

cleaning a vat used to process fish paste onboard a fish processing vessel, was seriously injured when the augers at the bottom of the vat suddenly started up. The churning augers trapped the employee's feet and legs and drew them into the machinery. It took coworkers two hours to free the employee from the machinery and another half day for a helicopter to arrive and airlift her off the vessel. The employee was flown to a hospital in Anchorage, Alaska, where her legs had to be amputated below the knees (Ex. 16-3).

Recently published injury statistics on the commercial fishing industry also support the need to address hazardous energy during servicing operations onboard floating fish factories. A study of serious injuries from 1991-98, collected by the Alaska Trauma Registry, determined that injuries related to fish processing equipment onboard vessels were the leading cause of injury in the industry (Ex. 16-5). These injuries accounted for more than one half of all injuries reported and many could have been prevented by implementing programs to control hazardous energy and applying lockout/tagout systems during servicing.

In light of these incidents, OSHA proposes to change its existing policy on the coverage of servicing and maintenance activities onboard commercial vessels, particularly fish processing vessels. In short, OSHA proposes adding language to § 1915.89 and § 1910.147 specifying that:

- Proposed § 1915.89 applies to the servicing of ship's systems by any employee, including but not limited to, ship's officers and crew of the vessel (see proposed § 1915.89(a)(2)(i)(A));
- Proposed § 1915.89 applies to the servicing of machines, equipment and systems that employees use in the course of performing shipyard employment operations (see proposed § 1915.89(a)(2)(i)(B)); and
- Existing § 1910.147, and not proposed § 1915.89, applies to the servicing of equipment onboard vessels that is used for inherently general industry operations such as fish processing (see § 1910.147(a) and proposed § 1915.89(a)(2)(iii)(C)).

Background and current policy. In order to fully explain OSHA's proposed changes, it is important to understand OSHA's current policy on the coverage of commercial vessels. This section discusses OSHA and U.S. Coast Guard authority over vessels, OSHA's current exemption of maritime employment from § 1910.147, and OSHA's current policy concerning application of § 1910.147 to floating fish processors.

Coast Guard/OSHA authority over vessels. Both OSHA and the U.S. Coast Guard have authority for the safety and health of employees onboard vessels. The Coast Guard has statutory authority to prescribe and enforce regulations affecting safety and health onboard *inspected* vessels and has exercised that authority. Therefore, OSHA does not have authority over those vessels (29 U.S.C. 653(b)(1); *Chao v. Mallard Bay Drilling, Inc. (Mallard Bay)*, 534 U.S. 235 (2002); Ex. 16-6; CPL 02-01-020 Coast Guard/OSHA Authority Over Vessels, 11/8/1996). However, OSHA does have authority over *uninspected* vessels (hereafter "commercial vessels") to the extent that the U.S. Coast Guard has not regulated a specific hazard or working condition (*Mallard Bay*, 534 U.S. at 244-45; Ex. 16-6). Almost all vessels used in the fish processing industry are uninspected, therefore they are within OSHA's authority (Ex. 16-6). Moreover, to date, the Coast Guard has not regulated the control of hazardous energy during the servicing and maintenance of equipment on commercial vessels. Therefore, OSHA has authority to regulate hazardous energy onboard commercial vessels. (OSHA notes that the Coast Guard has issued a limited regulation on machine guarding during production operations. See 46 CFR 28.215; 56 FR 40364, 40374 (8/14/1991) ("Running machinery is required to have hand covers, guards or railings to reduce the chance of personnel being injured while working around the moving gears, belts, and chains").

Where OSHA has authority over commercial vessels, the Agency generally has applied part 1910 standards to control hazardous working conditions (Ex. 16-6). However, OSHA has applied part 1915, and not the general industry lockout/tagout standard, to controlling hazardous energy during "ship repair" operations onboard commercial vessels. Ship repair is defined at § 1915.4(j) as "any repair of a vessel including, but not restricted to, alterations, conversions, installations, cleaning, painting, and maintenance work." Pursuant to that definition, OSHA has interpreted ship repair as including the servicing of all equipment and systems on commercial vessels, regardless of who performs the operation or whether the equipment is a permanent or inherent part of the vessel or a temporary fixture unrelated to the vessel's core navigation functions (Exs. 16-7; 16-8).

"Maritime employment" exemption. OSHA's current policy has been derived from language in the general industry lockout/tagout standard (§ 1910.147, 54

FR 36644) and Agency interpretations of it. The general industry lockout/tagout standard explicitly exempts "maritime employment" from coverage (§ 1910.147(a)(1)(ii)(A)). Although the standard and its preamble do not define maritime employment, in the preamble OSHA pointed to shipyard employment, longshoring and marine terminals as examples (54 FR 36655, 36657–36659).

The preamble cited several reasons for excluding maritime employment. OSHA said that including maritime employment, with its "unique situations and work practices * * * would unduly complicate development of a generic energy control standard for general industry" (54 FR 36657). OSHA also said a lockout/tagout standard likely could be applied quite differently in maritime than in general industry. As a result, the general industry rule might need to be modified considerably in order to provide optimal protection for maritime employees. However, the process of examining maritime employment and modifying the rule to address those issues would delay providing needed protection for millions of general industry employees. OSHA also explained that it did not have adequate information in the lockout/tagout record on hazardous energy hazards in shipyard employment, marine terminals and longshoring to support including them in the standard.

In exempting maritime employment, OSHA noted that part 1915 has provisions that address deenergization during the servicing of certain vessel systems and equipment (54 FR 36657). Those provisions, in subparts J and L, pertain to ship's systems and machinery (e.g., § 1915.162 Ship's boilers; § 1915.163 Ship's piping systems; § 1915.163 Ship's propulsion machinery) and electrical circuits and distribution boards (§ 1915.181). Although part 1915 does not define "ship's systems," generally the term is used to describe systems and equipment that are an inherent and permanent part of a vessel. The provisions in subparts J and L do not address the servicing of other types of equipment onboard vessels, such as fish processing equipment, and there are no other part 1915 standards addressing hazardous energy during the servicing of such equipment.

Interpretation of § 1910.147. After OSHA issued the general industry lockout/tagout standard, the Agency received two inquiries about its application to commercial vessels, specifically fish processing vessels. The first inquiry, in 1991, asked OSHA to clarify whether § 1910.147 applies to

servicing "the factory portion of floating fish processors" (Ex. 16–7). OSHA responded that the maintenance of "any equipment" onboard vessels is included in the maritime exemption from § 1910.147. OSHA explained that the maritime employment exemption applies to "shipyard employment," which includes "ship repair" (§§ 1910.15(a), 1915.4(i)). The Agency concluded that the definition of ship repair ("any repair of a vessel including, but not restricted to, alterations, conversions, installations, cleaning, painting, and maintenance work") was broad enough to include maintenance work on "any equipment on a vessel, including fish processing equipment" (Ex. 16–7).

In the second inquiry, from the Arctic Alaska Fisheries Corporation in 1994, OSHA confirmed its previous interpretation of the maritime employment exemption, again concluding that part 1915 applies to maintenance of any equipment onboard "all commercial vessels" (Ex. 16–8). (See also, Ex. 16–9, OSHA's Shipyard "Tool Bag" Directive CPL 02–00–142, confirming the earlier interpretations.) The current OSHA policy embedded in these interpretations is that fish processing or other equipment installed on vessels for any purpose is considered part of the vessel; accordingly, repair of that equipment is ship repair under part 1915.

Proposed additions and changes. The most significant of the additions that OSHA proposes, § 1915.89(a)(2)(iii)(C) and § 1910.147(a)(1)(ii)(B), clarify how the Agency, in the future, intends to cover the control of hazardous energy onboard commercial vessels during the servicing of equipment used for fish processing and other inherently general industry operations. There are two options: (1) follow the existing policy of classifying such servicing operations as "ship repair" and continue to cover them under proposed § 1915.89, or (2) classify such servicing as general industry operations and cover them under the general industry lockout/tagout standard (§ 1910.147).

The first option, applying proposed § 1915.89 to all equipment onboard commercial vessels, would result in a single standard for servicing operations onboard vessels. The single standard would apply regardless of whether the servicing involves ship's systems or fish processing equipment or whether it is done at a shipyard or at sea. In other respects, however, this option would result in the application of different standards to fish processing employees and employers, which might result in confusion. For fish processing

employees, it would mean that part 1910 standards would apply when they process fish and operate the equipment for production, but proposed § 1915.89 would apply when they clean or perform maintenance work on that same equipment. For employers who have both landside operations and floating fish processing facilities, it also would mean that proposed § 1915.89 would apply to servicing fish processing equipment on vessels, but § 1910.147 would apply to servicing the same equipment at landside facilities.

The second option, applying § 1910.147 to the servicing of fish processing and other inherently general industry equipment onboard vessels, will result in more uniform application of standards to fish processing and other general industry operations onboard commercial vessels. To illustrate, this option means that fish processing employees, who operate the processing equipment for production and perform the vast majority of all servicing of that equipment, will be uniformly covered by part 1910 standards during both the production and servicing operations. And for fish processing employers, part 1910 standards, including § 1910.147, would apply at both their landside and vessel-based fish processing operations.

The second option, however, will not result in completely uniform application of standards onboard vessels. Under option two, proposed § 1915.89 would apply to the servicing of ship's systems (i.e., systems and equipment that are an inherent and permanent part of the vessel), while § 1910.147 would apply to the servicing of inherently general industry equipment such as fish processing equipment. To determine which lockout/tagout standard applies, fish processing employers would have to determine first whether the equipment or system is an inherent and permanent part of the vessel (e.g., propulsion, navigation, electrical, ballast systems) or is used for performing inherently general industry operations.

For several reasons, OSHA believes it is appropriate to apply § 1910.147, and not proposed § 1915.89, to the servicing of inherently general industry equipment onboard vessels. First, fish processing and other general industry equipment are not core components of a vessel, but rather equipment placed on a vessel after the core vessel is built. In many cases general industry equipment may only be a temporary fixture on a vessel. As mentioned, fish processing equipment is changed typically at the end of every fishing season (Ex. 16–2). Given that, OSHA does not believe the equipment used to perform inherently

general industry operations is part of the "vessel" or that those servicing operations constitute the repair of it.

Second, fish processing and other inherently general industry operations onboard vessels are more closely associated with landside general industry operations than with shipbuilding, ship repairing, shipbreaking and related employment. For example, fish processing equipment onboard vessels is serviced almost exclusively by fish processing employees and not shipyard employees or others who regularly service ship's systems. This is true regardless of where the equipment is serviced—at sea, at port, or off the vessel. Rarely, if ever, do shipyard employees service fish processing or other inherently general industry equipment. When they do, the servicing is done as part of an overhaul of the entire vessel. At this point, the entire vessel, including the general industry equipment, is out of commission and the only operations being performed on or to the vessel are repair and maintenance. The proposal includes language covering this situation; specifying that when general industry equipment onboard vessels is serviced as part of an overhaul of the entire vessel proposed § 1915.89 will apply.

OSHA requests comment on the proposal to apply § 1910.147 to the servicing of fish processing and other equipment onboard vessels that is used for performing inherently general industry operations. What are the advantages and disadvantages of this proposed approach? Who services equipment onboard vessels that is used to perform inherently general industry operations? How frequently, if ever, do shipyard employees service general industry equipment onboard vessels and when does such servicing occur? What equipment onboard vessels, other than fish processing equipment, should OSHA classify as being used to perform inherently general industry operations? Should § 1915.89 or § 1910.147 apply to the servicing of inherently general industry equipment during an overhaul of the entire vessel? Please explain.

Servicing of "ship's systems." OSHA proposes that part 1915 will continue to cover the servicing of all "ship's systems" (proposed § 1915.89(a)(2)(i)(A)). Proposed § 1915.95 defines ship's systems as machines, equipment and systems that are a permanent or inherent part of a vessel. These systems, which are numerous, include navigation, propulsion, power (e.g., electrical, hydraulic, steam), piping, ventilation, communication, waste, ballast,

structural systems and systems to care for the crew of the vessel. Essentially, ship's systems are those systems that ensure the vessel's basic operational and navigational capability.

OSHA considers the servicing of ship's systems to be precisely the type of operation that the term "ship repair" was intended to cover. Servicing of ship's systems entails the repair and maintenance of core components of vessels. If these components are not maintained in proper working order, it is unlikely that the vessel will be fully operational or able to navigate properly. OSHA believes servicing ship's systems is at the very heart of shipyard employment and proposed § 1915.89 needs to apply.

OSHA notes that the language in proposed § 1915.89(a)(2)(i)(A) does not limit coverage to servicing ship's systems in certain locations. OSHA intends that § 1915.89 will apply to the servicing of ship's systems regardless of where such servicing occurs (e.g., on a commercial vessel at sea, at a commercial dock, in a shipyard) or who performs it (e.g., shipyard employees, contractors, fish processing employees, ship's crew). (See discussion of ship's crew below.)

OSHA believes it is necessary that part 1915 cover the servicing of all ship's systems in order to ensure that employees performing those operations are adequately protected from hazardous energy. Part 1915 was established and its standards are designed to address the "unique" hazards and working conditions associated with working on ship's systems, equipment and machinery. The hazards associated with ship's systems are particularly serious because these systems can be large, complex, and have multiple power sources and isolating devices. The hazards exist regardless of who services the ship's systems or where the servicing is done. OSHA believes that employees servicing ship's systems can best be protected from hazards if such servicing is covered by the standards designed to address the unique hazards and complexity of those systems.

Applying proposed § 1915.89 to the servicing of all ship's systems establishes a uniform set of standards for these systems, which is particularly necessary to ensure the protection of employees involved in multiple-employee or multiple-employer servicing operations. OSHA notes that the proposal includes additional procedures to further reduce the risk of harm for employees performing those types of servicing operations. However, these additional procedures will reduce

that risk only if all employees working on the system are required to follow them. Applying proposed § 1915.89 to all employers and employees working on ship's systems will accomplish that.

Applying proposed § 1915.89 to the servicing of all ship's systems will also ensure that employees performing those operations have the most effective protection possible. These employees will have the protections of not only § 1915.89, but also the additional energy control requirements in subparts J and L. Those provisions establish specific steps that must be taken when servicing certain ship's systems and power sources, such as blanking piping systems, locking or removing fuses, and posting conspicuous warning signs where employees are working. Neither the general industry lockout/tagout standard, nor the part 1910 electrical standards in subpart S, includes requirements directed to specific vessel systems (54 FR 36657). OSHA believes the system-specific protections in subparts J and L are necessary for all employees working on ship's systems to prevent death or serious injury from the direct escape of high temperature mediums used to power the systems (e.g., steam, water or oil) or from powerful electrical currents.

Finally, including the issue of servicing of ship's systems in this rulemaking will ensure that the unique hazards those operations pose are fully examined and discussed. It also enables OSHA to properly consider the interrelationship between the proposed lockout/tagout provisions and the specific provisions in subparts J and L, action that OSHA said was necessary in the lockout/tagout rulemaking (54 FR 36657). OSHA requests comment on applying proposed § 1915.89 to the servicing of all ship's systems. Who services ship's systems when the vessel is at sea? What protection and benefits will result from applying proposed § 1915.89 to the servicing of all ship's systems?

OSHA also asks for comment on its proposed definition of ship's systems. What machines, equipment and systems should the definition include? Does the proposed definition adequately distinguish between systems that are part of a vessel and equipment that is used for inherently general industry operations? Are there other approaches that would more clearly differentiate between those types of equipment and systems? Please explain.

Machines and equipment used to perform shipyard employment operations. In proposed § 1915.89(a)(2)(i)(B), OSHA simply codifies its existing policy that part

1915 applies to the servicing of machines and equipment used during the course of performing shipyard employment operations. OSHA considers these servicing operations to be "related employment" specified in the definition of shipyard employment (§ 1915.4(i)). For example, the proposal covers the servicing of shore-based power systems used in the construction of ships, automated blasting equipment to remove paint from vessels, and equipment (e.g., metal working equipment) in shipyard shops that is used to make or modify vessel components (e.g., plates, piping).

Ship's crew. Proposed § 1915.89(a)(2)(i)(A) specifies that § 1915.89 applies to all servicing of ship's systems regardless of who performs it. This means that proposed § 1915.89 applies to ship's officers, crew of commercial vessels, and contractors that commercial vessel owners and operators hire to service ship's systems (collectively referred to as "ship's crew").

The proposed provision explicitly clarifies longstanding OSHA policy that part 1915 applies whenever ship's crew performs ship repairing operations. That said, OSHA is including the issue in this rulemaking in order to address concerns that certain courts have raised about part 1915's coverage provisions.

Although § 1910.15(a) specifies that part 1915 applies to "every employment and place of employment of every employee engaged in ship repairing, shipbreaking, and shipbuilding, or related employment," some language in part 1915 suggests that the part does not cover certain shipyard employment activities or employees. Specifically, § 1915.4(d) states:

The term employee means any person engaged in ship repairing, shipbuilding, shipbreaking or related employments * * * other than the master, ship's officers, crew of the vessel, or any person engaged by the master to repair any vessel under 18 net tons.

Section 1915.4 was brought over from the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 *et seq.*), which, along with the OSH Act, provides OSHA with rulemaking authority over shipyard employment. Prior to enactment of the OSH Act, the Secretary of Labor, pursuant to authority under LHWCA, promulgated occupational safety and health standards for shipbuilding to protect the life, health and safety of shipyard employees (33 U.S.C. 941(a)).

When Congress enacted the OSH Act in 1970, they authorized OSHA, within the first two years after the effective date of the OSH Act, to promulgate as

occupational safety and health standards any established Federal standard (29 U.S.C. 655(a)). Pursuant to this authority, OSHA adopted all established Federal workplace safety and health standards in effect as of April 28, 1971, that pertained to employers, employees and employment covered by the OSH Act (§ 1910.11(a), 36 FR 10466 (5/29/1971)). This included the safety and health standards enacted under the LHWCA.

Since OSH Act coverage, which extends to employers engaged in business affecting interstate commerce, is broader than LHWCA coverage, OSHA consistently has held that the Agency is not bound by the coverage limitations in the LHWCA standards. To clarify this position, OSHA amended its incorporation by reference of established Federal standards (37 FR 26008 (12/7/1972)). Specifically, OSHA added paragraph (b) to § 1910.11 specifying that the Agency was incorporating "only substantive rules affecting safety and health" from established Federal standards (37 FR 26008). "The incorporations by reference of Parts 1915, 1916, 1917, 1918 * * * are not intended to include the discussion in those parts of the coverage of the Longshoremen's and Harbor Workers' Compensation Act * * *" (§ 1910.11(b)). OSHA explained that when it adopted the LHWCA safety and health rules the Agency had "no intention of incorporating [into OSHA rules] * * * any other rules having special applicability under the laws under which the 'established Federal standards' were initially adopted" (37 FR 26008). OSHA reiterated its position when the Agency consolidated the ship repairing, shipbuilding and shipbreaking standards into part 1915 Shipyard Employment (47 FR 16984, 16986 (4/20/1982)).

The Occupational Safety and Health Review Commission accepted the approach OSHA delineated in § 1910.11(b) (*Dravo Corporation*, 7 O.S.H. Cas. (BNA) 2089 (1980)). OSHA also has taken this position in the courts of appeals, however, three circuits have rejected OSHA's approach and applied the more restrictive language and limitations of the LHWCA provisions to cases arising under the OSH Act. *Tidewater Pacific, Inc. v. Herman*, 160 F.3d 1239 (9th Cir. 1998); *Kopcynski v. The Jacqueline*, 742 F.2d 555 (9th Cir. 1984); *Clary v. Ocean Drilling and Exploration Co.*, 609 F.2d 1120 (5th Cir. 1980); *Dravo Corporation v. OSHRC*, 613 F.2d 1227 (3rd Cir. 1980).

The court of appeals held in *Dravo* that, notwithstanding § 1910.11(b), OSHA would be held to the plain

language meaning of its part 1915 standards, including the coverage standards carried over from the LHWCA. *Dravo*, 613 F.2d at 1232-3. The language at issue in *Dravo* concerned the location of shipyard employment activities, that is, whether part 1915 covered shipbuilding activities performed at a waterfront fabrication shop on an island in the Ohio River. The court looked to the definitions of "employer" and "employee" in § 1915.4, which indicate the terms are limited to persons engaged in shipyard employment "on the navigable waters of the United States, including dry docks, graving docks and marine railways" (§ 1915.4(c) and (d)). (A dry dock is a narrow basin or vessel that can be flooded to allow a vessel to be floated in and then drained so the vessel comes to rest on a dry platform. A graving dock is a type of dry dock.) The court said the plain meaning of the definitions did not include fabrication shops ("they include only water, docks, and marine railways" *Id.*), and declined to construe the definitions more broadly:

[A]n occupational safety and health standard must give an employer fair warning of the conduct it prohibits or requires * * * To strain the plain and natural meaning of words for the purpose of alleviating a perceived safety hazard is to delay the day when the occupational safety and health regulations will be written in clear and concise language so that employers will be better able to understand and observe them * * * The responsibility to promulgate clear and unambiguous standards is upon the Secretary. The test is not what he might possibly have intended, but what he said. *Id.*

The *Dravo* court concluded that if OSHA intends a different coverage scheme, the Agency must amend part 1915 through rulemaking. *Id.* Although OSHA disagrees with the *Dravo* decision, to avoid confusion OSHA is expressly stating the applicability of proposed § 1915.89. Specifically, proposed § 1915.89 will apply to the servicing of ship's systems by *any employee*, including ship's officers and crew of the vessel (§ 1915.89(a)(2)(i)(A)). (Similarly, in the proposal OSHA also has clarified that subpart F applies "regardless of geographic location," even though the language of § 1915.4 limits "employer" to persons engaged in shipyard employment "on the navigable waters.")

The reasons for applying § 1915.89 to ship's crew have been discussed above and need not be repeated. OSHA believes that applying § 1915.89 to ship's crew should not come as a surprise to employers since OSHA has consistently applied part 1915

whenever ship's crew engage in shipyard employment (Ex. 16-9). Moreover, OSHA believes that the proposal to apply consistent coverage to ship's crew should reduce any confusion related to the split in the courts. OSHA requests comment on the proposed provision.

Clarification of "maritime employment" exemption in § 1910.147. OSHA proposes two technical revisions to the scope and application section of § 1910.147. The revisions clarify the meaning of the maritime employment exemption and provide notification of the proposed additions and policy changes discussed above. As mentioned, the general industry lockout/tagout standard exempted "maritime employment" (§ 1910.147(a)(1)(ii)(A)). Although the standard did not define maritime employment, OSHA has traditionally used the term as shorthand for the employment covered by parts 1915, 1917 and 1918. To eliminate possible confusion, OSHA proposes in § 1910.147(a)(1)(ii)(B) to replace the shorthand term with reference to the specific parts.

To clarify the exclusion from part 1915 of servicing of inherently general industry equipment, OSHA proposes to add the following note to § 1910.147(a)(1)(ii)(B):

Section 1910.147 applies to the servicing of equipment onboard vessels that is used for inherently general industry operations such as fish processing. However, if such servicing is part of a general overhaul and repair of the entire vessel, part 1915 applies.

The proposed revisions do not affect the substantive requirements of § 1910.147. OSHA requests comment.

Economic analysis. OSHA notes that its preliminary economic analysis, a summary of which is included in this preamble, includes compliance costs for shipyards and shipyard contractors to implement proposed § 1915.89. It does not include the costs of fish processing employers to comply with proposed § 1915.89. This is because the economic analysis for the general industry lockout/tagout rulemaking included the compliance costs for implementing the standard in activities other than shipyard employment. It included compliance costs for the fish processing industry, which includes fish processing onboard vessels. OSHA invites comment on whether there are additional costs for controlling hazardous energy on fish processing vessels that the economic analysis for § 1910.147 may not have included. If so, please explain what those costs involve.

The requirements of the proposed § 1915.89 standard. OSHA is proposing

to apply the general industry standard to shipyard employment in the same manner as it applies to general industry, except for the proposed changes described below. The preamble to the general industry lockout/tagout standard includes a detailed explanation of each of the standard's specific requirements, how they apply, and why they were adopted (54 FR 36654-83). OSHA is incorporating that document and the record of that rulemaking into this record. Therefore, OSHA will not repeat that discussion and instead will provide a short overview of the general industry requirements.

The general industry standard establishes minimum performance requirements for the control of hazardous energy. The rule requires that, before service or maintenance is performed, machinery and equipment must be turned off and disconnected from the energy source, the energy-isolating device must be either locked or tagged out, and the deenergization must be verified.

Scope and application (§ 1910.147(a), proposed § 1915.89(a)). The general industry Lockout/Tagout standard "covers the servicing and maintenance of machines and equipment in which the *unexpected* energization or start up of the machines or equipment, or release of stored energy could cause injury to employees" (§ 1910.147(a)(1)(i)). In proposed § 1915.89(a), OSHA is adopting this scope and application with a few changes. The proposal does not include the term "unexpected" that is used in describing the energization and startup of the general industry standard covers. The proposal also makes more explicit that the standard also applies to "systems." (These changes are discussed below in the section on the differences between proposed § 1915.89 and § 1910.147.)

The standard defines "servicing and/or maintenance" (hereafter collectively referred to as "servicing") as workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, maintaining, and servicing machines, equipment and systems (hereafter collectively referred to as "equipment") (§ 1910.147(b) and proposed § 1915.95). Servicing and maintenance activities are a necessary part of the industrial process. They are needed to maintain the ability of machines, equipment, systems and processes to perform their intended functions. Additionally, installation, construction, set-up, changeover, and dismantling are necessary and continuous industrial processes. The standard covers these types of

operations because they also can expose employees to hazardous energy. The standard does not apply in the following situations:

- Servicing or maintaining cord and plug connected electrical equipment, provided that the hazards are capable of being controlled by unplugging the equipment from the energy source and the plug being under the exclusive control of the employee performing the service and/or maintenance;

- Hot tap operations that involve transmission and distribution systems for gas, steam, water, or petroleum products when they are performed on pressurized pipelines, provided that continuity of service is essential, shutdown of the system is impractical, documented procedures are followed, and employees are provided with alternative protection that is equally effective; and

- Servicing or maintaining machines, equipment or systems onboard vessels that are inherently general industry operations. This would include operations such as fish processing (proposed § 1915.89(a)(3)(iii)).

As discussed earlier, proposed § 1915.89 will now also cover all ship's systems and all employees.

Normal production operations (proposed § 1915.89(a)(2)(ii)). Although OSHA recognizes that machines and equipment present many hazardous situations during normal production operations (i.e., whenever machines and equipment are used to perform their usual production function), the scope of the standard is servicing and maintenance operations. Hazards associated with normal production are covered by rules in other general industry and shipyard standards, such as the requirements for general machine guarding (§ 1910.212), guarding power transmission apparatus (§ 1910.219), and guarding tools and related equipment used in shipyard employment (§§ 1915.131 and 1915.134).

OSHA recognizes that some servicing activities that occur during normal production, such as making fine adjustments to equipment, must be performed with the power on. This may include certain aspects of troubleshooting, for example, checking to ensure that the source of a production problem has been corrected. The standard exempts from coverage these servicing activities during normal production, provided that they are routine, repetitive and integral to the use of the production equipment. However, the employer must provide employees with alternative means of protection while performing these

activities and follow the standard's lockout/tagout procedures when servicing occurs with the power off.

In certain circumstances, however, some hazards encountered during normal production operations may be covered by the lockout/tagout rule. Servicing and maintenance performed during or as part of normal production operations (e.g., lubricating, cleaning or unjamming machines and equipment) are covered by the lockout/tagout standard when any of the following conditions occurs:

- The employee must either remove or bypass machine guards or other safety devices, resulting in exposure to hazards at the point of operation;
- The employee is required to place any part of his or her body in contact with the point of operation of the operational machine or piece of equipment; or
- The employee is required to place any part of his or her body into a danger zone associated with the operating cycle of the equipment.

Energy control program (§ 1910.147(c), proposed § 1915.89(b)). The lockout/tagout standard requires that the employer establish an energy control program to ensure that equipment is isolated and inoperative before any employee performs service or maintenance where the energization, start up, or release of stored energy could occur and cause injury. The program must include (1) documented energy control procedures; (2) an employee training program; and, (3) periodic inspections of the energy control procedures. Employers have the flexibility to develop a program and procedures that meet the needs of their particular workplace and the particular types of equipment being maintained or serviced.

Although the energy control program applies to all employees, it is directed primarily at those who have the greatest exposure to hazardous energy—authorized and affected employees. The standard defines “authorized employees” as those employees who apply lockout/tagout devices and who perform servicing operations (§ 1910.147(b), proposed § 1915.95).

“Affected employees” include employees who operate, for normal production, the machines or equipment on which service is being performed as well as those employees whose job duties require them to work in the area where the servicing is being performed. The definition also specifies that an affected employee becomes an authorized employee when he performs servicing operations on the equipment.

Written energy control procedures (§ 1910.147(c)(4), proposed § 1915.89(b)(4)). The standard requires that written energy control procedures be developed, documented, and used to control potentially hazardous energy sources whenever employees perform activities covered by the standard. The written procedures must identify the information that employees must know in order to control hazardous energy during servicing.

The energy control procedures must outline the scope, purpose, authorization, rules and techniques that will be used to control hazardous energy sources, as well as the means that will be used to enforce compliance. At a minimum, each procedure must include the following elements:

- A statement on how the procedure will be used;
- The procedural steps needed to shut down, isolate, block, and secure equipment;
- The steps designating the placement, removal, and transfer of lockout/tagout devices, and who has the responsibility for them; and
- The specific requirements for testing equipment to determine and verify the effectiveness of locks, tags, and other energy control measures.

The standard requires that employers develop clear and specific written energy control procedures that have the level of detail necessary to ensure that employees know what steps and techniques they must follow to be protected from hazardous energy. Although procedures must be written in detail, the standard does not require separate procedures be written for each and every piece of equipment (54 FR 36670). Thus, if the procedures and information are the same for various equipment or if other logical groupings exist, then a single set of procedures may be sufficient. However, if equipment is not the same or other conditions are present that require specific consideration, such as multiple energy sources or different means of connection, then the employer must develop specific energy control procedures to address them and ensure employees are protected. For example, if a system requires that a unique shutdown sequence be followed, specific energy control procedures will be required for that system.

The standard includes an exception to the requirement to have written control procedures for particular equipment. A written procedure is not required for equipment if all of the following exist: (1) The machine, equipment or system has no potential for stored or residual energy or reaccumulation of stored

energy after shut down that could endanger employees; (2) the machine, equipment or system has a single energy source which can be readily identified and isolated; (3) the isolation and locking out of that energy source will completely deenergize and deactivate the machine, equipment or system; (4) the machine, equipment or system is isolated from that energy source and locked out during servicing or maintenance; (5) a single lockout device will achieve a locked-out condition; (6) the lockout device is under the exclusive control of the authorized employee performing the servicing or maintenance; (7) the servicing or maintenance does not create hazards for other employees; and (8) the employer, in utilizing this exception, has had no accidents involving the activation or reenergization of the machine, equipment or system during servicing or maintenance.

Energy-isolating devices (locks and tags) (§ 1910.147(c)(2) and (3), proposed § 1915.89(b)(2) and (3)). A primary tool for providing protection under the standard is the energy-isolating device, the mechanism that prevents the transmission or release of energy and to which locks or tags are attached. This device guards against equipment start-up or re-energization of equipment during servicing. There are two types of energy-isolating devices: Those that are capable of being locked and those that are not.

When the energy-isolating device cannot be locked, the standard requires that the employer use a tagout system. A tagout system consists of the required energy control procedures and extensive initial and periodic reinforcement training, including training on the limitation of tags (see training discussion below). However, where an energy-isolating device is lockable, the standard requires that lockout be used unless the employer can show that the use of a tagout system provides “full employee protection” equivalent to that obtained by using a lockout program (54 FR 36655).

“Full employee protection” means that the employer affixes the tagout device at the same location that the lock would have been attached and demonstrates that the tagout program provides equivalent protection. To demonstrate that equivalent protection is provided, the employer must demonstrate full compliance with all tagout-related provisions, including the additional tagout training requirements, and implement “additional elements as are necessary to provide equivalent safety.” This might include removing an isolating circuit element, blocking a

controlling switch, opening an extra disconnecting device, or removing a valve handle to reduce the potential for any inadvertent energization.

The standard requires that whenever major replacement, repair, renovation or modification of equipment is performed, and whenever new equipment is installed, the employer must ensure that energy-isolating devices are designed to accept locks. In the preamble to the general industry rule, OSHA explained that such modifications are most effectively and efficiently made as part of the normal equipment replacement or renovation cycle (54 FR 36656). (The proposed shipyard rule makes clear that this requirement would only apply to machines, equipment and systems the shipyard employer owns (proposed § 1915.89(b)(2)(iii)).

Requirements for lockout/tagout devices (protective materials and hardware) (§ 1910.147(c)(5), proposed § 1915.89(b)(5)). When attached to an energy-isolating device, both lockout and tagout devices are tools that the employer can use to help protect employees from hazardous energy. A “lockout device,” as defined in the standard, provides protection by holding the energy-isolating device in the safe position, thus preventing the equipment from becoming energized (§ 1910.147(b), proposed § 1915.95). The “tagout device” is a prominent warning device that provides protection by identifying the energy-isolating device as a source of potential danger. The tagout device indicates that the energy-isolating device and the equipment being controlled may not be operated until the tagout device is removed. Whichever device is used, the standard requires that it must be provided by the employer, be singularly identified, be the only device used for controlling hazardous energy and not be used for other purposes. Locks and tags must also meet the following requirements:

- *Durable*—Lockout and tagout devices must be able to withstand the environment to which they are exposed for the maximum duration of the expected exposure. Tagout devices, including tags, must be constructed and printed so that they do not deteriorate or become illegible in wet or damp environments, or when used in environments where corrosives (e.g., acid and alkali chemicals) are used or stored;

- *Standardized*—Both lockout and tagout devices must be standardized according to color, shape, or size so they are readily recognized and associated with the control of hazardous energy. Tagout devices must also be

standardized according to print and format;

- *Substantial*—Lockout and tagout devices must be substantial enough to prevent inadvertent or accidental removal. Locks must be substantial enough to prevent removal except by excessive force or by special tools such as bolt cutters or other metal cutting tools. The device for attaching the tag must be non-reusable, attachable by hand, self-locking and non-releasable. It must also have a minimum unlocking strength of no less than 50 pounds and have general design and basic characteristics equivalent to a one-piece nylon cable tie that will withstand all environments; and

- *Identifiable*—Locks and tags must clearly identify the employee who applies them. Tags must also warn against hazardous conditions if the machine or equipment is energized and must include a legend such as the following: DO NOT START; DO NOT OPEN; DO NOT CLOSE; DO NOT ENERGIZE; DO NOT OPERATE.

Periodic inspections (§ 1910.147(c)(6), proposed § 1915.89(b)(6)). The standard requires that the employer perform periodic inspections at least annually to ensure that energy control procedures are working properly. The inspection must be able to determine four things: (1) Whether the steps in the energy control procedures are being followed, (2) whether the employees involved know their responsibilities under the procedures, (3) whether the procedures are adequate to provide the necessary protection, and (4) what changes, if any, are needed to correct identified deficiencies (54 FR 36673). The inspection must be performed by an authorized employee, other than the employee utilizing the energy control procedures being inspected.

The periodic inspection must contain two components: an inspection of each energy control procedure and a review of each employee’s responsibilities under the energy control procedure being inspected. Where a tagout system is used, the inspector’s review of employee responsibilities also extends to affected employees because of the increased importance of their role in avoiding accidental or inadvertent energization (54 FR 36673). In addition, when a tagout system is used, the inspection must include a review with authorized and affected employees about the limitations of tags.

The standard requires that each energy control procedure must be separately inspected. However, that does not mean the employer must inspect each piece of equipment under the same energy control procedure or

observe each employee the procedure covers. The employer may inspect a representative sample of the equipment the procedure covers and authorized employees who implement the procedure on that equipment. Equipment that has the same type and magnitude of hazardous energy and has the same or similar type of controls may be grouped together and inspected by the type of procedure (Ex. 2–26, Letter to Thomas J. Civic, 3/9/2004). Moreover, a grouping of detailed individual procedures would be considered a single procedure for the purposes of periodic inspection, provided all of the procedures have the same or similar:

- Intended equipment use;
- Procedural steps for applying controls (i.e., shut down, isolation, blocking, and securing equipment);
- Procedural steps for placement, removal and transfer of lockout/tagout devices and responsibility for them; and
- Requirements for testing to verify the effectiveness of lockout/tagout devices and other control measures (Ex. 2–25 Letter to Lawrence P. Halprin, 9/19/1995).

In 1993, prior to the Agency interpretations, SESAC raised similar concerns about the percentage of equipment that employers must inspect in order to determine whether the energy control procedures are working properly and employees understand their responsibilities under the procedures (Docket SESAC 1993–3, Ex. 104X, pp. 164–169). OSHA believes the interpretations incorporated and discussed above address SESAC’s concerns.

Employee training (§ 1910.147(c)(7), proposed § 1915.89(b)(7)). The standard requires that the employer provide effective initial training as well as retraining as necessary to ensure that employees understand the purpose and function of the energy control program and acquire the knowledge and skills necessary for the safe application, use and removal of the energy controls. The details of the training (e.g., amount and type of training) may vary depending on factors such as the employee’s job duties under the energy control program and the complexity of the equipment or lockout/tagout procedures (54 FR 36673). The relative degree of knowledge that authorized, affected and other employees must acquire also varies, with authorized employees demanding the most extensive training because of their responsibility for implementing energy control procedures (i.e., applying lockout and tagout devices) and performing servicing operations. For example, the

training for authorized employees must cover at least:

- Recognition of applicable hazardous energy sources;
- The type and magnitude of the energy available in the workplace; and
- The means and methods necessary for energy isolation and control.

Affected employees, because they operate or use the equipment that authorized employees are servicing, must be trained in the purpose and use of the energy control procedures. Finally, other employees who may work or be in an area where energy control procedures are in use need to be instructed about the procedure in use and, most importantly, about the prohibition against attempting to start or energize machines or equipment that are locked out or tagged out.

As mentioned, when a tagout system is used the standard requires that employers also train employees in the limitations of tags, including at least:

- Tags are essentially warning devices affixed to energy isolating devices and do not provide the physical restraint of a lock;
- When a tag is attached to an energy isolating device, it is not to be removed without authorization of the authorized person responsible for it, and it is never to be bypassed, ignored or otherwise defeated;
- To be effective, tags must be legible and understandable by all authorized employees, affected employees and all other employees whose work operations are or may be in the area;
- Tags and their means of attachment must be made of materials that will withstand the environmental conditions encountered in the workplace;
- Tags may evoke a false sense of security. They are only one part of an overall energy control program; and
- Tags must be securely attached to an energy isolating device so they cannot be inadvertently or accidentally detached during use.

The standard also requires the employer to provide retraining to authorized and affected employees when the energy control procedures are changed, when a change in job assignment occurs or when a change in equipment presents a new hazard. Additional retraining must also be provided when an inspection reveals or the employer has reason to believe that there are deviations from or inadequacies in the employee's knowledge or use of the energy control procedures. Finally, the retraining must reestablish employee proficiency and describe any new or revised control methods and procedures, if needed. The standard requires that employers certify

that training and retraining has been provided and is current.

Application of controls
(§ 1910.147(d), proposed § 1915.89(c)). The standard establishes procedures that authorized employees must follow for applying energy controls. The energy control procedures must include the following elements implemented in this sequence:

- (1) Prepare for shutdown, ensuring authorized employee has knowledge in the type and magnitude of the energy, the hazards to be controlled and the methods to control energy;
- (2) Shut down the equipment using the procedures established for that equipment;
- (3) Isolate the equipment from the energy sources;
- (4) Apply lockout or tagout devices to energy isolating device in a manner that holds the energy isolating devices in a safe or off (lockout) position or indicates that operation or movement of the energy isolating device is prohibited (tagout). Where a tag cannot be affixed directly to the energy isolating device, the standard requires that it must be placed as close as safely possible to the device, and in a position that will be immediately obvious to anyone attempting to operate the device or equipment;
- (5) Relieve or render safe all stored or residual energy. If there is a possibility of stored or residual energy reaccumulating, the verification of isolation must be continued until the servicing is completed or the risk no longer exists; and
- (6) Verify isolation and deenergization of equipment before beginning servicing.

The standard requires that applying energy controls be performed only by the authorized employee performing the servicing and only after affected employees are notified that energy controls are being applied (or being removed) (§ 1910.147(c)(8) and (9), proposed § 1915.89(b)(8) and (9)).

Release from lockout or tagout
(§ 1910.147(e), proposed § 1915(d)). The standard also establishes procedures that authorized employees must follow when releasing lockout and tagout applications. Before lockout or tagout devices are removed (i.e., the equipment is being released from the lockout or tagout status) and energy is restored to the equipment, the authorized employee must take the following actions in this sequence:

- (1) Inspect the work area to ensure that non-essential items have been removed and that equipment components are intact and capable of operating properly;

(2) Check the work area to ensure that all employees have been safely positioned or removed;

(3) Notify affected employees after removing locks or tags and before starting equipment; and

(4) Make sure that locks and tags are removed only by the authorized employees who attached them. In the very few instances when this is not possible, the device may be removed by another employee who is also an authorized employee and is working at the direction of the employer, provided that the employer has:

- Implemented specific procedures and training that address the situation; and
- Demonstrated that the procedures provide equivalent safety.

Furthermore, the procedure must include the following:

- A verification that the employee who applied the lockout/tagout device is not at the facility;
- Reasonable efforts have been made to contact the authorized employee to inform him or her that the device has been removed; and
- Assurance that the absent authorized employee knows about the removal before he or she returns and resumes work.

Additional safety requirements
(§ 1910.147(f), proposed § 1915.89(e)). The standard includes additional requirements when certain circumstances may pose an increased risk of harm. These circumstances are: (1) Testing or positioning equipment during servicing; (2) the presence of outside (contractor) personnel at the worksite who are engaged in servicing operations; (3) servicing or maintenance performed by a group (rather than one specific person); and (4) changes in workshifts or personnel.

Testing or positioning of machines, equipment, systems or their components
(§ 1910.147(f)(1), proposed § 1915(e)(1)). The standard allows the temporary removal of locks or tags and the reenergization of equipment during the limited time when power is needed for the testing or positioning of them or their components. The reenergization must be conducted in accordance with the sequence of steps listed below to ensure employees' safety when they take equipment from a deenergized to energized condition and back again:

- (1) Clear the equipment of tools and materials;
- (2) Remove employees from the equipment area;
- (3) Remove the lockout or tagout devices in accordance with the required removal procedures;

(4) Energize the equipment and proceed with testing or positioning;

(5) When testing or positioning is complete, deenergize all systems and isolate the equipment from the energy source; and

(6) Reapply lockout or tagout devices in accordance with the required control application procedures.

Outside personnel (contractors, ship's crew, etc.) (§ 1910.147(f)(2), proposed § 1915(e)(2)). When outside personnel perform servicing operations at the worksite, the standard requires that the onsite employer and the outside employer must inform each other of their respective lockout or tagout procedures. The onsite employer must ensure that his or her personnel understand and comply with all restrictions and/or prohibitions of the outside employer's energy control program. The proposed rule makes it clear that outside personnel include ship's crew and contractors hired by the ship owner.

The following accident highlights the need for employers to coordinate their lockout/tagout program. In 1987, a fatality occurred aboard a grain-carrying ship that was equipped with wing tanks on each side of the ship. A screw conveyor ran through each wing tank. At the time of the accident, two of the wing tanks were being washed. Simultaneously, a Marine Chemist and a shipyard employee were inside another wing tank that was not being washed. The shipyard employee was standing on the conveyor when it was turned on by a member of the ship's crew who was unaware the employee and the chemist were inside the other wing tank. The screw conveyor crushed the shipyard employee to death. Although a lockout procedure was in effect for the employees washing the tanks, this information was not provided to the other employees, nor was there any coordination between employers or tasks.

Group lockout or tagout (§ 1910.147(f)(3), proposed § 1915(e)(3)). The standard requires that when servicing is performed by a crew or other group, the employer must utilize procedures that afford employees a level of protection equivalent to the use of a personal lockout or tagout device. The group lockout/tagout procedures must be in accord with the employer's energy control procedures, including at least the following specific requirements:

- Each group working under a group lockout/tagout must have an authorized employee who is vested with primary responsibility for the group;

- The authorized employee must ascertain the exposure status of each member of the group;

- Each authorized employee must affix a personal lockout or tagout device when he or she begins work and remove it when work is completed; and

- If more than one crew or group is involved in servicing, an authorized employee must be designated to coordinate the affected groups and ensure continuity of protection.

Shift or personnel changes (§ 1910.147(f)(4), proposed § 1915(e)(4)). The standard requires that the employer's energy control program include specific procedures to ensure the continuity of lockout or tagout protection during the workshift or personnel changes.

Appendix A (Non-mandatory). The standard also includes a non-mandatory appendix as a guideline to help employers and employees comply with the requirements of the standard. The appendix also provides other helpful information on the control of hazardous energy.

The differences between proposed § 1915.89 and § 1910.147. As mentioned, in most respects, OSHA is proposing to apply the general industry lockout/tagout standard to shipyards in the same manner as it applies to general industry. However, in certain places OSHA is proposing to modify the language of the standard to make the rule more directly applicable to shipyard employment. Most of the proposed modifications are strictly technical, for example, changes in the effective date and references to applicable standards in Part 1915. A few proposed changes address specific working conditions and circumstances in shipyards.

- *"Unexpected."* The proposal does not include the term "unexpected," which the general industry Lockout/Tagout standard uses in describing equipment energization and startup that the standard covers (§ 1910.147(a)(1)(i)). OSHA interpreted "unexpected energization or startup" to mean energization or startup of equipment that is unintended or unplanned. OSHA believes that energization or startup that occurs while the employee is servicing the equipment and before the employee intends to activate it is unintended and unplanned. This includes any steps toward reenergization that are taken without the servicing employee's knowledge. Such startup is clearly outside the energy control plan and procedures, and could result in injury if the energy involved is strong enough. Thus, determining whether employees could be injured if the equipment is

energized or starts up during the servicing operation is a key inquiry for employers. Thus, OSHA believes preventing energization or startup during servicing that could cause injury is necessary to fully effectuate the standard's purpose and the provisions designed to protect employees from injury during servicing operations.

In *Reich v. General Motors Corp.*, the Commission and Court of Appeals for the Sixth Circuit did not accept OSHA's interpretation of "unexpected" energization or startup in the general industry Lockout/Tagout standard. *Reich v. General Motors Corp.*, 17 O.S.H. Cas. (BNA) 1673 (1995); 89 F.3d 313 (6th Cir. 1996). Although the Agency disagrees with their decisions in that case, to avoid any confusion OSHA is not using the term "unexpected" in this proposal. OSHA believes this change further clarifies the Agency's intent that the proposal covers all servicing activities in which the equipment being serviced could energize, start up or release energy while the employee is servicing it, and such action could cause injury.

Systems. OSHA proposes to add the word "systems" to the "machines and equipment" the general industry standard covers. The hazards on vessels often involve working on ship's systems that create and distribute power—not only the machines or equipment that are driven by it. There are several reasons for explicitly identifying systems in the application of the shipyard standard. First, the language of shipbuilding and repair revolves around systems. The functional components of a ship are commonly known as ship's systems, such as electrical, propulsion, guidance, fuel, or radar systems. Adding systems to the standard makes it more directly applicable to shipyard employment, and makes it clear that the standard applies to systems as a whole, not merely the individual components of such systems.

Second, including systems also makes it clear that pipes, electrical cables, and like components are included in the equipment and processes to which lockout/tagout must be applied, and that a holistic approach may be needed to ensure employees are protected. In some cases, pipes, power cables, and control systems need to be considered when working on a specific piece of equipment, and adding the systems term helps to ensure that holistic approach is followed.

Scope—exemptions. The shipyard lockout/tagout proposal (§ 1915.89(a)(1)) does not carry over the exemptions from coverage contained in the scope section of the general industry standard (§ 1910.147(a)(1)(ii)). The reasons are

obvious. The exemptions include the maritime industry or address hazards and activities that are not present in shipyard employment (e.g., agriculture, oil and gas well drilling and servicing). The proposal (§ 1915.80 and .89) makes clear that the entirety of subpart F applies to shipyard employment, including landside operations and work on board vessels and vessel sections.

The proposal also does not include the exemption that SESAC recommended:

Note: This standard does not apply on vessel sections, equipment, and machines which are under the control of a Federal government agency (e.g., the U.S. Navy), and where the agency exercises control over hazardous energy sources by its lockout or tagout procedures. Those procedures shall supersede these regulations (Docket SESAC 1993-3, Ex. 104X, p. 48).

It is unclear to whom SESAC intends that the proposed exemption would apply—the ship, Federal civilian employees, military personnel, shipyard owners or Federal contract employers and employees. At the outset, OSHA notes that its standards apply to employers and not vessels. Assuming, however, that SESAC intends the exemption to apply to shipyard owners and Federal contractors who perform servicing onboard government vessels, such an exemption is inconsistent with the OSH Act and case law interpreting it. The OSH Act does not exclude Federal contractors from coverage (29 U.S.C. 653(b)(2)). The case law is well-settled that employees of private contractors performing work under Federal contracts are covered under the OSH Act. *Ensign-Bickford Co. v. OSHRC*, 717 F.2d 1419, 1421, cert. denied, 466 U.S. 937 (1984). In addition, the provisions in 29 CFR part 1960 (Elements for Federal Employee Occupational Safety and Health Programs) stress that the OSH Act covers Federal contractors and their employees. In particular, § 1960.1(f) provides that Federal contract employees are assured protection under the OSH Act and no provision of part 1960 “shall be construed in any manner to relieve any private employer, including Federal contractors, or their employees of any rights or responsibilities under the provisions of the Act.”

OSHA is preempted from covering Federal contractors and their employees only where another Federal agency has statutory authority to prescribe and enforce occupational safety and health standards on the contract employers and exercises that authority. *Ensign-Bickford*, 717 F.2d at 1421. A contractual obligation to comply with a

Federal agency’s safety procedures or manual does not constitute an exercise of statutory authority sufficient to justify preemption under section 4(b)(1) of the OSH Act (29 U.S.C. 653). *Id.* Preemption is appropriate only where a Federal agency implements and enforces the regulatory apparatus necessary to replace those safeguards the OSH Act requires. *Id.*

With regard to Federal civilian employees, the SESAC’s proposed exemption also is inconsistent with the OSH Act, Executive Order (E.O.) 12196 and 28 CFR 1960. Those provisions, which require that each Federal agency provide safe and healthful places and conditions of employment for Federal employees, are meant to ensure that Federal civilian employees have the same protections as private sector employees have under the OSH Act (29 U.S.C. 668(a)(1); E.O. 12196 § 1–201 (1980); 29 CFR 1960.1(a)). To effectuate this, section 1–201(d) of Executive Order 12196 and 29 CFR 1960.16 require Federal agencies to comply with all standards issued under section 6 the OSH Act. There is no evidence in the record that the hazardous energy to which Federal civilian employees may be exposed during onboard servicing operations is any different from those that private sector employees face onboard vessels. Therefore, OSHA believes excluding Federal employees is not appropriate.

With regard to military personnel, OSHA notes that E.O. 12196 excludes from coverage “military personnel and uniquely military equipment, systems, and operations” (E.O. 12196 § 1–101). Accordingly, the exemption SESAC recommends is not necessary to exclude military personnel from the proposed lockout/tagout standard.

Scope—application and purpose. The general industry standard specifies that it does not apply to “normal production operations,” except in certain limited situations (§ 1910.147(a)(2)(ii)). The standard and its preamble explain that equipment hazards during those operations are covered by subpart O of Part 1910. The requirements of subpart O generally apply to shipyard employment. However, certain provisions are not applicable to shipyard employment because the specific requirements in subpart H of part 1915 apply (e.g., §§ 1915.131 and .134). Accordingly, OSHA is proposing to revise the regulatory language to indicate that standards addressing normal production operations in shipyard employment are found in the applicable requirements contained in “subpart O of 29 CFR part 1910 and subpart H of 29 CFR part 1915.”

Similarly, § 1910.147(a)(3)(ii) requires employers to use the general industry standard to supplement lockout/tagout provisions in other standards in part 1910. The proposed rule modifies this language to include part 1915 as well as part 1910. As mentioned, the part 1915 standards that contain lockout/tagout requirements include § 1915.162 Ship’s Boilers, § 1915.163 Ship’s Piping Systems, § 1915.164 Ship’s Propulsion Machinery, and § 1915.181 Electrical circuits and distribution boards. Part 1910 standards that currently contain lockout/tagout related requirements that may apply, with some exceptions, to shipyards include: § 1910.178 Power Industrial Trucks; § 1910.179 Overhead and Gantry Cranes; § 1910.181 Derricks; § 1910.213 Woodworking Machinery; § 1910.217 Mechanical Power Presses; § 1910.218 Forging Machines; § 1910.252 Welding, Cutting and Brazing; and § 1910.305 Electrical.

Definitions. The proposed standard uses the same definitions as paragraph (b) of § 1910.147. The proposed definitions contain some technical changes, primarily to make the definitions more directly applicable to shipyard employment. In addition, the lockout/tagout definitions have been moved to the definitions section for subpart F, (proposed § 1915.95). As a result, the paragraph numbers in the proposed § 1915.89 do not correspond with the numbers in the general industry standard.

Installing lockable energy-isolating devices during replacement and overhaul. Paragraph (c)(2)(iii) of the general industry standard requires employers to install lockable energy-isolating devices when replacing or overhauling machines or equipment. In the preamble to the final standard, OSHA said that it was “much more effective and protective” to design a locking capability into equipment during normal replacement and overhaul cycles (54 FR 36656). The proposed lockout/tagout standard for shipyards also contains this requirement (proposed § 1915.89(b)(2)(iii)). However, the general industry provision assumes that the employer owns, and therefore, has the ability to make changes to equipment. This frequently is not the case in shipyard employment, particularly with regard to ship’s systems. As mentioned, shipyard employers ordinarily do not own the ships that they service. Accordingly, the Agency proposes to include the following exception to § 1915.89(b)(2)(iii): “This requirement does not apply to a machine, equipment or system that the employer does not own.”

However, OSHA believes that shipyard employees, ship's crews, and contractor employees would be safer if vessel owners installed lockout systems, and some owners already are implementing this safety measure. For example, the Military Sealift Command (MSC) operates over 100 civilian-crewed ships providing ocean transportation of equipment, fuel, supplies, and ammunition to sustain U.S. military forces worldwide (Ex. 9). The MSC lockout/tagout program requires both a tag and a locking device with a padlock to secure an energy source whenever possible, which protects shipyard employees as well as ship's crews during lockout/tagout applications (Ex. 9). OSHA asks for comment on how the Agency or shipyards can encourage ship owners to install lockable systems during the design and overhaul process. Finally, the Agency is also proposing to change paragraph (b)(2)(iii) to reference the effective date of the revised 1915 subpart F.

Outside personnel (contractors, ship's crew, etc.) proposed § 1915.89(e)(2). OSHA is requesting comment on what language to adopt in the final rule that best and most clearly explains the requirement to coordinate the activities of the various employers that might be involved in servicing operations at shipyards. The proposed language, which is consistent with the language of § 1910.147(f)(2) reads as follows:

(2) *Outside personnel (contractors, ship's crew, etc.).* (i) Whenever outside servicing personnel such as contractors or ship's crew are to be engaged in activities covered by the scope and application of this standard, the on-site employer and the outside employer shall inform each other of their respective lockout or tagout procedures.

(ii) The on-site employer shall ensure that his/her employees understand and comply with the restrictions and prohibitions of the outside employer's energy control program.

Several shipyard employment standards require employers to coordinate safety and health activities. For example, the part 1915 Subpart P Fire Protection in Shipyard Employment standards require contract employers in shipyard employment to have a fire safety plan that complies with the host employers fire safety plan (§ 1915.502(e)). In OSHA's experience, such coordination is commonly achieved by the contract employers adopting the safety and health policies and procedures of the shipyard. For example, as explained in the preamble to the fire protection rulemaking, OSHA finds it acceptable for a contractor to adopt the host employer's fire safety plan if that plan includes the fire

hazards the contract employees will encounter (69 FR 55674, (9/15/2004)).

OSHA is concerned that the language of paragraph (ii) requiring the on-site employer to ensure that his/her employees understand and comply with the restrictions and prohibitions of the *outside* employer's energy control program may appear to run counter to the common practice of contractors following the host employer's programs. OSHA does not believe that this is actually the case, because contract employers who adopt the host employer's energy control procedures would implement the required coordination and both employers would be in compliance. However, to avoid potential confusion on this matter, OSHA is considering alternative language used in a similar requirement found in § 1910.269(d)(8)(iv) of the general industry electric power generation, transmission and distribution standard, which reads as follows:

Whenever outside servicing personnel are to be engaged in activities covered by paragraph (d) of this section, the on-site employer and the outside employer shall inform each other of their respective lockout or tagout procedures, and each employer shall ensure that his or her personnel understand and comply with restrictions and prohibitions of the energy control procedures being used.

OSHA requests comment on the best language to use for this provision. Is the alternative language easier to understand? Does it improve or alter employee protections? Does it provide more flexibility by allowing the employers to decide among themselves which procedures are more appropriate? Should the final standard require the employer to adopt the most protective procedures, regardless of which employer has them?

Issues for which OSHA is seeking comment on the lockout/tagout proposal. Although OSHA is proposing to adopt the § 1910.147 provisions with minor revision, the Agency is also considering whether to add additional measures to further tailor the standard to the shipyard industry and to provide additional protection for shipyard employees. Therefore, OSHA asks for comment on the following issues.

Current shipyard lockout/tagout programs. OSHA asks for information on current hazardous energy control programs used by shipyard employers and how they differ from OSHA's general industry approach. Please describe your lockout/tagout program and submit copies of your programs to the record. OSHA is also interested in learning about the effectiveness, costs,

and cost savings associated with different hazardous energy approaches. Please submit any information on program effectiveness, injury reduction, costs, cost savings, and other benefits associated with your lockout/tagout efforts.

Compatibility of general industry approach for shipyard employment. At the beginning of the discussion of the proposed lockout/tagout standard, OSHA outlined the reasons why the Agency proposes to adopt the general industry lockout/tagout approach for shipyard employment. OSHA requests comment on the proposed approach. Specifically, OSHA requests comment on whether the proposed approach, as is, would adequately protect employees against hazardous energy in shipyard employment. Please explain what additional modifications to the standard, if any, may be needed to protect shipyard employees from hazardous energy. OSHA is aware that a number of shipyard employers have implemented lockout/tagout programs that are based on the general industry standard. Please describe your lockout/tagout program and submit a copy of it for the record. Why did your establishment implement the general industry approach? What type of revisions, if any, did you make to the general industry energy control program so it would be compatible and effective in your workplace?

Some members of SESAC urged that OSHA, instead of proposing to apply the general industry lockout/tagout standard to shipyards, to develop a different plain language lockout/tagout standard tailored specifically to shipyard employment. OSHA requests comment on whether a different standard, not based on the general industry standard, is necessary to control hazardous energy in shipyard employment. If not, why not? If so, what should such a standard contain? What types of problems and costs, if any, would adopting a separate shipyard lockout/tagout standard pose for shipyard employers who already have implemented a lockout/tagout program based on the general industry standard?

Incident investigation. SESAC recommended that a shipyard lockout/tagout standard include a provision requiring the employer to conduct incident investigations when accidents or near misses occur (Docket SESAC 1993-3, Ex. 8, p. 7). They recommended that incident investigations be conducted to identify deficiencies in the lockout/tagout program and then to correct any problems or deficiencies in the program. OSHA requests input on whether the standard should include an

incident investigation requirement. Does your shipyard or industry routinely conduct such investigations? If not, why not? If so, has the approach been successful in identifying and resolving lockout/tagout problems? If OSHA adopts an incident investigation provision, what requirements should it include (e.g., the qualifications of staff performing the investigation; the promptness of the investigation; the quality of the investigation, documentation, and corrective action)?

Additional measures. As discussed, the general industry standard only allows an employer to use a tagout device on a lockable energy isolating device when the employer can demonstrate that the tagout system will provide "full employee protection," that is, when the employer demonstrates that the tagout program provides a level of safety equivalent to that obtained by using a lock. To demonstrate that the required level of protection is achieved the employer must demonstrate full compliance with all tagout provisions and implement additional safety measures as necessary. Some of the additional measures the standard identifies are removal of isolating circuit elements or valve handles and blocking control switches.

The general industry standard and this proposed rule do not apply the requirement of full employee protection and additional measures to energy isolating devices that are not capable of being locked. OSHA decided against extending the requirement to non-lockable energy isolating devices in the general industry rule because the Agency determined that such devices could not provide protection equivalent to that obtained by using a lock. In addition, OSHA observed that, in general industry, the number of non-lockable energy isolating devices was small, less than 10 percent of all equipment. Moreover, OSHA predicted that their number would rapidly decline and eventually disappear when the requirement to make energy isolating devices lockable during replacement or major repair was implemented.

Although the situation for shipyard landside operations is similar to that of general industry, the situation onboard vessels is almost the opposite. OSHA estimates that more than 90 percent of equipment and systems onboard vessels are not capable of being locked (see Preliminary Economic Analysis below). Some cannot be locked because the system is too complex or because locking the system would result in shutting down all operations throughout the vessel. In addition, a number of vessel systems are not designed or built

to allow locks and shipyard employers cannot attach or retrofit them because they do not own the vessel. In recognition of this, OSHA is proposing to exempt shipyard employers from the requirement to make systems on vessels lockable during replacement and repair if the employer does not own the vessel. Therefore, for machines, equipment and systems onboard vessels, it is unlikely that the number of non-lockable systems will decrease significantly without action by ship owners. At the same time, OSHA is aware that many shipyard employers use additional measures whenever a tagout system is used, regardless of whether the energy isolating device is capable of being locked (Docket SESAC 1993-3, Ex. 104X, p. 73). OSHA requests comment on whether the standard should require shipyard employers to implement additional safety measures whenever a tagout system is used, regardless of whether the energy isolating device is capable of being locked. Does your establishment currently use additional safety measures whenever a tagout system is utilized? If not, why not? If so, what measures do you use and why?

A related issue is what additional measures employers may use when tagout systems are utilized. In addition to using the measures identified in the general industry standard, some shipyard employers use administrative means, such as posting authorized employees as attendants at the energy isolating device or power source to help ensure that no one removes the tagout device or starts up the equipment while servicing is still in progress. OSHA requests comment on whether the Agency should include posting of an attendant as an example of the additional measures employers may use. What additional measures does your shipyard and industry use to provide added protection when tagout systems are used? Please explain how these measures work and why they are used.

Group lockout/tagout. The general industry standard (§ 1910.147(f)(3)(iii)(D)) and the proposed standard require that the employer ensure that each authorized employee affix a personal lockout or tagout device to the group mechanism before beginning work and remove the device when work ends. This provision, along with others in the standard, ensures that each employee has a degree of control over his or her protection. SESAC recommended that a shipyard lockout/tagout standard include a provision allowing shipyard employers to use administrative or other means to control access to locked or tagged machines or equipment when a group of

employees are servicing the same equipment (Docket SESAC 1993-3, Ex. 104X, pp. 134-158). OSHA requests comment on other "equivalent methods" for group lockout/tagout that the Agency should consider. What methods does your shipyard or industry use to control access in group lockout/tagout situations? Do they result in any other advantages or disadvantages?

It is OSHA's view that the group lockout/tagout provisions apply whether the employees in the group work for only one employer, or if they work for multiple employers. In your establishment or industry, are group lockout/tagout procedures used for multi-employer groups? If so, what safety measures do you use to assure that consistent procedures are used by the employers and employees involved?

Non-mandatory appendix. OSHA proposes to adopt the non-mandatory appendix from the general industry standard. The appendix, which provides an example of a typical minimum lockout procedure, will help shipyard employers comply with the standard. OSHA requests comment on whether the appendix should be revised to further tailor it to shipyard employers.

Section 1915.90 Safety Color Code for Marking Physical Hazards

OSHA proposes to incorporate by reference the general industry standard on safety color coding for marking physical hazards (§ 1910.144). The standard already is applicable to shipyard employment, both on vessels and on shore. The existing standard requires that the color red shall be the basic color for the identification of dangerous conditions such as containers of flammable liquids, lights at barricades and temporary obstructions and danger signs. The standard also specifies that red shall be the color for emergency stop buttons, electric switches, and machine stop bars. In addition, the standard requires that yellow shall be the basic color for designating caution and marking physical hazards such as slip, trip and fall hazards.

Section 1915.91 Accident Prevention Signs and Tags

OSHA is proposing to incorporate by reference the general industry Accident Prevention Signs and Tags standard (1910.145). The standard's requirements on the classification, design and wording of accident prevention *signs* apply to shipyard employment (on vessels and on shore)(§ 1910.145(a) through (e)); however, the standard's requirements on accident prevention *tags* do not (§ 1910.145(f)(ii)). Part 1915

does not have comprehensive, uniform requirements on the design, application and use of such tags. Part 1915 contains only limited requirements for accident signs and labels, such as provisions on the posting of warning signs and labels to comply with the shipyard confined and enclosed spaces standard (§ 1915.16).

The general industry provisions on accident prevention tags require that they be used where employees are exposed to potentially hazardous conditions, equipment or operations that are “out of the ordinary, unexpected or not readily apparent” (§ 1910.145(f)(3)). The provisions also require that tags meet uniform criteria for message, legibility, positioning/affixing, and comprehensibility (§ 1910.145(f)(4)).

Incorporating the general industry standard is necessary to provide consistent protection wherever shipyard employees are exposed to potentially hazardous conditions. It also ensures that important warning and danger signs and tags are uniform in their design and use, which OSHA believes will increase their effectiveness. The proposed requirements should not pose problems for shipyard employers since the general industry requirements are universally recognized and the use of signs and tags as specified in § 1910.145 are already common shipyard practice.

To eliminate any possible confusion, the proposal also amends § 1910.145 to remove from the scope provisions the exclusions for “marine regulations” and “maritime” (§ 1910.145(a)(1) and (f)(1)(ii)). As discussed in the proposed lockout/tagout section, a potential for confusion may exist because the terms “maritime” and “marine” have sometimes been used as shorthand for shipyard employment, marine terminals and longshoring. Removing those terms eliminates that potential ambiguity. (OSHA notes that removing the terms does not change the scope and application of § 1910.145 vis a vis marine terminals and longshoring; that is, removing the language excluding maritime and marine regulations does not now make the standard applicable to marine terminals and longshoring. General industry standards apply to marine terminals and longshoring only to the extent they are specifically incorporated by reference in parts 1917 and 1918. Section 1910.145 is not incorporated into either part; therefore, it does not apply.)

OSHA requests comment on the proposed requirements. Should OSHA propose that accident prevention signs be understandable to employees (existing paragraph 1910.145(f)(4)(iv))

and that employees be provided with information as to their meaning (existing paragraph 1910.145(f)(5)(v)) as already required for accident prevention tags? (Section 1915.16 contains similar requirements, but they are for warning signs and labels for confined and enclosed spaces.) If not, why not? If so, what should those requirements include?

Section 1915.92 Retention of DOT Markings, Placards, and Labels

OSHA proposes to retain, with minor editorial changes, the existing requirements (§ 1915.100) on the retention of DOT markings, placards and labels on hazardous materials the shipyard receives. Proposed paragraphs (a) and (b) require that employers not remove labels and markings on any hazardous materials or freight containers, rail freight cars, motor vehicles, or transportation vehicles that the U.S. Department of Transportation regulations require to be marked until the hazardous materials are removed, and that any residue is cleaned and any vapors are purged to prevent potential hazards. This would apply regardless of how the shipyard receives the hazardous material packages (e.g., single packages, in bulk).

Proposed paragraph (c) requires that the markings, placards and labels on the hazardous materials be maintained so that they are “readily visible.” Proposed paragraph (d) states that employers are considered in compliance with this section if the markings/labels on non-bulk packages that will not be reshipped are affixed in accordance with the Hazard Communication standard § 1915.1200. Finally, proposed paragraph (e) specifies that the definition of “hazardous materials” and other undefined terms have the same definition as the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 through 180). OSHA requests comment on whether paragraph (e), which cross-references the DOT hazardous materials regulations (as does the general industry standard), is necessary for employers to understand the standard or whether it should be deleted in the final rule.

Section 1915.93 Motor Vehicle Safety Equipment, Operation, and Maintenance

OSHA proposes to add a new section addressing the hazards associated with the use of motor vehicles at shipyards. The proposed section sets forth requirements addressing motor vehicle safety equipment and the safe operation and maintenance of motor vehicles. According to the BLS CFOI database,

over an 11-year period (1993–2003), 27 shipyard employees were killed in transportation accidents, accounting for 17 percent of the deaths during that time. OSHA believes that the proposed motor vehicle safety provisions will help reduce the incidence of motor vehicle related fatalities.

In § 1915.95, OSHA is proposing to define “motor vehicle” to mean any motor-driven vehicle operated by an employee that is used to transport employees, materials, or property. Motor vehicles would include passenger cars, light trucks (e.g., pickup trucks), vans, all-terrain vehicles, powered industrial trucks, and other similar vehicles.

OSHA believes the proposed requirements are necessary because vehicle accidents continue to result in employee deaths in shipyard employment. As discussed above, a high proportion of shipyard employee fatalities are caused by motor vehicle-related accidents. Motor vehicle accidents are also a significant cause of employee injury in shipyards. According to BLS, since 1998 an estimated 225 shipyard employees have suffered motor vehicle-related injuries serious enough to involve days away from work. In 2002, 63 shipyard employees suffered injuries involving days away from work in transportation accidents.

Paragraph (a)—Application. In paragraph (a)(1), OSHA proposes to apply this section to any motor vehicle used to transport employees, materials or property at shipyards. The provision also makes clear that the section would not apply to motor vehicle operation on public streets and highways. OSHA believes that Federal, State and local laws and regulations such as safety belt and vehicle inspection laws, already provide adequate protection on public roads. Thus, the proposal is directed to where those laws and regulations may not apply to motor vehicles used on shipyard property (e.g., transporting employees between worksites, moving materials). Nonetheless, OSHA believes the proposal’s benefits will extend beyond motor vehicle operation at shipyard worksites. For example, an employee who is required to wear a safety belt while riding in a motor vehicle on shipyard property is more likely to continue to wear it when the vehicle leaves the shipyard. Likewise, a motor vehicle that is maintained in safe operating condition for use in shipyard employment will also be safe when it is used on public roads.

In paragraph (a)(2), OSHA proposes to limit application of most of the provisions of the section to motor

vehicles the employer provides. However, because some employers allow employees to use their own motor vehicles to transport themselves, other employees and materials within the shipyard, OSHA proposes that three provisions in this section also would apply to motor vehicles provided by employees. Those provisions are the requirements that employees use safety belts (§ 1915.93(b)(2)), that motor vehicles have seats for each employee being transported (§ 1915.93(b)(4)), and that tools and materials transported by motor vehicles be firmly secured (§ 1915.93(c)(2)).

Proposed paragraph (a)(3) states that only motor vehicle safety equipment requirements in paragraph (b)(1) through (b)(3) would apply to the operation of powered industrial trucks in shipyards. The seating requirements in paragraph (b)(4) would not apply to powered industrial trucks manufactured for operation in a standing position, because they are not equipped with seats. In addition, the Power Industrial Trucks standard prohibits unauthorized personnel from riding on powered industrial trucks and requires that a safe place to ride be provided where riding is allowed (§ 1910.178(m)(3)).

Proposed paragraph (a)(3) also provides that the motor vehicle operation and maintenance requirements in this section would not apply to powered industrial trucks. Proposed paragraph (a)(3) makes clear that employers must continue to comply with the maintenance, inspection, operation, and training requirements for powered industrial trucks in § 1910.178. Those requirements are more comprehensive and provide more specific protection than the more general motor vehicle operation and maintenance requirements proposed here.

Paragraph (b)—Motor vehicle safety equipment—Paragraph (b) proposes requirements for equipping motor vehicles with safety equipment and using it while motor vehicles are operated.

OSHA proposes in paragraph (b)(1) to require that each motor vehicle the employer acquires or puts in service for the first time after the final rule becomes effective be equipped with safety belts for each employee operating or riding in the vehicle. The Agency believes this requirement is necessary and appropriate because, as mentioned above, shipyard employees have been injured and killed in motor vehicle-related accidents, and it is well documented that safety belts reduce the risk of injury and death (Exs. 2–2; 2–4, p. 61; 2–5, p. 6; 2–6; 2–7; 2–8; 2–11; 2–

18). There have been injuries and fatalities in shipyard employment, as well as other industries, directly related to employees not using safety belts, including while operating powered industrial trucks (e.g., forklifts) and other off-road vehicles (Ex. 2–9). Recognition of the hazard of operating motor vehicles without safety belts is also evidenced by the national consensus standards that require motor vehicles to be equipped with operator restraints and specify that operators and passengers use them (Ex. 3–13, SAE J386, Operator Restraint Systems for Off-Road Work Machines, November 1997; Ex. 3–10, ANSI/ASME B56.1–2000 Safety Standard for Low Lift and High Lift Trucks). The proposal would make subpart F consistent with those standards.

OSHA is aware that the powered industrial truck standard (§ 1910.178) does not require those motor vehicles to be equipped with safety belts. Much of the standard was promulgated pursuant to section 6(a) and was taken from the ANSI standard on low lift and high lift trucks that was in effect at the time, ANSI B56.1–1969. The 1969 ANSI standard did not have a safety belt requirement. However, when the ANSI standard was revised in 1993, provisions were added requiring that powered industrial trucks manufactured after 1992 be equipped with safety belts and requiring that operators use them. The current ANSI/ASME standard continues to require this. In issuing its 5(a)(1) enforcement policy regarding operator restraint systems for powered industrial trucks, OSHA said that the provisions in the revised national consensus standard evidence “recognition of the hazard of powered industrial truck tipover and the need for the use of an operator restraint system” (Ex. 2–15, Memorandum dated October 9, 1996, to Regional Administrators from John Miles).

Proposed paragraph (b)(1) would not require employers to retrofit those motor vehicles that they are already using with safety belts. OSHA is proposing to limit application of the requirement to motor vehicles put into service by the employer for the first time after the final rule becomes effective. Although OSHA anticipates that the vast majority of motor vehicles shipyard employers put into service after the effective date will be new vehicles that have been manufactured with safety belts, the proposed language also addresses used motor vehicles employers acquire and use for the first time after the final rule becomes effective. Applying the standard to both groups of motor vehicles would ensure that employers

consider the safety of employees whenever they acquire motor vehicles. The proposal includes an exception to the safety belt requirement for those motor vehicles that were not originally manufactured with them (e.g., buses). However, if the motor vehicle was manufactured with safety belts and they have been removed or are not operational, the employer would have to ensure the motor vehicle has operational safety belts before it is used for the first time in the shipyard.

Proposed paragraph (b)(2) requires the employer to ensure that employees use safety belts at all times while operating or riding in a motor vehicle. As mentioned, motor vehicle accidents are a significant cause of employee injury and death and safety belts have been shown to reduce that risk. OSHA notes that the proposed requirement applies to all motor vehicles used at shipyards including powered industrial trucks. Forklifts are particularly susceptible to tipovers if they run over uneven ground, potholes, sand, or railways; turn corners sharply; or if the mast strikes an object. These situations and conditions are often found in shipyards. In many forklift tipover accidents, operators have been injured or killed because they were thrown from the forklift, or struck or crushed by the forklift when they tried to jump free. In 2001, BLS reported that across private industry 35 of 123 forklift fatalities (28 percent) involved tipovers or falling from a moving forklift. In contrast, where forklift operators were wearing safety belts in many cases the injuries were more limited. In one tipping accident, where an OSHA inspector noted that the operator was wearing a safety belt, the injuries were limited to four fingers on one hand.

OSHA is aware of concerns that some forklift operators have about using operator restraints near water. The Agency has heard some operators say they do not wear safety belts because they need to be able to jump free of the forklift if it goes off the dock. However, OSHA is not aware of any reports of powered industrial trucks running off a shipyard dock. OSHA requests comment, especially any data and other information on this issue.

OSHA is also aware of arguments that the safety belt provision is unnecessary since states have mandatory seat belt laws. However, those laws only apply to motor vehicles operated on public streets and highways and do not apply to off-road industrial vehicles such as powered industrial trucks. As mentioned, shipyard employees have been injured and killed in off-road motor vehicle accidents, which may have been prevented if they had been

using safety belts. OSHA believes that where employers inform employees about the safety belt requirement and require their use that safety belt usage will be significantly higher.

Proposed paragraph (b)(2) also requires that the employer ensure that employees wear safety belts securely and tightly at all times they are operating or riding in a motor vehicle. OSHA believes this language is necessary because the safety belt or operator restraint system may not restrain the employee within the vehicle compartment in the event of an accident or tipover if the belt is not fastened tightly.

As mentioned above, the safety belt requirement would apply to both employer and employee provided motor vehicles used to transport employees, materials and equipment on shipyard property. The risk of injury exists regardless of whether employees are operating or riding in employer or employee provided motor vehicles. Applying the proposed provision to employee provided motor vehicles will ensure that employees riding in those vehicles will have the same protections as those riding in employer provided motor vehicles.

Proposed paragraph (b)(3) would require that employers ensure that motor vehicle safety equipment is not removed from employer provided vehicles and replace equipment that is removed. For purposes of this paragraph, motor vehicle safety equipment includes items such as safety belts, airbags, lights, brakes, mirrors, horns, windshields and windshield wipers. This provision must be read in conjunction with proposed paragraph (c)(1) requiring that employers equip motor vehicles with safety equipment that is in serviceable and safe operating condition.

Proposed paragraph (b)(4) requires that motor vehicles used to transport employees have a firmly secured seat for each employee being transported. It also requires the employer to ensure that employees use the seat when they are being transported. This requirement is necessary because some shipyards transport employees from one worksite to another in the back of pickup trucks that do not have seats, and these employees are at risk of injury from falling out of or being thrown from the vehicle when traveling in the back of pickup trucks, even at low speeds. In 2001, for instance, a construction employee riding in the back of a pickup while placing cones on a highway fell out and was killed even though the truck was traveling only 10 to 15 mph,

which is the speed limit in most shipyards.

To address this hazard, it is OSHA's intent that employees have a safe seat to sit in when they are transported in shipyards, and that they use those seats to ride from one location to another. OSHA is not requiring that employers retrofit their motor vehicles with seats. Rather, employers need to ensure that transportation used to move employees throughout the shipyard has seats for every employee transported. OSHA believes the provision should not pose a problem for employers since many shipyard employers already use vans, small buses, and automobiles to transport employees.

As mentioned, OSHA also proposes to apply this provision to employee provided motor vehicles. This will ensure that every vehicle transporting employees in shipyards provides the same protection. OSHA notes that this provision would not apply to powered industrial trucks manufactured for operation in a standing position and do not have operator seats.

The Agency seeks comments on this proposed requirement. In your establishment and industry, how are employees transported from one worksite to another and what measures are in place to ensure that they are safely transported?

Paragraph (c) Motor vehicle maintenance and operation—Paragraph (c) proposes new requirements for the maintenance and operation of motor vehicles used in shipyards.

Proposed paragraph (c)(1) requires that employers ensure that each vehicle is maintained in a "serviceable and safe operating condition." Safe operating condition refers to the condition of equipment that directly affects the safe operation of the vehicle. For example, the proposal would require that motor vehicle safety equipment such as visibility and warning devices, headlights, taillights, horns, windshield wipers, defogging or defrosting devices and safety belts be in safe working order. In § 1915.95, OSHA proposes to define "serviceable condition" to mean the state or ability of a vehicle to operate as it was intended by the manufacturer to operate. Accordingly, motor vehicles that are operated in accordance with manufacturer's instructions and recommendations would be considered in compliance with this provision.

Proposed paragraph (c)(1) would also require that motor vehicles be removed from service if they are not in serviceable and safe operating condition. It is OSHA's intent that the motor vehicle could not be used for

shipyard employment until the problem or damage is repaired.

Proposed paragraph (c)(2) would require that tools or equipment be secured while being transported to prevent unsafe movement. This will reduce the risk of injury due to heavy or sharp tools or equipment sliding into or hitting operators or passengers. This provision does not require that all materials be secured, only those that may pose a hazard to employees. Items that do not pose a hazard to the driver or passengers could be transported in the vehicle cab or back of a pickup truck without being secured. As mentioned, this requirement would also apply to employee provided motor vehicles used at shipyards.

In paragraph (c)(3), OSHA proposes to address motor vehicle problems associated with the intermingling of pedestrian, bicycle and motor vehicle traffic in shipyards. When pedestrians, bicyclists and motor vehicles share shipyard roadways there is potential for accidents. Often accidents occur because the motor vehicle operator does not see the pedestrian or bicyclist in time to avoid hitting them. Due to the size of many shipyards, roads may be narrow or unmarked, and parking space may be limited. As a result, many employers provide bicycles or allow employees to use their own to get from one location to another. As the use of bicycles has grown, so too have the reports of accidents. For example, an employee riding a bicycle to perform regularly assigned work tasks in a Mississippi shipyard was killed when he collided with a motor vehicle (Ex. 2-1). It is OSHA's intention to ensure that employees riding bicycles and walking can be seen by motor vehicle operators and protected from injury.

Paragraph (c)(3) would require that employers implement measures to ensure motor vehicle operators can see and avoid hitting pedestrians and bicyclist traveling in shipyards. The proposal identifies some measures employers may implement. For example, the employer may establish dedicated travel lanes for pedestrians and bicyclists and install crosswalks and traffic control devices (e.g., stop signs, pavement markings) to control pedestrian and bicycle traffic across roadways. Using physical barriers to separate the travel lanes will also help to prevent injury. For travel lanes to be effective, the employer must ensure that the dedicated lanes are wide enough. For example, motor vehicle lanes need to be wide enough so they do not interfere with pedestrian/bicycle lanes and pedestrian/bicycle lanes need to be

wide enough for safe passage of both pedestrian and bicyclists.

The employer may also comply with the proposed provision by providing pedestrians and bicyclists with equipment such as reflective vests, reflectors or lights. OSHA believes this measure should not pose problems for employers since bicycles are manufactured with reflectors and lights. In addition, many shipyard employers already provide reflective vests so employees are visible to equipment operators.

The Agency seeks comment on the proposed provisions to reduce injuries related to the intermingling of pedestrian, bicycle and motor vehicle traffic in shipyards. OSHA also requests comments on the safe operation of motor vehicles. What does your company do to ensure that employees operate motor vehicles safely? Do you have requirements for employees driving in your facilities or using company vehicles?

Section 1915.94 Servicing Multi-Piece and Single Piece Rim Wheels

OSHA proposes to incorporate by reference the general industry standard (§ 1910.177) and non-mandatory appendices on servicing multi-piece and single piece rim wheels. The general industry standard currently exempts shipyard employment (§ 1910.177(a)(2)). (To avoid any confusion, OSHA also proposes to amend § 1910.177 to delete the exemption as it applies to shipyard employment.)

OSHA decided that this gap in coverage should be remedied by applying the general industry standard to shipyard employment after a preventable fatality was reported in 1999 at a special trade contractor site during rim servicing.

The general industry standard applies to servicing large vehicles such as trucks, tractors, trailers, buses and off-road machines, all of which are used in shipyard employment. The standard does not apply to servicing rim wheels on automobiles or on pickup trucks and vans using "LT" (light trucks) tires (1910.177(a)(1)).

The standard establishes requirements addressing four major areas: (1) Training for all tire servicing employees (§ 1910.177(c)); (2) the use of proper equipment such as clip-on chucks, restraining devices, or barriers to retain the wheel components in the event of an incident during the inflation of tires (§ 1910.177(d)); (3) the use of compatible components (§ 1910.177(e)); and (4) the use of safe operating procedures for servicing multi-piece and single-piece rim wheels (§ 1910.177(f)

and (g)). The Agency believes that applying the general industry standard to shipyard employment should not pose a problem for employers because many shipyards that service the tires of their own vehicles are aware of and adhere to the safety provisions of § 1910.177.

OSHA requests comment on the proposed provision. To what extent do shipyards service multi-piece and single piece rim wheels? What safety precautions are followed to ensure employees are not injured during these tasks?

Section 1915.95 Definitions

In § 1915.95, OSHA proposes to add definitions for terms used in subpart F. The Agency believes that defining key terms in the regulatory text will make the standards easier to understand and to comply with. OSHA is not including a discussion of the terms that apply to the control of hazardous energy (lockout/tagout) in proposed § 1915.89. Most of those terms are discussed throughout the preamble section for § 1915.89 above. The terms are affected employee, authorized employee, capable of being locked out, energized, energy isolating device, energy source, hot tap, lockout, lockout device, normal production operations, servicing and/or maintenance, setting up, and ship's systems.

Hazardous or toxic substances. OSHA proposes to define hazardous or toxic substances to include any of the following: any material listed in the U.S. DOT Hazardous Materials Regulations (49 CFR part 172), any substance regulated by subpart Z of 29 CFR part 1910, any atmosphere with an oxygen content of less than 19.5%, or any corrosive substance or environmental contaminant that may expose employees to injury, illness or disease. Harmful environmental contaminants would include coliform and fecal matter.

Health care professional is proposed to mean a physician or any other health care provider whose legally permitted scope of practice allows the provider to independently provide or be delegated the responsibility to provide some or all of the advice or consultation this subpart requires. (See § 1915.87(b) for further discussion.)

Motor vehicle is proposed to mean any motor-driven vehicle operated by an employee that is used to transport employees, passengers, or property. For the purposes of this subpart, motor vehicles would include, but are not limited to, passenger cars, light trucks, vans, motorcycles, all terrain vehicles, powered industrial trucks, and other similar types of vehicles. The proposed

definition excludes boats and vehicles operated exclusively on a rail(s).

Portable toilet facility is proposed to mean a non-sewered facility in which urine and defecation is collected and contained. Portable toilet facilities may be flushable, with water or another flushing agent. They also may be non-flushable, such as facilities that use chemicals or biological agents to treat waste. The proposed definition does not include privies, which are unlikely to be found in shipyards because many State and local regulations prohibit them near shorelines.

Potable water is proposed to mean water (1) approved for drinking by the State or local authority having jurisdiction, or (2) meeting the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141). Requiring that drinking water meet those requirements ensures that it will be free of environmental contaminants and toxic materials.

The proposed definition, for purposes of subpart F, updates the existing definition in § 1910.141(a)(2) to reflect that the EPA regulations have replaced the U.S. Public Health Service Drinking Water Standards. SESAC recommended that OSHA delete the reference to Federal drinking water regulations as a way to simplify the definition. However, OSHA believes that the reference needs to be retained to ensure that employee drinking water at least meets a uniform national quality baseline and that there will not be a gap in protection in areas where there may not be State or local drinking water regulations or jurisdiction. OSHA requests comment on whether the reference to Federal drinking water regulations should be retained.

Sanitation facilities is proposed to mean facilities provided for employee health and personal needs such as potable drinking water, toilet facilities, handwashing and drying facilities, showers (including quick drench/flush), changing rooms, eating and food preparation areas, first aid stations, on-site medical service areas and waste disposal. The proposed definition also includes supplies for sanitation facilities such as soap, toilet paper, towels, and drinking cups. OSHA notes that the proposed rule does not require employers to provide certain sanitation facilities such as on-site eating and drinking areas. However, where such facilities are provided they would have to meet the sanitation requirements OSHA proposes.

Serviceable condition means the state or ability of a tool, machine, vehicle, or other device to operate as it was

intended by the manufacturer to operate. For tools, machines and vehicles to be considered in serviceable condition, they must be maintained in good working condition. OSHA notes that if these devices are maintained and operated in accordance with manufacturer instructions and recommendations they would be considered to be in compliance with the requirement to be in serviceable condition.

Sewered toilet facility means a fixture maintained for the purpose of urination and defecation that is connected to a sewer, septic tank, holding tank (bilge), or on-site sewage disposal treatment facility and that is flushed with water. For purposes of this subpart, toilet facilities that are a permanent fixture onboard a vessel or vessel section would be considered to be sewered toilet facilities.

Vehicle safety equipment is proposed to mean those systems and devices installed on a motor vehicle for the purposes of effecting the safe operation of the vehicle such as safety belts, airbags, headlights, tail lights, emergency hazard lights, windshield wipers, brakes, horn, mirrors, windshields and other windows, and locks.

Vermin is proposed to mean any insects, birds, and other animals, such as rodents and feral cats, which may create safety and health hazards for employees.

Walking and working surfaces is proposed to mean any surface on or through which employees gain access to or perform job tasks. Walking and working surfaces also include any surface upon or through which employees are required or allowed to walk or work in the workplace. Walking and working surfaces include, but are not limited to, work areas, accessways, aisles, exits, gangways, ladders, passageways, stairs, steps, ramps, and walkways. This definition is drawn from the proposed rule for walking and working surfaces, subpart D of part 1910 (55 FR 13360 (04/10/1990)). OSHA believes that using this term in place of the list of specific working and walking areas will help to simplify subpart F.

Proposed Deletions

OSHA proposes not to include in revised subpart F the following provisions that are currently applicable to shipyard employment. The hazards and working conditions these provisions address are not present in the shipyard industry.

Section 1910.141(f)—OSHA is proposing not to retain the existing requirement to provide facilities to dry

work clothing (i.e., protective clothing) before it is worn again. Information from site visits and industry meetings indicates that the provision may not be necessary because shipyards almost exclusively provide disposable protective clothing. OSHA requests comments or information about whether this provision is still needed in the shipyard industry.

Section 1910.141(h)—OSHA is proposing not to retain the existing requirements addressing food handling. OSHA believes that existing State and local health codes provide adequate protection for the hazards this section is intended to address. OSHA requests comment.

Section 1915.97(a)—OSHA is proposing not to retain the existing requirement on controls and personal protective equipment (PPE). This provision was adopted 30 years ago, prior to promulgation of standards addressing specific hazards and the PPE requirements in subpart I of part 1915. Those standards identify and require the controls and PPE this section addresses.

Section 1915.97(e)—OSHA is proposing to delete the existing prohibition that minors under 18 years of age not be employed in shipbreaking or related equipment. The prohibition is the only OSHA rule that regulates the working activities allowed for youth employees. States have numerous rules regulating work conditions for youth employees. At the Federal level, OSHA's sister agency in the Department of Labor, the Employment Standards Administration regulates youth working conditions under the authority of the Fair Labor Standards Act (FLSA). To protect young employees from hazardous employment, the FLSA provides for a minimum age of 18 years in occupations found and declared by the Secretary to be particularly hazardous or detrimental to the health or well-being of minors 16 and 17 years of age. The Secretary has issued 17 orders, published at 29 CFR part 570 subpart E, listing the occupations where persons less than 18 years of age are prohibited from working. Order 15 of the Part 570 subpart E prohibits minors from working in all occupations in wrecking, demolition, and shipbreaking operations, which are defined as "all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel" (§ 570.66). OSHA believes that the § 1915.97(e) prohibitions are duplicative of the part 570 prohibitions, therefore, the Agency is proposing to delete the section.

OSHA asks for comment on the extent to which youth employees are employed in the shipyard industries, what occupations they work in, data on work-related injuries and illnesses occurring to youth employees, and whether the § 1915.97(e) prohibition is needed to protect youth employees.

V. Executive Summary of the Preliminary Economic and Initial Regulatory Flexibility Screening Analysis

Introduction. OSHA's Preliminary Economic and Regulatory Flexibility Screening Analysis (PEA) addresses issues related to the costs, benefits, technological feasibility, and economic feasibility (including small business impacts) of the Agency's proposed revision of 29 CFR 1915 subpart F on General Working Conditions in Shipyard Employment. This analysis also evaluates the non-regulatory alternatives to the proposal.

OSHA has determined that this proposal is not an economically significant regulatory action under E.O. 12866 and not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 609). As required by section 6(a)(3)(C) of E.O. 12866, OSHA has provided OMB's Office of Information and Regulatory Affairs with an assessment of the costs, benefits, and alternatives of this proposal, which are summarized below. E.O. 12866 requires regulatory agencies to conduct an economic analysis for rules that meet certain criteria. The most frequently used criterion under E.O. 12866 is that the rule will impose annual costs on the economy of \$100 million or more. Neither the benefits nor the costs of this proposed rule exceed \$100 million.

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended in 1996, requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. OSHA's Regulatory Flexibility Analysis indicates that the proposal will not have significant impacts on a substantial number of small entities. OSHA's PEA and Regulatory Flexibility Analysis include: A description of the industries potentially affected by the proposal; an evaluation of the risks the proposal addresses; an assessment of the benefits attributable to the proposal; a determination of the technological feasibility of the proposed requirements; an estimate of the costs employers would incur to comply with the proposal; a determination of the economic feasibility of compliance with

the proposal; and an analysis of the economic and other impacts associated with this rulemaking, including those on small businesses. The executive summary of the PEA is presented here and the full analysis has been placed in the rulemaking docket (Ex. 17).

OSHA's preliminary analysis estimates that the proposal will affect approximately 639 establishments and 86,764 employees in the shipyard employment industry. OSHA estimates that the proposal will prevent 1.1 deaths and 142.2 injuries and cost employers about \$1 million per year to implement. The Agency estimates \$7.1 million in monetized benefits from these prevented injuries. Following OMB guidelines to monetize all benefits, OSHA estimates the value of a statistical life of 1.1 prevented deaths at \$8.3

million. Monetized benefits, therefore, would total \$15.4 million annually.

Affected Establishments and Employees. The proposal will affect all establishments in shipyard employment, which consists of shipbuilding, shipbreaking, ship repair and related employment. For purposes of this analysis, OSHA incorporated the following three definitions of "small firms" and provided separate analyses for each: (1) Firms with fewer than 1,000 employees (the Small Business Administration (SBA) definition of small businesses in this sector); (2) firms with fewer than 250 employees (the definition of small business recommended by the Shipyard Fire Protection Negotiated Rulemaking Advisory Committee); and (3) firms with fewer than 20 employees. OSHA based

its estimates of the number of firms, establishments, employment, and wages on BLS and U.S. Census Bureau data for North American Industrial Classification (NAIC) industry sector 336611. Also, OSHA used firm data from SBA in this analysis. Profit rates are based on data from the Internal Revenue Service's *2001 Corporation Source Book of Statistics of Income*. Table 6 shows the total number of establishments, number of firms, employment, revenues and payroll per establishment affected by the proposed rule. As the table shows, there are 614 firms with 639 establishments in the affected industry. The industry employs 86,764 employees, of whom 72 percent are estimated to be production employees.

TABLE 6.—INDUSTRIAL PROFILE FOR THE PROPOSED STANDARD

	Size class	Firms	Establishments	Employees	Production employees	Annual (1,000)	
						Payroll	Revenues
Shipyards	1,000 & Up	4	9	59,456	42,808	\$2,402,689	\$8,650,079
	500-999	7	12	9,075	6,534	310,743	1,191,169
	250-499	19	21	5,813	4,185	276,533	923,357
	100-249	43	49	5,813	4,189	305,522	925,760
	20-99	50	53	2,793	2,011	139,667	459,032
Off-Site	20-99	76	80	1,957	1,409	94,511	354,512
	1-19	415	415	1,852	1,333	98,717	310,665
Total .....	.....	614	639	86,764	62,470	3,628,382	12,814,574

Source: Office of Regulatory Analysis.

Evaluation of Risk and Potential Benefits. OSHA's risk profile for exposure to the hazards the proposal addresses is based on data from the CFOI database and the BLS Survey of Occupational Injuries and Illnesses, as well as an analysis of OSHA fatality/catastrophe inspection data obtained from the Agency's IMIS database.

OSHA anticipates that the proposal will significantly reduce the number of shipyard accidents involving electrical contacts, being caught in machinery, and being struck by motor vehicles and their resulting injuries and fatalities. OSHA believes that the proposed requirements for controlling hazardous energy (i.e., energy control procedures, training, inspections) and motor vehicle safety will help to save lives and prevent injuries in the shipyard workforce. OSHA also believes that the new proposed CPR requirements for first aid providers will help to save lives and reduce the severity of injuries that do occur. OSHA estimates that compliance with the proposal would annually prevent 1.1 fatalities, 49.9 cases involving days away from work

injuries, and 92.3 non-lost workday injuries, as stated in Chapter IV of the PEA Ex. 17.

In addition to saving lives and reducing injuries in shipyards, OSHA believes that compliance with the proposal would yield substantial cost savings to parties within and connected with the shipyard employment industry and ultimately to society as a whole. These monetized benefits take the form of willingness to pay estimates to avoid an injury or death. OSHA estimates monetized benefits of \$7.1 million from the 142.2 avoided injuries from compliance with the proposal. When the monetized benefit of 1.1 avoided deaths (\$8.3 million) is added, total annual monetized benefits equal \$15.4 million.

Technological Feasibility and Compliance Costs (including Net Benefits). Consistent with the legal framework established by the OSH Act and court decisions, OSHA has determined that the proposal is technologically feasible. The proposal does not require any practices not already undertaken in many shipyards

today. For example, a number of shipyard employers already are training their employees about the release of hazardous energy in servicing operations.

Annualized compliance cost estimates are annualized costs to employers using a 7 percent discount rate and a ten year life for one-time expenses. These proposed estimates are based on the employment and establishment counts in Chapter II (Industrial Profile) of the PEA, (Ex. 17) and the dollar costs needed to comply. These estimates also consider non-compliance rates to account for establishments that have already complied with the requirements.

To develop the proposed cost estimates, OSHA first examined the extent to which shipyard employers were already in compliance with existing and proposed OSHA requirements, with rules of other parties (such as the U.S. Navy in some shipyards), and with voluntary codes and best practices. Identifying provisions for which there is already substantial or full compliance, OSHA

arrived at a list of activities for which shipyard employers would incur costs, shown in Table 7. Table 7 presents the total annualized costs of the proposal, by major provision, which total \$1,010,778. Most of the costs are associated with the requirements for controlling hazardous energy (Lockout/Tagout).

TABLE 7.—ESTIMATED TOTAL ANNUALIZED COMPLIANCE COSTS BY PROVISION

Requirement	Total annualized costs
Sanitation:	
Handwashing Facilities	\$254,540
Medical Services and First Aid:	
CPR Training	136,442
Lockout/Tagout:	
Energy Control Program	107,857
Full Employee Protection	330,373
Protective Materials & Hardware	16,069
Training and Communication	132,622
Periodic Inspections & Certification	20,006
Subtotal	606,927
Vehicle Safety:	
Reinstalling Safety Equipment	12,762
Rim Wheel Training	107
Subtotal	12,869
Total	1,010,778

Source: Office of Regulatory Analysis, OSHA.

Net Benefits. For informational purposes, the Agency compared the estimated costs of compliance to the monetized benefits of the proposed standard. The Agency estimates monetized death benefits of \$8.3 million dollars and monetized injury benefits of \$7.1 million annually (see Chapter IV of the PEA). This yields total monetized benefits of \$15.4 million annually. When the costs of compliance are compared to these estimates, the Agency concludes that the annualized net benefits of the proposed standard equal \$14.4 million.

Economic Impacts. OSHA analyzed the impacts of these compliance costs on firms in the shipyard employment

sector by comparing costs as a percentage of revenues and costs as a percentage of profits. These two measures (in percentages) correspond to two assumptions used by economists to set bounds for the range of possible impacts. One assumption is no-cost pass-through (i.e., that employers will be unable to pass any of the costs of compliance forward to their customers). This corresponds to compliance costs as a percentage of profits. The second assumption is full-cost pass-through (i.e., that employers will be able to pass all of the costs of compliance forward to their customers). This corresponds to compliance costs as a percentage of revenues. As summarized in Table 8,

OSHA estimates that if affected establishments in the shipyard employment sector were forced to absorb these compliance costs entirely from profits (a highly unlikely scenario), profits would be reduced by an average of 0.14 percent. At the other extreme, if affected establishments were able to pass all of these compliance costs forward to their customers, OSHA projects that the price (revenue) increase required to pay for these costs would be less than 0.01 percent. Given the minimal potential impact on both prices and profits, OSHA concludes that the proposed regulation is economically feasible.

TABLE 8.—ECONOMIC IMPACTS

Size Class:	Per establishment compliance cost	Compliance cost as a % of revenues	Compliance cost as a % of profits
1–19	\$56	0.01	0.20
1–250	422	0.01	0.16
1–1,000	749	0.01	0.20
All	1,582	0.01	0.14

Source: Office of Regulatory Analysis.

Regulatory Flexibility Screening Analysis. The RFA requires regulatory agencies to determine whether regulatory actions will adversely affect small entities. For employers in NAIC 336611, small firms are defined by SBA as those with less than 1,000 employees.

As shown in Table 9, for firms with less than 1,000 employees, proposed costs are 0.20 percent of profits and 0.01 percent of revenues. OSHA also examined costs as a percentage of profits and revenues for firms with less than 250 employees, a definition of

“small entity” recommended by the Shipyard Fire Protection Negotiated Rulemaking Advisory Committee and for firms with less than 20 employees to see whether there might be significant impacts on the very smallest firms. For firms with less than 250 employees,

proposed costs were 0.16 percent of profits and 0.01 percent of revenues. For firms with less than 20 employees,

proposed costs were 0.20 percent of profits and 0.01 percent of revenues. The major source of the small variation

in impacts is the low estimated compliance costs incurred by the small firms.

TABLE 9.—SMALL FIRM IMPACTS

	Per firm compliance cost	Compliance cost as a % of revenues	Compliance cost as a % of profits
Size Class:			
1–19	\$59	0.01	0.20
1–250	432	0.01	0.16
1–1,000	768	0.01	0.20
All	1,645	0.01	0.14

Source: Office of Regulatory Analysis

OSHA has set the criteria that if costs exceed one percent of revenues or five percent of profits, then the impact on small entities is considered significant for purposes of complying with the RFA. For all of the classes of affected small firms in the shipyard employment industry, the costs of the proposal would be less than one percent of revenues and five percent of profits. OSHA therefore certifies that this proposal will not have an economically significant impact on a substantial number of small entities.

Non-Regulatory Alternatives. OSHA concludes that economic and social alternatives to a federal workplace standard fail to adequately protect employees in the shipyard employment industry from the hazards the proposal addresses. Tort liability laws and workers' compensation provide some protection, but institutional factors limit effective means of addressing the significant costs of occupational injuries and illnesses. Therefore, OSHA finds that this proposal will provide the necessary remedy.

VI. Environmental Assessment

The proposed standard has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA Procedures (29 CFR part 11). The provisions of the standard focus on the reduction and avoidance of accidents occurring in shipyard employment. Consequently, no major negative impact is foreseen on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

VII. Federalism

OSHA has reviewed this proposed rule in accordance with E.O. 13132 (64 FR 43255 (8/10/1999)) regarding Federalism. This Order requires that

agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear constitutional authority and the presence of a problem of national scope. Additionally, the Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act (29 U.S.C. 667) expresses Congress' clear intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such State Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce or must be justified by compelling local conditions (see section 18(c)(2)). The Federal standards on shipyard employment operations address hazards that are not unique to any one State or region of the country.

Subject to these requirements, States with occupational safety and health plans approved under section 18 of the OSH Act are free to develop and enforce under State law their own requirements for safety and health standards. A State Plan State can develop its own State standards to deal with any special problems that might be encountered in a particular State. Moreover, because

this standard is written, to the extent possible, in general performance-oriented terms, there is considerable flexibility for State Plans to require, and for employers to use, methods of compliance which are appropriate to the working conditions covered by the standard. However, most shipyards even in State Plan States remain subject to Federal OSHA jurisdiction as only a few States (California, Minnesota, Vermont and Washington) have elected to cover shipyards and other maritime employment.

The Agency concludes that this proposed rule complies with E.O. 13132. In States without OSHA-approved State Plans, Congress expressly provides for OSHA standards to preempt State job safety and health rules in areas addressed by Agency standards; in these States, the proposed rule would limit State policy options in the same manner as every OSHA standard. In States with OSHA-approved State Plans, this action would not significantly limit State policy options; these States will be able to address any special conditions within the framework of the OSH Act while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal and will be fully considered prior to promulgation of a final rule.

VIII. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501, *et seq.*), as well as E.O. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

IX. OMB Review Under the Paperwork Reduction Act of 1995

The proposed standard for General Working Conditions in Shipyard Employment contains collection-of-

information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3501 *et seq.*) and OMB regulations (5 CFR part 1320). The PRA-95 defines "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format * * *" (44 U.S.C. 3502(3)(A)).

The collection-of-information requirements identified in the NPRM have been submitted to OMB for review (44 U.S.C. 3507(d)). OSHA solicits comments on the collection-of-information requirements and the estimated burden hours associated with these collections including comment on the following:

- Whether the proposed collection-of-information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection-of-information requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply, for example, by using automated or other technological information collection and transmission techniques.

The title, description of the need for and proposed use of the information, summary of the collections of information, description of respondents, and frequency of response of the information collection are described below, along with an estimate of the annual reporting burden and cost as required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2).

Title: General Working Conditions in Shipyard Employment (29 CFR part 1915, subpart F).

Description and Proposed Use of the Collection-of-Information Requirements

OSHA is proposing to revise and update the existing standards in subpart F of 29 CFR part 1915 that address hazardous working conditions in shipyard employment. These standards cover many diverse working conditions in shipyard employment, including housekeeping, lighting, utilities, work in confined or isolated spaces, lifeboats, sanitation, and medical services and first aid.

OSHA also proposes to add new requirements to protect employees from

hazardous working conditions that subpart F does not currently address. These proposed additions include the control of hazardous energy (lockout/tagout); motor vehicle safety equipment, operation and maintenance; accident prevention tags; and servicing multi-piece and single piece rim wheels.

OSHA adopted the existing subpart F standards in 1972 (37 FR 22458 (10/19/1972)) pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*). Section 6(a) permitted OSHA, within two years of the passage of the OSH Act, to adopt as an occupational safety or health standard any national consensus and established Federal standards (29 U.S.C. 655(a)). The provisions in subpart F were adopted from existing Federal regulations promulgated under Section 41 of the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 941), as well as national consensus standards.

OSHA believes the proposed revisions and additions to subpart F are necessary and reasonable to protect the safety and health of shipyard employees.

The following table identifies and describes the need for the new collection-of-information requirements contained in the proposed standard.

TABLE 10.—COLLECTION OF INFORMATION REQUIREMENTS CONTAINED IN THE PROPOSED STANDARD

Collection-of-Information Requirements Contained in the Proposed Standard
<p>§ 1915.87(f)(3): The employer shall store stretchers in a clearly-marked location in a manner that prevents damage and protects them from environmental conditions. Marking the location of the stretchers ensures that they will be easily located in the event of an emergency.</p>
<p>§ 1915.89(b)(4)(i): <i>Energy control procedures.</i> (i) Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section. Employers use this information as the basis for effectively identifying operations and processes in the workplace that require energy control procedures; ensuring the safe application, use and removal of energy controls; and providing information and training to employees about the purpose and function of energy-control procedures. These procedures ensure that employees are protected while working on machines, equipment or systems that potentially contain hazardous energy.</p>
<p>§ 1915.89(b)(6)(i): The employer shall conduct a periodic inspection of each energy control procedure at least annually to ensure that the procedures and the requirements of this standard are being followed and to correct any deficiencies. This information will be used as a basis for employee retraining and to determine whether employers need to revise their energy control procedures.</p>
<p>§ 1915.89(b)(6)(ii): The employer shall certify that the periodic inspections have been performed. The certification shall identify the machine, equipment or system on which the energy control procedure was being utilized, the date of the inspection, the employees included in the inspection and the person performing the inspection. Certifying the inspections assures that the employer has performed a periodic inspection.</p>
<p>§ 1915.89(b)(7)(iv): <i>Certification.</i> The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain each employee's name and dates of training. Written certification assures the employer that employees receive the training specified by the Standard.</p>
<p>§ 1915.89(b)(9): <i>Notification of employees.</i> Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout devices or tagout devices. Notification shall be given before the controls are applied, and after they are removed from the machine, equipment or system.</p>
<p>§ 1915.89(d)(2)(ii): After lockout or tagout devices have been removed and before a machine equipment or system is started, affected employees shall be notified that the lockout or tagout device(s) have been removed. OSHA is not taking a paperwork burden for this specification because it does not add burden to the notification requirement in paragraph (b)(9).</p>
<p>§ 1915.89(d)(3)(ii): <i>Lockout or tagout devices removal.</i> Each lockout or tagout device shall be removed from each energy isolating device by the employee who applied the device.</p>

TABLE 10.—COLLECTION OF INFORMATION REQUIREMENTS CONTAINED IN THE PROPOSED STANDARD—Continued

Collection-of-Information Requirements Contained in the Proposed Standard

Exception to paragraph (d)(3): When the authorized employee who applied the lockout or tagout device is not available to remove it, that device may be removed under the direction of the employer, provided that specific procedures and training for such removal have been developed, documented and incorporated into the employer's energy control program. The employer shall demonstrate that the specific procedure provides equivalent safety to the removal of the device by the authorized employee who applied it. The specific procedures shall include at least the following elements:

- (ii) Making all reasonable efforts to contact the authorized employee to inform he or she that his or her lockout or tagout device has been removed; and
- (iii) Ensuring that the authorized employee has this knowledge before he/she resumes work at that facility.

Such notification informs employees of the impending interruption of the normal production operations, and serves as a reminder of the restrictions imposed on them by the energy-control program. In addition, this requirement ensures that employees do not attempt to reactivate a machine or piece of equipment after an authorized employee isolates its energy source and renders it inoperative. Notifying employees after removing an energy-control device alerts them that the machines and equipment are no longer safe for servicing, maintenance, and repair.

§ 1915.89(e)(2)(i): *Outside personnel (contractors, ship's crew, etc.)* Whenever outside servicing personnel such as contractors or ship's crew are to be engaged in activities covered by the scope and application of this standard, the on-site employer and the outside employer shall inform each other of their respective lockout or tagout procedures.

This provision ensures that each employer knows about the unique energy-control procedures used by the other employer preventing any misunderstanding regarding the implementation of lockout or tagout procedures.

§ 1915.94 Servicing multi-piece and single piece rim wheels.

§ 1910.177(d)(5): Current charts or rim manuals containing instructions for the type of wheels being serviced shall be available in the service area.

Paragraph (d)(3)(iv) requires that when restraining devices and barriers are removed from service because they are defective, they shall not be returned to service until they are repaired and reinspected. If the repair is structural, the manufacturer or a Registered Professional Engineer must certify that the strength requirements specified in (d)(3)(i) of the Standard have been met.

The certification records are used to assure that equipment has been repaired properly. The certification records also provide the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

OMB Control Number: 1218-0NEW.

Affected Public: Business or other for-profit.

Number of Respondents: 639.

Frequency: On occasion.

Average Time per response: Time per response ranges from 15 seconds for affected employees to be notified of the application and removal of lockout and tagout devices to 80 hours for large shipyards (shipyards employing more than 250 employees) to develop energy control procedures.

Estimated Total Burden hours: 10,491.

Estimated Costs (Operation and Maintenance): 0.

Interested parties who wish to comment on the collection-of-information requirements contained in this proposal must send their written comments regarding the burden hour and cost estimates or other aspects of the information collection request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA (RIN 1218-AB50), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency also encourages commenters to submit their comments on these collection-of-information requirements to OSHA, along with their comments on the proposed rule. (See **ADDRESSES** section.). Persons are not required to respond to the collection of information unless it displays a valid OMB number.

To read or download the complete ICR, go to <http://www.regulations.gov> (Docket No. OSHA-S049-2006-0675) or <http://www.dockets.osha.gov> (Docket No. S-049). You also may obtain an electronic copy of the complete ICR at <http://www.reginfo.gov>. Click on "Inventory of Approved Information Collection Collections, Collection Under Review, Recently Approved/Expired," then scroll under "Currently Under Review" to Department of Labor (DOL) to view all of DOL's ICRs, including those ICRs submitted for proposed rulemakings. For further information, contact Mr. Todd Owen, OSHA, Directorate of Standards and Guidance, OSHA, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

X. State Plan States

When Federal OSHA promulgates a new standard or standards amendment which imposes additional or more stringent requirements than an existing standard, the 26 States and U.S. Territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show the Agency why such action is unnecessary (e.g., because an existing State standard covering this area already is at least as effective as the new Federal standard or amendment) (29 U.S.C. 553.5(a)). The State standard must be at

least as effective as the final Federal rule, must be applicable to both the private and public (i.e., State and local government employees) sectors, and must be completed within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, States are not required to revise their standards, although the Agency may encourage them to do so. The 26 States and Territories with OSHA-approved State Plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

Since this proposed rule imposes additional or more stringent requirements, State Plans that cover maritime issues and/or have public employees working in the maritime industries covered by this standard would be required to revise their standard appropriately within six months of publication of the final rule.

XI. Public Participation

Submission of Comments and Access to Docket

OSHA invites comments on all aspects of the proposed rule. Throughout this document OSHA has invited comment on specific issues and requested information and data about practices at your establishment and in your industry. OSHA will carefully review and evaluate these comments, information and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments in response to this document (1) electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA-S049-2006-0675). You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions in response to this **Federal Register** notice are posted without change at <http://www.regulations.gov> (Docket No. OSHA-S049-2006-0675). Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth.

Exhibits referenced in this **Federal Register** document are posted at <http://www.regulations.gov> (Docket No. OSHA-S049-2006-0675) and/or at <http://dockets.osha.gov> (OSHA Docket Nos. S-049, SESAC-1988 through SESAC-1993, MACOSH-1995 through MACOSH-2005, S-012, S-012A, S-012B, S-024, H-308).

Although all submissions in response to this **Federal Register** notice and exhibits referenced in this **Federal Register** notice are listed in the <http://www.regulations.gov>

and/or <http://dockets.osha.gov> indexes, some information (e.g., copyrighted material) is not publicly available to read or download through those Webpages. All submissions and exhibits, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using <http://www.regulations.gov> to submit comments and access dockets is available at the Webpage's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Webpage and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's Webpage at <http://www.osha.gov>.

Requests for Informal Public Hearings

Under section 6(b)(3) of the OSH Act (29 U.S.C. 655) and 29 CFR 1911.11, interested parties may request an informal public hearing. Hearing requests must be submitted to the OSHA Docket Office at the address above and must comply with the following:

- (1) The hearing requests must include the name and address of the person submitting them;
- (2) The hearing requests must be submitted (postmarked or sent) by March 19, 2008.
- (3) The hearing requests must specify with particularity the provision of the proposed rule to which each objection is taken and the basis for the objection;
- (4) Each hearing request must be separately stated and numbered; and
- (5) The hearing requests must be accompanied by a detailed summary of the evidence proposed to be presented at the requested hearing.

List of Subjects

29 CFR Part 1910

Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements, and Vessels.

29 CFR Part 1915

Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, and Vessels.

XII. Authority and 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. It is issued under sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 941 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 *et seq.*), Secretary of Labor's Order No. 5-2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC this 7th day of December, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

XIII. The Proposed Standard

For the reasons set forth in the preamble, OSHA proposes to amend 29 CFR parts 1910 and 1915 as follows:

PART 1910—[AMENDED]

Part 1910 of title 29 of the Code of Federal Regulation is hereby proposed to be amended as follows:

Subpart J—[Amended]

1. The authority citation for subpart J of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008) or 5-2007 (72 FR 31159) as applicable.

Section 1910.145 also issued under 29 CFR part 1911.

2. In § 1910.145, paragraphs (a)(1) and (f)(1)(ii) are revised to read as follows:

§ 1910.145 Specifications for accident prevention signs and tags.

(a) *Scope.* (1) These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) intended to indicate and, insofar as possible, to define specific hazards of a nature such that failure to designate them may lead to accidental injury to workers or the public, or both, or to property damage. These specifications are intended to cover all safety signs except those designed for streets, highways, and railroads. These specifications do not apply to plant bulletin boards or to safety posters.

* * * * *

(f) * * *

(1) * * *

(ii) This paragraph (f) does not apply to construction or agriculture.

* * * * *

3. In § 1910.147, paragraph (a)(1) is revised to read as follows:

§ 1910.147 The control of hazardous energy (lockout/tagout).

(a) *Scope, application, and purpose—(1) Scope.*

(i) This standard covers the servicing and maintenance of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees. This standard establishes minimum performance requirements for the control of such hazardous energy.

(ii) This standard does not cover the following:

(A) Construction and agriculture employment; and

(B) Employment covered by parts 1915, 1917, and 1918 of this title.

Note to paragraph (a)(1): Section 1910.147 applies to the servicing of equipment onboard vessels that is used for inherently general industry operations such as fish processing. However, if such servicing is part of a general overhaul and repair of the entire vessel, part 1915 applies.

* * * * *

Subpart N—[Amended]

4. The authority citation for subpart N of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008) or 5-2007 (72 FR 31159) as applicable.

Section 1910.177 also issued under 29 CFR part 1911.

5. In § 1910.177, paragraph (a)(2) is revised to read as follows:

§ 1910.177 Servicing multi-piece and single piece rim wheels.

(a) * * *

(2) This section does not apply to employers and places of employment regulated under the Longshoring Standards, 29 CFR part 1918, Construction Safety Standards, 29 CFR part 1926; or Agriculture Standards, 29 CFR part 1928.

* * * * *

PART 1915—[AMENDED]

6. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008) or 5-2007 (72 FR 31159) as applicable; 29 CFR part 1911.

Subpart F—[Amended]

7. Subpart F of 29 CFR part 1915 is revised to read as follows:

Subpart F—General Working Conditions

Sec.

- 1915.80 Scope and application.
- 1915.81 Housekeeping.
- 1915.82 Lighting.
- 1915.83 Utilities.
- 1915.84 Work in confined or isolated spaces.
- 1915.85 Vessel radar and radio transmitters.
- 1915.86 Lifeboats.
- 1915.87 Medical services and first aid.
- 1915.88 Sanitation.
- 1915.89 Control of hazardous energy (lockout/tagout).
- 1915.90 Safety color code for marking physical hazards.
- 1915.91 Accident prevention signs and tags.
- 1915.92 Retention of DOT markings, placards, and labels.
- 1915.93 Motor vehicle safety equipment, operation, and maintenance.
- 1915.94 Servicing multi-piece and single-piece rim wheels.
- 1915.95 Definitions.

Subpart F—General Working Conditions

§ 1915.80 Scope and application.

The provisions of this subpart apply to general working conditions in shipyard employment, regardless of geographic location, including work onboard vessels, vessel sections, and landside operations.

§ 1915.81 Housekeeping.

(a) The employer shall maintain good housekeeping conditions to ensure that walking and working surfaces do not create a hazard for employees. The employer shall ensure that these conditions are maintained at all times.

(b) The employer shall ensure that walking and working surfaces provide adequate space for work and passage.

(c) The employer shall ensure that only tools, materials, and equipment necessary to perform the job in progress are kept on walking and working

surfaces. All other tools, materials, and equipment shall be stored or located in an area that does not interfere with walking and working surfaces.

(d) The employer shall ensure that the floor or deck of every work area shall be maintained, so far as practicable, in a dry condition. Where wet processes are used, drainage shall be maintained and the employer shall provide false floors, platforms, mats or other dry standing places. Where this is not practicable, the employer shall provide appropriate waterproof footwear, such as rubber overboots, in accordance with § 1915.152.

(e) The employer shall ensure that walking and working surfaces are kept clear of debris, including solid and liquid wastes, and other objects that may create a safety or health hazard to employees, such as protruding nails, splinters, loose boards, and unnecessary holes and openings.

(f) The employer shall ensure that free access is maintained to exits, firealarm boxes, fire call stations, and firefighting equipment.

(g) The employer shall ensure that slippery conditions, such as snow and ice, on walking and working surfaces are eliminated as they occur.

(h) The employer shall ensure that construction materials are stacked in a manner that does not create a hazard to employees.

(i) The employer shall ensure that hoses and electrical service cords are hung over or placed under walking and working surfaces or covered by crossovers to prevent injury to employees and damage to the hoses and cords.

(j) The employer shall ensure that flammable substances, such as paint thinners, solvents, rags and waste, are stored in covered fire-resistant containers when not in use.

(k) The employer shall ensure that combustible scrap is removed from work areas as soon as possible.

§ 1915.82 Lighting.

(a) *General Requirements.* (1) The employer shall ensure that each area of the workplace is illuminated to at least the intensities in Table 1 whenever an employee is present. The requirement to provide illumination in accordance with Table 1 applies to permanent and temporary lighting.

TABLE 1 TO SUBPART F.—MINIMUM LIGHTING INTENSITIES IN FOOT-CANDLES

Lumens (foot-candles)	Area or operation
3	General areas on vessels and vessel sections such as accessways, exits, gangways, stairs, and walkways.
5	General landside areas such as corridors, exits, stairs, and walkways.

TABLE 1 TO SUBPART F.—MINIMUM LIGHTING INTENSITIES IN FOOT-CANDLES—Continued

Lumens (foot-candles)	Area or operation
5	All assigned work areas on any vessel or vessel section. Landside tunnels, shafts, vaults, pumping stations, and underground work areas.
10	Landside work areas such as machine shops, electrical equipment rooms, carpenter shops, lofts, tool rooms, warehouses, and outdoor work areas.
10	Changing rooms, showers, sewerer toilet facilities, and eating, drinking, and break areas.
30	First aid stations, infirmaries, and offices.

Note to Table 1: The values in table 1 do not apply to emergency or handheld portable lights.

(2) The employer shall ensure that matches and open flame devices are not used for lighting.

(b) *Temporary lights.* The employer shall ensure that temporary lights meet the following requirements:

(1) Lights with bulbs that are not completely recessed are equipped with guards to prevent accidental contact;

(2) Lights are equipped with electric cords designed with sufficient capacity to safely carry the electric load;

(3) Connections and insulation are maintained in a safe condition;

(4) Lights and lighting stringers are not suspended solely by their electric cords unless they are designed by the manufacturer to be suspended in this way;

(5) Lighting stringers do not overload branch circuits;

(6) Branch circuits are equipped with over-current protection whose capacity does not exceed the rated current-carrying capacity of the cord used;

(7) Splices have insulation with a capacity that exceeds that of the cable; and

(8) Exposed, non-current-carrying metal parts of lights are grounded. The employer shall ensure that grounding is provided either through a third wire in the cable containing the circuit conductors or through a separate wire that is grounded at the source of the current. Grounding shall be done in accordance with the requirements of § 1915.132(b).

(c) *Handheld portable lights.* (1) In any dark area that does not have permanent or temporary lights, where lights are not working, or are not readily accessible, the employer shall provide handheld portable lights and ensure that employees do not enter those areas without such lights.

(2) Where temporary lighting from sources outside the vessel or vessel section is the only means of illumination, the employer shall ensure that handheld portable lights are available in the immediate work area to provide illumination so each employee

is able to move safely if the temporary lights fail.

(3) The employer shall ensure that only explosion-proof, self-contained handheld portable lights are used in areas that are not gas-free, or other electric equipment approved by a nationally recognized testing laboratory (NRTL). Handheld portable lights bearing the approval of a NRTL for the class and division of the location in which they are used are considered to meet the requirements of this paragraph.

§ 1915.83 Utilities.

(a) *Steam supply system.* The employer shall ensure that the vessel's steam piping system, including hoses, has a safe working pressure prior to supplying steam from an outside source. The employer shall ensure that each steam supply system meets the following:

(1) A pressure gauge and a relief valve are installed at the point where the temporary steam hose joins the vessel's steam piping system;

(2) Each relief valve is set and is capable of relieving steam at a pressure that does not exceed the safe working pressure of the system in its present condition;

(3) There are no means of disconnecting any relief valve from the system that it protects;

(4) Each pressure gauge and relief valve is kept in legible condition and located so it is visible and readily accessible; and

(5) The relief valve is positioned or placed in a location where it is not likely to cause injury if it is activated.

(b) *Steam hoses.* The employer shall ensure that each steam hose meets the following:

(1) The steam hose and its fittings have a safety factor of at least five (5);

(2) The steam hose is hung with short bights to prevent chafing and to reduce tension on the hose and its fittings;

(3) Each steam hose is protected from damage; and

(4) Each steam hose or temporary piping passing through a walking or working area is shielded to protect employees from contact.

(c) *Electric shore power.* When a vessel is supplied with electric shore power, the employer shall ensure the following precautions are taken prior to energizing the vessel's circuits:

(1) The vessel is grounded if it is in dry dock;

(2) Circuits to be energized are in a safe condition; and

(3) Circuits to be energized are equipped with over-current protection that does not exceed the rated current-carrying capacity of the conductors.

(d) *Heat lamps.* The employer shall ensure that heat lamps, including the face, are equipped with surround-type guards to prevent contact with the lamp and bulb.

§ 1915.84 Work in confined or isolated spaces.

Except as provided in § 1915.51(c)(3) of this part, whenever an employee is working in a confined space or alone in an isolated location, the employer shall ensure that each employee is:

(a) Checked frequently during each workshift to ensure the employee's safety; and

(b) Accounted for at the end of each workshift.

§ 1915.85 Vessel radar and radio transmitters.

(a) The employer shall secure each radar and radio transmitter so it is incapable of energizing or emitting radiation before any employee begins to work on it or on a mast, king post, or other area near the radar or radio transmitter.

(b) The employer shall ensure that hazardous energy is controlled in accordance with § 1915.89 Control of Hazardous Energy prior to servicing, repairing or testing any vessel radar or radio transmitter.

(c) The employer shall schedule the testing of radar or radio transmitter at a time when no work is in progress aloft or when personnel can be cleared a minimum safe distance from the danger area. The employer shall follow minimum safe distances established for the type, model, and power of the equipment being tested.

§ 1915.86 Lifeboats.

(a) The employer shall ensure that before any employee works in or on a lifeboat, either in a stowed or suspended position, that the lifeboat is secured independently of the releasing gear to prevent it from falling or capsizing.

(b) The employer shall not permit any employee to be in a lifeboat while it is being hoisted.

(c) The employer shall not permit any employee to work on the outboard side of a lifeboat that is stowed on chocks unless the lifeboat is secured by gripes or another device that prevents it from swinging outboard.

§ 1915.87 Medical services and first aid.

(a) *General Requirement.* The employer shall ensure that medical services and first aid are readily accessible.

(b) *Advice and consultation.* The employer shall ensure that health care professionals are readily available for advice and consultation on matters of workplace health.

(c) *First aid providers.* (1) The employer shall ensure that there are an adequate number of employees at each work location during each workshift who are qualified to render first aid, including cardiopulmonary resuscitation (CPR). The employer shall consider the following factors in determining the number of employees who must have first aid training: Size and location of each shipyard work location; the number of employees at each work location; the nature of the hazards present at each work location; and the distance of each work location from hospitals, clinics, and rescue squads.

(2) The employer shall ensure that any employee designated to provide first aid has a valid first aid certificate, such as is issued by the Red Cross, American Heart Association, or other equivalent organization.

(d) *First aid supplies.* (1) The employer shall provide and maintain adequate first aid supplies at each work location.

(2) The employer shall ensure that the placement, content, and amount of first aid supplies are adequate for the size and location of each work location, the number of employees at each work location, the nature of the hazards present at each work location, and the distance of each work location from hospitals, clinics, and rescue squads.

(3) The employer shall inspect first aid supplies at intervals that ensure supplies are in dry, sterile and serviceable condition.

(e) *Quick drenching/flushing facilities.* Where there is a possibility that an employee could be injured if

splashed with hazardous or toxic substances, the employer shall provide facilities for quick drenching or flushing the eyes and body. The employer shall ensure that a facility is located within each work area for immediate emergency use.

(f) *Basket stretchers.* (1) The employer shall ensure there are an adequate number of basket stretchers, or the equivalent, readily accessible where work is being performed onboard a vessel or vessel section.

(2) The employer shall ensure each stretcher is equipped with:

(i) Permanent lifting bridges that enable the stretcher to be attached to hoisting gear and that are capable of lifting at least 5,000 pounds (2,270 kg);

(ii) Restraints that are capable of securely holding the injured employee while the stretcher is lifted or moved; and

(iii) A blanket or other suitable covering for the injured employee.

(3) The employer shall store stretchers in a clearly-marked location in a manner that prevents damage and protects them from environmental conditions.

(4) The employer shall inspect stretchers at intervals that ensure they remain in a safe and serviceable condition.

Appendix A to § 1915.87—First Aid Kits (Non-Mandatory)

1. First aid supplies are required to be adequate and readily accessible under paragraphs § 1915.88(a) and (d). An example of the minimal contents of a generic first aid kit for workplace settings is described in American National Standard (ANSI) Z308.1–2003 “Minimum Requirements for Workplace First Aid Kits.” The contents of the kit listed in the ANSI standard should be adequate for small work locations. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the work location, additional types of first aid equipment and supplies, and additional quantities and types of supplies and equipment in the first aid kits.

2. In a similar fashion, employers who have unique or changing first aid needs in their workplace may need to enhance their first aid kits. The employer can use the OSHA 300 Log, OSHA 301’s or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate healthcare professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment first aid kits appropriately.

3. If it is reasonably anticipated that employees will be exposed to blood or other

potentially infectious materials while using first aid supplies, employers are required to provide appropriate personal protective equipment (PPE) in compliance with the provisions of the Occupational Exposure to Bloodborne Pathogens standard, § 1910.1030(d)(3) (56 FR 64175). This standard lists appropriate PPE for this type of exposure, such as gloves, gowns, face shields, masks, and eye protection.

§ 1915.88 Sanitation

(a) *General Requirements.* (1) The employer shall provide adequate and readily accessible sanitation facilities.

(2) The employer shall supply and maintain each sanitation facility in a clean, sanitary, and serviceable condition.

(b) *Potable water.* (1) The employer shall provide potable water for all employee health and personal needs and ensure that only potable water is used for these purposes.

(2) The employer shall provide potable drinking water in amounts that are adequate to meet the health and personal needs of each employee.

(3) The employer shall dispense drinking water from a fountain, a covered container with single-use drinking cups stored in a sanitary receptacle, or single-use bottles. The employer shall prohibit the use of shared drinking cups, dippers, and water bottles.

(c) *Non-potable water.* (1) The employer may use non-potable water for other purposes such as firefighting and cleaning outdoor premises so long as it does not contain chemicals, fecal matter, coliform or other substances at levels that may create a hazard for employees.

(2) The employer shall clearly mark non-potable water supplies and outlets as “not safe for health or personal use.”

(d) *Toilet facilities—(1) General requirements.* The employer shall ensure that sewer and portable toilet facilities:

(i) Are separate for each sex, except as provided in paragraph (d)(1)(i)(B) of this section;

(A) The number of toilet facilities provided for each sex shall be based on the maximum number of employees of that sex present at the workplace at any one time during a workshift. A single occupancy toilet room shall be counted as one toilet regardless of the number of toilets it contains;

(B) The employer does not have to provide separate toilet facilities for each sex where they will not be occupied by more than one employee at a time, can be locked from the inside, and contain at least one toilet; and

(ii) Ensure privacy at all times. Where a toilet room contains more than one

toilet, each toilet shall occupy a separate compartment with a door and walls or partitions between them that are sufficiently high to ensure privacy.

(2) *Sewered toilet facilities.* The employer shall provide at least the following number of sewered toilet facilities for each sex.

TABLE 2 TO SUBPART F

Number of employees of each sex	Minimum number of toilet facilities
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
Over 150	1 additional toilet facility for each additional 40 employees.

Note to Table 2. Where toilet facilities will only be used by men, urinals may be provided instead of toilet facilities, except that the number of toilets in such cases shall not be reduced to less than $\frac{2}{3}$ of the minimum specified.

(3) *Portable toilet facilities.* In addition to the required number of sewered toilet facilities, the employer may also provide portable toilet facilities. The employer shall ensure that each portable toilet facility is maintained in a clean, sanitary and serviceable condition, equipped with adequate venting and, as necessary, lighting and heating.

(4) *Exception for normally unattended work locations.* The requirement to provide toilet facilities does not apply to normally unattended work locations and mobile work crews, provided that the employer ensures that employees have immediately available transportation to readily accessible sanitation facilities that are maintained in a clean, sanitary and serviceable condition and meet the requirements of this section.

(e) *Handwashing facilities.* (1) The employer shall provide handwashing facilities at or adjacent to each toilet facility.

(2) The employer shall ensure that each handwashing facility:

(i) Is equipped with either hot and cold or lukewarm running water and soap, or with waterless skin cleansing agents that are capable of disinfecting the skin or neutralizing the contaminants to which the employee may be exposed; and

(ii) If the facility uses soap and water, it is supplied with clean, single-use hand towels stored in a sanitary container and a sanitary means for

disposing of them, clean individual sections of continuous cloth toweling, or an air blower.

(3) *Exception for normally unattended work locations.* The requirement to provide handwashing facilities does not apply to normally unattended work locations and mobile work crews, provided that the employer ensures that employees have immediately available transportation to readily accessible sanitation facilities that are maintained in a clean, sanitary and serviceable condition and meet the requirements of paragraphs (e)(1) through (e)(2) of this section.

(4) The employer shall inform each employee engaged in the application of paints or coatings or in other operations where hazardous or toxic substances can be ingested or absorbed about the need for removing surface contaminants by thorough washing of hands and face at the end of the workshift and prior to eating, drinking, or smoking.

(f) *Showers.* (1) When showers are required by an OSHA standard, the employer shall provide one shower for each 10, or fraction of 10 employees of each sex, who are required to shower during the same workshift.

(2) The employer shall ensure that each shower is equipped with soap, hot and cold water, and clean towels for each employee who uses the shower.

(g) *Changing rooms.* When an employer provides protective clothing to prevent employee exposure to hazardous or toxic substances, the employer shall provide the following:

(1) Changing rooms that provide privacy for each sex; and

(2) Storage facilities for street clothes and separate storage facilities for protective clothing.

(h) *Eating, drinking and break areas.* The employer shall ensure that food, beverages and tobacco products are not consumed or stored in any area where hazardous or toxic substances may be present.

(i) *Waste disposal.* (1) The employer shall provide waste receptacles that meet the following requirements:

(i) Each receptacle is constructed of materials that are corrosion resistant, leak-proof and easily cleaned or disposable;

(ii) Each receptacle is equipped with a solid tight-fitting cover, unless it can be kept in clean, sanitary and serviceable condition without the use of a cover;

(iii) Receptacles are provided in numbers, sizes and locations that encourage their use; and

(iv) Each receptacle is emptied as often as necessary to prevent it from overflowing and in a manner that does

not create a hazard for employees. Waste receptacles for food shall be emptied at least every day, unless unused.

(2) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage that could endanger their safety and health.

(3) The employer shall ensure that employees working beneath or on the outboard side of a vessel are not contaminated by drainage or waste from overboard discharges.

(j) *Vermin control.* (1) To the extent reasonably practicable, the employer shall clean and maintain the workplace in a manner that prevents the harborage of vermin such as rodents, insects and birds.

(2) Where vermin are detected, the employer shall implement and maintain an effective control program.

§ 1915.89 Control of hazardous energy (lockout/tagout).

(a) *Scope, application and purpose—*

(1) *Scope.* This standard covers the servicing and maintenance of machines, equipment and systems in which the energization or start up of the machines, equipment, systems, or release of stored energy, could cause injury to employees. This standard establishes minimum performance requirements for the control of such hazardous energy.

(2) *Application.* (i) This standard applies to the control of hazardous energy during servicing and maintenance of machines, equipment and systems, including those onboard vessels and vessel sections, including:

(A) Servicing of ship's systems by any employee, including, but not limited to, ship's officers or crew of the vessel; and

(B) Servicing of machines, equipment and systems that employees use in the course of shipyard employment.

(ii) Normal production operations are not covered by this standard (See subpart O of 29 CFR part 1910 and subpart H of this part for machine guarding). Servicing and/or maintenance which takes place during normal production operations is covered by this standard only if:

(A) An employee is required to remove or bypass a guard or other safety device; or

(B) An employee is required to place any part of his or her body into an area on a machine, piece of equipment or system where work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during an operating cycle.

Note to paragraph (a)(2)(ii): *Exception.* Minor tool changes and adjustments, and other minor servicing activities, which take

place during normal production operations, are not covered by this standard if they are routine, repetitive, and integral to the use of the machine, equipment or system for production, provided that the work is performed using alternative measures which provide effective protection (See subpart O of 29 CFR part 1910).

(iii) This standard does not apply to the following:

(A) Work on cord and plug connected electric machines or equipment provided that energization or start up is controlled by the unplugging of the machines or equipment from the energy source and by the plug being under the exclusive control of the employee performing the servicing or maintenance;

(B) Hot tap operations involving transmission and distribution systems for substances such as gas, steam, water or petroleum products when they are performed on pressurized pipelines, provided that the employer demonstrates that continuity of service is essential; shutdown is impractical; and documented procedures are followed, and special equipment is used that will provide proven effective protection for employees; and

(C) The servicing and maintenance of machines, equipment and systems onboard vessels that are used for inherently general industry operations such as fish processing.

(3) *Purpose.* (i) This section requires employers to establish a program and utilize procedures for affixing appropriate lockout devices or tagout devices to energy isolating devices and to otherwise disable machines, equipment or systems to prevent energization, start up or release of stored energy in order to prevent injury to employees.

(ii) When other standards in this part or applicable standards in part 1910 require the use of lockout or tagout, they shall be used and supplemented by the procedural and training requirements of this section.

(b) *General—(1) Energy control program.* The employer shall establish a program consisting of energy control procedures, employee training and periodic inspections to ensure that before any employee performs any servicing or maintenance where the energizing, startup or release of stored energy could occur and cause injury, the machine, equipment or system shall be isolated from the energy source and rendered inoperative.

(2) *Lockout/tagout.* (i) If an energy isolating device is not capable of being locked out, the employer's energy control program under paragraph (b)(1)

of this section shall utilize a tagout system.

(ii) If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (b)(1) of this section shall utilize lockout, unless the employer can demonstrate that the utilization of a tagout system will provide full employee protection as set forth in paragraph (b)(3) of this section.

(iii) After [Insert Date 90 Days After Publication of a Final Rule in the Federal Register], whenever replacement or major repair, renovation or modification of a machine, equipment or system is performed, and whenever a new machine, equipment or system is installed, the employer shall ensure that energy isolating devices for the machine, equipment or system are designed to accept a lockout device. This requirement does not apply to a machine, equipment or system that is part of a vessel or vessel section the shipyard employer does not own.

(3) *Full employee protection.* (i) When a tagout device is used on an energy isolating device that is capable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program.

(ii) In demonstrating that a level of safety is achieved in the tagout program that is equivalent to the level of safety obtained by using a lockout program, the employer shall demonstrate full compliance with all tagout-related provisions of this standard together with such additional elements as are necessary to provide the equivalent safety available from the use of a lockout device. Additional means to be considered as part of the demonstration of full employee protection shall include the implementation of additional safety measures, such as the removal of an isolating circuit element, blocking of a controlling switch, opening of an extra disconnecting device, or the removal of a valve handle to reduce the likelihood of inadvertent energization.

(4) *Energy control procedures.* (i) Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

Note to paragraph (b)(4)(i): *Exception.* The employer need not document the required procedure for a particular machine, equipment or system when all of the following elements exist: (1) The machine,

equipment or system has no potential for stored or residual energy or reaccumulation of stored energy after shut down that could endanger employees; (2) the machine, equipment or system has a single energy source which can be readily identified and isolated; (3) the isolation and locking out of that energy source will completely deenergize and deactivate the machine, equipment or system; (4) the machine, equipment or system is isolated from that energy source and locked out during servicing or maintenance; (5) a single lockout device will achieve a locked-out condition; (6) the lockout device is under the exclusive control of the authorized employee performing the servicing or maintenance; (7) the servicing or maintenance does not create hazards for other employees; and (8) the employer, in utilizing this exception, has had no accidents involving the activation or reenergization of the machine, equipment or system during servicing or maintenance.

(ii) Each procedure shall clearly and specifically outline the scope, purpose, authorization, rules and techniques to be utilized for the control of hazardous energy and the means to enforce compliance including, but not limited to, the following:

(A) A specific statement of the intended use of the procedure;

(B) Specific procedural steps for shutting down, isolating, blocking and securing machines, equipment or systems to control hazardous energy;

(C) Specific procedural steps for the placement, removal and transfer of lockout devices or tagout devices and the responsibility for them; and

(D) Specific requirements for testing a machine, equipment or system to determine and verify the effectiveness of lockout devices, tagout devices and other energy control measures.

(5) *Protective materials and hardware.*

(i) Locks, tags, chains, wedges, key blocks, adapter pins, self-locking fasteners, or other hardware shall be provided by the employer for isolating, securing or blocking of machines, equipment or systems from energy sources.

(ii) Lockout devices and tagout devices shall be singularly identified; shall be the only device(s) used for controlling energy; shall not be used for other purposes; and shall meet the following requirements:

(A) *Durable.* (1) Lockout and tagout devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(2) Tagout devices shall be constructed and printed so that exposure to weather conditions or wet and damp locations will not cause the tag to deteriorate or the message on the tag to become illegible.

(3) Tags shall not deteriorate when used in corrosive environments such as areas where acid and alkali chemicals are handled and stored.

(B) *Standardized*. Lockout and tagout devices shall be standardized within the facility in at least one of the following criteria: Color; shape; or size; and additionally, in the case of tagout devices, print and format shall be standardized.

(C) *Substantial*—(1) *Lockout devices*. Lockout devices shall be substantial enough to prevent removal without the use of excessive force or unusual techniques, such as with the use of bolt cutters or other metal cutting tools.

(2) *Tagout devices*. Tagout devices, including their means of attachment, shall be substantial enough to prevent inadvertent or accidental removal.

Tagout device attachment means shall be of a non-reusable type, attachable by hand, self-locking and non-releasable with a minimum unlocking strength of no less than 50 pounds and having the general design and basic characteristics of being at least equivalent to a one-piece, all environment-tolerant nylon cable tie.

(D) *Identifiable*. Lockout devices and tagout devices shall indicate the identity of the employee applying the device(s).

(iii) Tagout devices shall warn against hazardous conditions if the machine, equipment or system is energized and shall include a legend such as the following: *Do Not Start; Do Not Open; Do Not Close; Do Not Energize; Do Not Operate*.

(6) *Periodic Inspection*. (i) The employer shall conduct a periodic inspection of each energy control procedure at least annually to ensure that the procedures and the requirements of this standard are being followed and to correct any deficiencies.

(A) The periodic inspection shall be performed by an authorized employee other than the employees(s) utilizing the energy control procedure being inspected.

(B) Where lockout is used for energy control, the periodic inspection shall include a review between the inspector and each authorized employee of that employee's responsibilities under the energy control procedure being inspected.

(C) Where tagout is used for energy control, the periodic inspection shall include a review between the inspector and each authorized and affected employee of that employee's responsibilities under the energy control procedure being inspected and the elements set forth in paragraph (b)(7)(ii) of this section.

(ii) The employer shall certify that the periodic inspections have been performed. The certification shall identify the machine, equipment or system on which the energy control procedure was being utilized, the date of the inspection, the employees included in the inspection and the person performing the inspection.

(7) *Training and communication*. (i) *General*. The employer shall provide training to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application, usage and removal of the energy controls are acquired by employees. The training shall include the following:

(A) Each authorized employee shall receive training in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace and the methods and means necessary for energy isolation and control.

(B) Each affected employee shall be instructed in the purpose and use of the energy control procedure.

(C) Each affected employee and all other employees whose work operations are or may be in an area where energy control procedures may be utilized shall be instructed about the procedure and about the prohibition relating to attempts to restart or reenergize machines, equipment or system which are locked out or tagged out.

(ii) *Tagout System Training*. When tagout systems are used, employees shall also be trained in the following limitations of tags:

(A) Tags are essentially warning devices affixed to energy isolating devices and do not provide the physical restraint on those devices that is provided by a lock;

(B) When a tag is attached to an energy isolating means, it is not to be removed without authorization of the authorized person responsible for it and it is never to be bypassed, ignored, or otherwise defeated;

(C) Tags must be legible and understandable by all authorized employees, affected employees and all other employees whose work operations are or may be in the area;

(D) Tags and their means of attachment must be made of materials which will withstand the environmental conditions encountered in the workplace;

(E) Tags may evoke a false sense of security and their meaning needs to be understood as part of the overall energy control program; and

(F) Tags must be securely attached to energy isolating devices so that they

cannot be inadvertently or accidentally detached during use.

(iii) *Employee retraining*. (A) Retraining shall be provided for all authorized and affected employees whenever there is a change in their job assignments; a change in machines, equipment, systems or processes that present a new hazard; or when there is a change in the energy control procedures.

(B) Additional retraining shall also be conducted whenever a periodic inspection under paragraph (b)(6) of this section reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the employee's knowledge or use of the energy control procedures.

(C) The retraining shall reestablish employee proficiency and introduce new or revised control methods and procedures, as necessary.

(iv) *Certification*. The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain each employee's name and dates of training.

(8) *Energy isolation*. Lockout or tagout shall be performed only by the authorized employees who are performing the servicing or maintenance.

(9) *Notification of employees*. Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout devices or tagout devices. Notification shall be given before the controls are applied and after they are removed from the machine, equipment or system.

(c) *Application of control*. The established procedures for the application of energy control (the lockout or tagout procedures) shall cover the following elements and actions and shall be done in the following sequence:

(1) *Preparation for shutdown*. Before an authorized or affected employee turns off a machine, equipment or system, the authorized employee shall have knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled and the method or means to control the energy.

(2) *Machine, equipment or system shutdown*. The machine, equipment or system shall be turned off or shut down using the procedures established for the machine, equipment or system. An orderly shutdown must be utilized to avoid any additional or increased hazard(s) to employees as a result of the equipment stoppage.

(3) *Machine, equipment or system isolation*. All energy isolating devices

that are needed to control the energy to the machine, equipment or system shall be physically located and operated in such a manner as to isolate the machine, equipment or system from the energy source(s).

(4) *Lockout or tagout device application.* (i) Lockout or tagout devices shall be affixed to each energy isolating device by authorized employees.

(ii) Lockout devices, where used, shall be affixed in a manner that will hold the energy isolating devices in a "safe" or "off" position.

(iii) Tagout devices, where used, shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited.

(A) Where tagout devices are used with energy isolating devices designed with the capability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached.

(B) Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

(5) *Stored energy.* (i) Following the application of lockout or tagout devices to energy isolating devices, all potentially hazardous stored or residual energy shall be relieved, disconnected, restrained and otherwise rendered safe.

(ii) If there is a possibility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the servicing or maintenance is completed, or until the possibility of such accumulation no longer exists.

(6) *Verification of isolation.* Prior to starting work on machines, equipment or system that have been locked out or tagged out, the authorized employee shall verify that isolation and deenergization of the machine, equipment or system have been accomplished.

(d) *Release from lockout or tagout.* Before lockout or tagout devices are removed and energy is restored to the machine, equipment or system, procedures shall be followed and actions taken by the authorized employee(s) to ensure the following:

(1) *The machine, equipment or system.* The work area shall be inspected to ensure that nonessential items have been removed and to ensure that machine, equipment or system components are operationally intact.

(2) *Employees.* (i) The work area shall be checked to ensure that all employees have been safely positioned or removed.

(ii) After lockout or tagout devices have been removed and before a machine, equipment or system is started, affected employees shall be notified that the lockout or tagout device(s) have been removed.

(3) *Lockout or tagout devices removal.* Each lockout or tagout device shall be removed from each energy isolating device by the employee who applied the device.

Note to paragraph (d)(3): Exception. When the authorized employee who applied the lockout or tagout device is not available to remove it, that device may be removed under the direction of the employer, provided that specific procedures and training for such removal have been developed, documented and incorporated into the employer's energy control program. The employer shall demonstrate that the specific procedure provides equivalent safety to the removal of the device by the authorized employee who applied it. The specific procedure shall include at least the following elements:

(i) Verification by the employer that the authorized employee who applied the device is not at the facility;

(ii) Making all reasonable efforts to contact the authorized employee to inform he or she that his or her lockout or tagout device has been removed; and

(iii) Ensuring that the authorized employee has this knowledge before he/she resumes work at that facility.

(e) *Additional requirements—(1) Testing or positioning of machines, equipment, systems, or their components.* In situations in which lockout or tagout devices must be temporarily removed from the energy isolating device and the machine, equipment or system energized to test or position it, the following sequence of actions shall be followed:

(i) Clear the machine, equipment, or system of tools and materials in accordance with paragraph (d)(1) of this section;

(ii) Remove employees from the machine, equipment or system area in accordance with paragraph (d)(2) of this section;

(iii) Remove the lockout or tagout devices as specified in paragraph (d)(3) of this section;

(iv) Energize and proceed with testing or positioning; and

(v) Deenergize all systems and reapply energy control measures in accordance with paragraph (c) of this section to continue the servicing and/or maintenance.

(2) *Outside personnel (contractors, ship's crew, etc.).* (i) Whenever outside servicing personnel such as contractors or ship's crew are to be engaged in

activities covered by the scope and application of this standard, the on-site employer and the outside employer shall inform each other of their respective lockout or tagout procedures.

(ii) The on-site employer shall ensure that his/her employees understand and comply with the restrictions and prohibitions of the outside employer's energy control program.

(3) *Group lockout or tagout.* (i) When servicing and/or maintenance is performed by a crew, craft, department or other group, they shall utilize a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device.

(ii) Group lockout or tagout devices shall be used in accordance with the procedures required by paragraph (b)(4) of this section including, but not necessarily limited to, the following specific requirements:

(A) Primary responsibility is vested in an authorized employee for a set number of employees working under the protection of a group lockout or tagout device (such as an operations lock);

(B) Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout or tagout of the machine, equipment or system;

(C) When more than one crew, craft, department, etc., is involved, assignment of overall job-associated lockout or tagout control responsibility to an authorized employee designated to coordinate affected work forces and ensure continuity of protection; and

(D) Each authorized employee shall affix a personal lockout or tagout device to the group lockout device, group lockbox, or comparable mechanism when he or she begins work and shall remove those devices when he or she stops working on the machine, equipment or system being serviced or maintained.

(4) *Shift or personnel changes.* Specific procedures shall be utilized during shift or personnel changes to ensure the continuity of lockout or tagout protection, including provision for the orderly transfer of lockout or tagout device protection between off-going and oncoming employees, to minimize exposure to hazards from the energization or start-up of the machine, equipment or system, or the release of stored energy.

Note to § 1915.89: The following appendix A to § 1915.89 serves as a non-mandatory guideline to assist employers and employees in complying with the requirements of this section, as well as to provide other helpful information. Nothing in the appendix adds to

or detracts from any of the requirements of this section.

Appendix A to § 1915.89, Typical Minimal Lockout Procedures

General

Lockout Procedure

Lockout Procedure for

(Name of Company for single procedure or identification of machine, equipment or system, if multiple procedures are used).

Purpose

This procedure establishes the minimum requirements for the lockout of energy isolating devices whenever maintenance or servicing is done on machines, equipment or systems. It shall be used to ensure that the machine, equipment or system is stopped, isolated from all potentially hazardous energy sources and locked out before employees perform any servicing or maintenance where the energization or start-up of the machine, equipment or system or release of stored energy could cause injury.

Compliance With This Program

All employees are required to comply with the restrictions and limitations imposed upon them during the use of lockout. The authorized employees are required to perform the lockout in accordance with this procedure. All employees, upon observing a machine, equipment, or system that is locked out to perform servicing or maintenance shall not attempt to start, energize, or use that machine, equipment or system.

Type of compliance enforcement to be taken for violation of the above.

Sequence of Lockout

(1) Notify all affected employees that servicing or maintenance is required on a machine, equipment or system and that it must be shut down and locked out to perform the servicing or maintenance.

Name(s)/Job Title(s) of affected employees and how to notify.

(2) The authorized employee shall refer to the company procedure to identify the type and magnitude of the energy that the machine, equipment or system utilizes, shall understand the hazards of the energy and shall know the methods to control the energy.

Type(s) and magnitude(s) of energy, its hazards and the methods to control the energy.

(3) If the machine, equipment or system is operating, shut it down by the normal stopping procedure (depress the stop button, open switch, close valve, etc.).

Type(s) and location(s) of machine, equipment or system operating controls.

(4) De-activate the energy isolating device(s) so that the machine, equipment or system is isolated from the energy source(s).

Type(s) and location(s) of energy isolating devices.

(5) Lock out the energy isolating device(s) with assigned individual lock(s).

(6) Stored or residual energy (such as that in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems and air, gas, steam, or water pressure, etc.) must be dissipated or restrained by methods such as grounding, repositioning, blocking, bleeding down, etc.

Type(s) of stored energy—methods to dissipate or restrain.

(7) Ensure that the machine, equipment or system is disconnected from the energy source(s) by first checking that no personnel are exposed, then verify the isolation of the machine, equipment or system by operating the push button or other normal operating control(s) or by testing to make certain it will not operate.

CAUTION: Return operating control(s) to neutral or "off" position after verifying the isolation of the machine, equipment or system.

Method of verifying the isolation of the machine, equipment or system.

(8) The machine, equipment or system is now locked out.

Restoring Machine, Equipment or System to Service. When the servicing or maintenance is completed and the machine, equipment or system is ready to return to normal operating condition, the following steps shall be taken.

(1) Check the machine, equipment or system and the immediate area around the machine to ensure that nonessential items have been removed and that the machine, equipment or system components are operationally intact.

(2) Check the work area to ensure that all employees have been safely positioned or removed from the area.

(3) Verify that the controls are in neutral.

(4) Remove the lockout devices and reenergize the machine, equipment or system.

Note: The removal of some forms of blocking may require reenergization of the machine, equipment or system before safe removal.

(5) Notify affected employees that the servicing or maintenance is completed and the machine, equipment or system is ready for use.

§ 1915.90 Safety color code for marking physical hazards.

The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.144 of this chapter.

§ 1915.91 Accident prevention signs and tags.

The requirements applicable to shipyard employment under this section are identical to those set forth at § 1910.145 of this chapter.

§ 1915.92 Retention of DOT markings, placards and labels.

(a) Any employer who receives a package of hazardous material that is required to be marked, labeled, or placarded in accordance with the U.S. Department of Transportation Hazardous Materials Regulations shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the U.S. Department of Transportation Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle, or transport vehicle until the hazardous materials are sufficiently removed to prevent any potential hazards.

(c) The employer shall maintain markings, placards and labels in a manner that ensures that they are readily visible.

(d) For non-bulk packages that will not be reshipped, the requirements of this section are met if a label or other acceptable marking is affixed in accordance with 29 CFR 1910.1200 Hazard Communication.

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 through 180).

§ 1915.93 Motor vehicle safety equipment, operation and maintenance.

(a) *Application.* (1) This section applies to any vehicle used to transport employees, materials, or property at shipyards. This section does not apply to motor vehicle operation on public streets and highways.

(2) The requirements of this section apply to employer provided motor vehicles. The requirements of paragraphs (b)(2), (b)(4) and (c)(2) of this section also apply to employee provided motor vehicles.

(3) Only the requirements of paragraphs (b)(1) through (b)(3) apply to powered industrial trucks, as defined in § 1910.178. The maintenance, inspection, operation and training requirements in 29 CFR 1910.178 continue to apply to powered industrial trucks used for shipyard employment.

(b) *Motor vehicle safety equipment.*

(1) The employer shall ensure that each motor vehicle acquired or initially used after February 19, 2008 is equipped with

a safety belt for each employee operating or riding in the motor vehicle. This requirement does not apply to any motor vehicle that was not equipped with safety belts at the time of manufacture.

(2) The employer shall ensure that each employee uses the safety belt, securely and tightly fastened, at all times while operating or riding in a motor vehicle.

(3) The employer shall ensure that vehicle safety equipment is not removed from any employer-provided vehicle. The employer shall replace safety equipment that is removed.

(4) The employer shall ensure that each motor vehicle used to transport an employee has firmly secured seats that are adequate for each employee being transported and shall ensure that all employees who are being transported are using seats.

(c) *Motor vehicle maintenance and operation.* (1) The employer shall ensure that each motor vehicle is maintained in a serviceable and safe operating condition and removed from service if it is not in such condition.

(2) The employer shall ensure that before a motor vehicle is operated, any tools and materials being transported are secured if their movements may create a hazard for employees.

(3) The employer shall implement measures to ensure that motor vehicle operators are able to see and avoid injuring pedestrians and bicyclists at shipyards. Measures that employers may implement to comply with this requirement include:

(i) Establishing dedicated travel lanes for motor vehicles, bicyclists and pedestrians;

(ii) Installing crosswalks and traffic control devices such as stop signs or physical barriers to separate travel lanes;

(iii) Providing reflective vests or other gear so pedestrians and bicyclists are clearly visible to motor vehicle operators; and

(iv) Ensuring that bicycles have reflectors, lights or other equipment to maximize visibility of the bicyclist.

§ 1915.94 Servicing multi-piece and single piece rim wheels.

The requirements applicable to shipyard employment under this section are identical to those set forth at 29 CFR 1910.177.

§ 1915.95 Definitions.

The following definitions are applicable to this subpart:

Affected employee. An employee whose job requires operation or use of a machine, equipment or system on

which servicing or maintenance is being performed under lockout or tagout, or whose job requires work in an area in which such servicing or maintenance is being performed.

Authorized employee. A person who locks out or tags out machines, equipment, or systems in order to perform servicing or maintenance. An affected employee becomes an authorized employee when that employee's duties include performing servicing or maintenance covered under this section.

Capable of being locked out. An energy isolating device is capable of being locked out if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it. Other energy isolating devices are capable of being locked out, if lockout can be achieved without the need to dismantle, rebuild, or replace the energy isolating device or permanently alter its energy control capability.

Energized. Connected to an energy source or containing residual or stored energy.

Energy isolating device. A mechanical device that physically prevents the transmission or release of energy, including but not limited to the following: manually operated electrical circuit breaker; a disconnect switch; a manually operated switch by which the conductors of a circuit can be disconnected from all ungrounded supply conductors and, in addition, no pole can be operated independently; a line valve; a block; and any similar device used to block or isolate energy. Push buttons, selector switches and other control circuit type devices are not energy isolating devices.

Energy source. Any source of electrical, mechanical, hydraulic, pneumatic, chemical, thermal, or other energy.

Hazardous or toxic substances. Hazardous or toxic substances mean:

- (1) Any substance regulated by subpart Z of part 1915;
- (2) Any material listed in the U.S. Department of Transportation Hazardous Materials Regulations (49 CFR parts 171 through 180);
- (3) Any atmosphere with an oxygen content of less than 19.5%;
- (4) Any corrosive substance; or
- (5) Any environmental contaminant that may expose employees to injury, illness or disease.

Health care professional. A physician or any other health care provider whose legally permitted scope of practice allows the provider to independently provide or be delegated the responsibility to provide some or all of

the advice or consultation this subpart requires.

Hot tap. A procedure used in the repair, maintenance and services activities which involves welding on a piece of equipment (pipelines, vessels or tanks) under pressure, in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam and petrochemical distribution systems.

Lockout. The placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

Lockout device. A device that utilizes a positive means such as a lock, either key or combination type, to hold an energy isolating device in the safe position and prevent energization or startup. Included are blank flanges and bolted slip blinds.

Motor vehicle. Any motor-driven vehicle operated by an employee that is used to transport employees, material, or property. For the purposes of this subpart, motor vehicles include passenger cars, light trucks, vans, motorcycles, all-terrain-vehicles, powered industrial trucks and other similar vehicles. Motor vehicle does not include boats or vehicles operated exclusively on a rail or rails.

Normal production operations. The utilization of a machine, equipment or system to perform its intended production function.

Portable toilet facility. A non-sewered facility for collecting and containing urine and feces. A portable toilet facility may be either flushable or non-flushable. For purposes of this section, portable toilet facilities do not include privies.

Potable water. Water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141).

Sanitation facilities. Facilities, including supplies, maintained for employee personal and health needs such as potable drinking water, toilet facilities, handwashing and drying facilities, showers (including quick drenching/flushing) and changing rooms, food preparation and eating areas, first aid stations and on-site medical service areas. Sanitation supplies include soap, waterless cleaning agents, single-use drinking

cups, drinking water containers, toilet paper and towels.

Serviceable condition. The state or ability of a tool, machine, vehicle, or other device, to operate as it was intended by the manufacturer to operate.

Servicing and/or maintenance. Workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, repairing, maintaining and servicing machines, equipment or systems. These activities include lubricating, cleaning, unjamming and making adjustments or tool changes.

Setting up. Any work performed to prepare a machine, equipment or system to perform its normal production operation.

Sewered toilet facility. A fixture maintained for the purpose of urination and defecation that is connected to a sanitary sewer, septic tank, holding tank (bilge), or on-site sewage disposal treatment facility and that is flushed with water.

Ship's systems. Machines, equipment and systems that are a permanent or inherent part of a vessel. Such systems include, but are not limited to, systems that ensure the vessel's operational capability, such as propulsion, navigation, radar, electrical, water, steering, ballast, structural systems and systems to care for the crew. Ship's systems do not include inherently general industry operations onboard vessels such as fish processing equipment.

Tagout. The placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

Tagout device. A prominent warning device, such as a tag and a means of attachment, which can be securely fastened to an energy isolating device in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

Vehicle safety equipment. Those systems and devices installed on a motor vehicle for the purposes of effecting the safe operation of the

vehicle such as safety belts, airbags, headlights, tail lights, emergency hazard lights, windshield wipers, brakes, horn, mirrors, windshields and other windows and locks.

Vermin. Includes insects, birds and other animals, such as rodents and feral cats, which may create safety and health hazards for employees.

Walking and working surfaces. Any surface on or through which employees gain access to or perform job tasks. Walking and working surfaces also include any surface upon or through which employees are required or allowed to walk or work in the workplace. Walking and working surfaces include, but are not limited to, work areas, accessways, aisles, exits, gangways, ladders, ramps, stairs, steps and walkways.

Subpart J—[Amended]

8. In § 1915.162, paragraph (a)(1) is revised as follows:

§ 1915.162 Ship's boilers.

(a) * * *

(1) The employer shall ensure that the isolation and shutoff valves connecting the dead boiler with the live system or systems are secured, blanked and locked or tagged, in accordance with § 1915.89 Control of Hazardous Energy (Lockout/Tagout), indicating that employees are working on the boiler. This lock or tag shall not be removed nor the valves unblanked until it is determined that this may be done without creating a hazard to the employees working on the boiler, or until the work on the boiler is completed. Where valves are welded instead of bolted, at least two isolation and shutoff valves connecting the dead boiler with the live system or systems shall be secured and locked or tagged, in accordance with § 1915.89 Control of Hazardous Energy (Lockout/Tagout).

* * * * *

9. In § 1915.163, paragraph (a)(1) is revised to read as follows:

§ 1915.163 Ship's Piping Systems.

(a) * * *

(1) The employer shall ensure that the isolation and shutoff valves connecting the dead system with the live system or systems are secured, blanked and locked or tagged, in accordance with § 1915.89 Control of Hazardous Energy (Lockout/

Tagout), indicating that employees are working on the systems. The lock or tag shall not be removed or the valves unblanked until it is determined that this may be done without creating a hazard to the employees working on the system, or until the work on the system is completed. Where valves are welded instead of bolted, at least two isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, locked, or tagged, in accordance with § 1915.89.

* * * * *

10. In § 1915.164, paragraph (a)(2) is revised to read as follows:

§ 1915.164 Ship's propulsion machinery.

(a) * * *

(1) * * *

(2) If the jacking gear is steam driven, the employer shall ensure that the stop valves to the jacking gear are secured and locked or tagged in accordance with § 1915.89 Control of Hazardous Energy (Lockout/Tagout).

(3) If the jacking gear is electrically driven, the employer shall ensure that the circuit controlling the jacking gear is deenergized by tripping the circuit breaker, opening the switch or removing the fuse, whichever is appropriate and locked or tagged in accordance with § 1915.89.

Subpart I—[Amended]

11. In § 1915.181, paragraph (c) is revised to read as follows:

§ 1915.181 Electrical circuits and distribution boards.

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(c) The employer shall ensure that deenergizing the circuit is accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever method is appropriate. The circuit breaker, switch, or fuse location shall be locked out or tagged in accordance with § 1915.89 Control of Hazardous Energy (Lockout/Tagout). Such locks or tags shall not be removed nor the circuit energized until it is determined definitely that the work on the circuit has been completed.

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Part III

Nuclear Regulatory Commission

**10 CFR Parts 60, 63, 73 and 74
Geologic Repository Operations Area
Security and Material Control and
Accounting Requirements; Proposed Rule**

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 60, 63, 73, and 74

RIN 3150-A106

Geologic Repository Operations Area Security and Material Control and Accounting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to revise the security requirements and material control and accounting (MC&A) requirements for a geologic repository operations area (GROA). The goal of this rulemaking is to ensure that effective security measures are in place for the protection of high-level radioactive waste (HLW) and other radioactive material at a GROA given the post-September 11, 2001, threat environment. New requirements for specific training enhancements, improved access authorization, enhancements to defensive strategies, and enhanced reporting requirements would be incorporated. The proposed rule would establish general performance objectives and corresponding system capabilities for the GROA MC&A program, with a focus on strengthening, streamlining, and consolidating all MC&A regulations specific to a GROA. In addition, the proposed rule would require the emergency plan to address radiological emergencies.

DATES: The comment period expires March 4, 2008. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the number RIN 3150-A106 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information such as name, address, telephone, e-mail address, etc., will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *ATTN:* Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail

confirming that we have received your comments, contact us directly at (301) 415-1677.

Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8126, e-mail, mlh1@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion
 - A. What Action Is the NRC Taking?
 - B. Whom Would This Action Affect?
 - C. Why Do the Requirements Need to be Revised?
 - D. When Do the Security and MC&A Plans Need To Be Submitted?
 - E. What Types of Material Would Be Covered by the New Security and MC&A Requirements?
 - F. What Are the Key Aspects of the Proposed MC&A Requirements?
 - G. What Kinds of Systems Capabilities Would Be Proposed for the MC&A Program?
 - H. Would Shipper-Receiver Comparisons With Independent Measurements Be Required for Receipts?
 - I. What Measurements Would Be Necessary Under the GROA MC&A Program?
 - J. What Would an MC&A Detection and Response Program Involve?

K. What Additional Requirements Would Be Imposed if DOE Possesses Formula Quantities of Strategic SNM That Is in a Form Other Than as Irradiated Nuclear Reactor Fuel?

- L. What Special MC&A-Related Needs Exist?
- M. What Is the Objective of the Proposed Physical Security Requirements?
- N. What Threat Would a GROA Be Required To Defend Against?
- O. Why Do the Security Requirements Differ for Various Aspects of a GROA?
- P. Would Access Authorization Requirements Apply to a GROA and What Would They Cover?
- Q. Would Criminal History Checks Apply to a GROA?
- R. What Are the Key Aspects of the Security Requirements?
- S. What Is a Target Set as it Applies to a GROA?
- T. What Weapons Authorization Would Be Necessary for the GROA Operations?
- U. Would DOE Be Required To Conduct Force-on-Force Exercises for the GROA Facility?
- V. How Would the Security Plans Handle Construction at a GROA After Receipt of HLW Begins?
- W. Does This Rulemaking Cover Transportation of High-Level Radioactive Waste to a GROA?
- X. Would the Security and MC&A Plans Cover Postclosure?
- Y. What Safeguards Reporting Requirements Would Be Proposed for a GROA?
- Z. Does the NRC Plan To Issue Guidance Documents?
- AA. Would the GROA Facilities Be Subject to IAEA Safeguards?
- BB. What Changes Would Be Made to the Emergency Plan Requirements?
- CC. What Should I Consider as I Prepare My Comments to NRC?

- III. Discussion of Proposed Amendments by Section
 - IV. Criminal Penalties
 - V. Agreement State Compatibility
 - VI. Plain Language
 - VII. Voluntary Consensus Standards
 - VIII. Finding of No Significant Environmental Impact
 - IX. Paperwork Reduction Act Statement
 - X. Public Protection Notification
 - XI. Regulatory Analysis
 - XII. Regulatory Flexibility Certification
 - XIII. Backfit Analysis

I. Background

On November 2, 2001 (66 FR 55732), the NRC published its final rule governing disposal of HLW in a potential geologic repository at Yucca Mountain in Nevada. The U.S. Department of Energy (DOE) must comply with these regulations for NRC to authorize construction and license operation of a potential repository at Yucca Mountain in Nevada. The security requirements applicable to a GROA in these regulations were developed prior to September 11, 2001, under a previous and very different

threat environment. Currently, there is no distinction between the security and MC&A requirements for independent spent fuel storage installations (ISFSIs) and the requirements for larger, more complicated geologic repositories for permanent disposal of HLW. At the time the security provisions were established, the NRC used the same regulatory approach for protecting a GROA as that for protecting spent nuclear fuel storage facilities licensed under 10 CFR part 72. GROA operations, at least those conducted in surface facilities, seemed vulnerable to the same kinds of potential threats that were characteristic of the storage of spent nuclear fuel (SNF). The same level of protection was deemed sufficient to protect against acts that might be inimical to the common defense and security. The same reasoning applies to the MC&A requirements.

The NRC's regulatory approach was predicated on maintaining the physical integrity of the SNF rods. In the event the physical integrity of the SNF rods could not be maintained, the staff planned to address the additional security measures that would be necessary by incorporating conditions into the license.

Potential surface operations at a GROA have become more complex over the years. For example, the DOE has indicated that it now plans to include bare SNF handling operations within a spent fuel pool to transfer SNF from a non-TAD (transfer, aging, disposal) canister to a TAD canister, which would then be utilized for emplacement and permanent disposal of the SNF in the Yucca Mountain repository.

Because both the threat environment and the plans for surface operations at the GROA have changed, the NRC now believes that a separate regulatory approach for protecting and safeguarding a GROA is necessary. The DOE has not set forth a final concept of operations for the GROA. Therefore, it is not clear what types of facilities will be part of the surface operations or what type of handling of the HLW within the surface facilities may occur.

The new security and MC&A requirements also should be broad enough and sufficiently flexible to cover a range of possible types of non-HLW radioactive materials without the need for additional rulemaking. The DOE, in its Final Environmental Impact Statement (FEIS) for a geologic repository at Yucca Mountain, considered the possibility that radioactive waste types other than SNF and HLW, such as Greater-Than-Class-C low-level radioactive waste (LLW) and Special-Performance-Assessment-

Required LLW might be disposed of in a geologic repository. See *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*, February 2002, Vol. II, A-1, A-57-A-64. Disposal of such non-HLW could require new legislation or a determination by the NRC that these wastes require permanent isolation. The NRC is not making such a determination in this rulemaking. However, the security and MC&A requirements being proposed for a GROA take account of the possibility that the geologic repository might be used for the disposal of radioactive materials which are not SNF or HLW.

Following the terrorist attacks on September 11, 2001, the NRC conducted a thorough review of its security requirements to ensure that special nuclear material (SNM) at fixed sites and in transit continued to have effective security measures in place given the changing threat environment. Through a series of security orders issued to certain NRC licensees, the Commission specified changes to the Design Basis Threat (DBT) for power reactor and Category I Strategic SNM licensees, and implemented enhanced requirements for specific training, access authorization, defensive strategies, and security. Through generic communications, the Commission specified expectations about enhanced notifications to the NRC for certain security events or suspicious activities. These enhancements resulted in some licensees revising their physical security plans, security personnel training and qualification plans, and safeguards contingency plans to defend against the supplemental DBT requirements. These security orders specifically required certain licensees to: (1) Increase patrols; (2) augment the security force capabilities and security posts; (3) add and modify existing physical security barriers; (4) move vehicle check points to a greater standoff distance; (5) enhance coordination with local law enforcement agency (LLEA) and military authorities; (6) augment their security and emergency response training, equipment, and communications; and (7) strengthen off-site access controls, including additional background and screening checks of employees. The enhanced security measures have yet to be imposed on a GROA. This rulemaking is the mechanism the NRC is using to impose the new requirements on the DOE for operations at a GROA.

This rulemaking to upgrade the requirements for physical protection of HLW and other radioactive materials at

a GROA combines lessons learned, current/best practices, and requirements based on those contained in security orders issued to NRC licensees that address the post-September 11, 2001, threat environment. The security orders, as well as other ongoing security rulemakings, are used as the basis for upgrading the GROA security requirements. Specifically, the security requirements for power reactors are being used as the starting point for the security requirements for this proposed rule. The reactor requirements are used as the starting point because of the similarity in material, the material's attractiveness for malevolent use, and the potential consequences of its malevolent use. The security requirements should provide protection equivalent to a power reactor. The reactor requirements have been proposed in a rule entitled "Power Reactor Security Requirements" (71 FR 62664; October 26, 2006).

Section 653 of the Energy Policy Act of 2005 (EPAct), signed into law on August 8, 2005, allows the NRC to authorize licensees to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic assault weapons. Section 653 requires that all security personnel with access to any weapons undergo a background check that includes fingerprinting and a check against the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) database. Under Section 161k. of the Atomic Energy Act (AEA), as amended, the DOE has authority for authorization of weapons. The NRC does not plan to use its authority under Section 653 of the EPAct. The DOE, under its own authority under Section 161k. of the AEA, may authorize the use of an expanded weapons arsenal and the use of force in accordance with the requirements of 10 CFR part 1047.

The goal of this rulemaking is to ensure that effective security measures are in place for the protection of HLW and other radioactive materials given the post-September 11, 2001, threat environment. New requirements for specific training enhancements, improved access authorization, and enhancements to defensive strategies would be incorporated. The proposed rule would establish general performance objectives and corresponding system capabilities for the GROA MC&A program, with a focus on strengthening, streamlining, and consolidating into 10 CFR Part 74 all MC&A regulations specific to a GROA. In addition, the proposed rule would

require the emergency plan to address radiological emergencies.

II. Discussion

A. What Action Is the NRC Taking?

The NRC is proposing to amend its regulations primarily to establish new physical security and MC&A requirements for HLW and other radioactive materials at a GROA. The requirements specified in this rulemaking would establish the objectives and minimum performance standards that the DOE must meet to protect against each threat (theft or diversion and radiological sabotage) at a GROA, and the objectives and minimum capabilities for the MC&A program. The proposed rule is risk-informed and performance-based.

B. Whom Would This Action Affect?

Only the DOE, as the potential operator of any repository, would be impacted by this proposed rule. The regulations in 10 CFR Part 63 are specific for the Yucca Mountain repository.

C. Why Do the Requirements Need To be Revised?

The current regulations for MC&A and security for a GROA were developed under a different threat environment, and the threat environment has changed, as have the plans for surface operations at a GROA. The NRC now believes that a new regulatory approach for protecting a GROA is necessary. In addition, the DOE has not set forth a final concept of operations document for the GROA; therefore, the types and forms of material to be handled and disposed of at a GROA have not been finalized. The current security and MC&A requirements for a GROA are not adequate to protect the common defense and security or the public health and safety. The new security and MC&A requirements must be broad enough and sufficiently flexible to cover a range of possible activities without the need for additional rulemaking. This rulemaking to upgrade the requirements for physical protection of HLW and other radioactive materials at a GROA capitalizes on the lessons learned, current/best practices, and security orders issued to NRC licensees to address the post-September 11, 2001, threat environment. The security orders, as well as ongoing security rulemakings, have been used as the basis for upgrading the GROA security requirements. The proposed rule would also establish general performance objectives and corresponding system capabilities for the GROA MC&A program, with a

particular focus on strengthening, streamlining, and consolidating into 10 CFR part 74 all MC&A regulations specific to a GROA.

D. When Do the Security and MC&A Plans Need To Be Submitted?

The DOE should include a description of the security and MC&A plans in its license application when it is submitted. The actual plans would be submitted no later than 180 days after the Commission grants the construction authorization for the GROA. A description of the security and MC&A plans is necessary at the time of the application to demonstrate that the DOE can adequately address and meet the NRC requirements for security and MC&A. Additionally, there may be some aspects that would be better integrated during construction. Submitting the plans after the Commission grants a construction authorization allows the DOE to take advantage of any new technology and concepts that may not be available at the time the construction application is submitted. The timing still allows some aspects, if appropriate, to be addressed during construction. The plans would not need to be implemented until the Commission grants a license to receive and possess source, special nuclear, or byproduct material at a GROA.

E. What Types of Material Would Be Covered by the New Security and MC&A Requirements?

This rule would cover the security and MC&A aspects for the radioactive material at both surface and subsurface areas where waste handling activities are conducted. This radioactive material can include HLW in the form of irradiated reactor fuel and reprocessing wastes. Section 63.102(b)(4) provides that if the DOE proposes to use the GROA for storage of radioactive waste other than HLW, the storage of this radioactive waste is subject to the requirements of 10 CFR Part 63. Irradiated reactor fuel contains SNM and fission byproducts. Depending on the enrichment and quantity, the SNM may be considered strategic special nuclear material, SNM of moderate strategic significance, or SNM of low strategic significance. The higher the enrichment of the SNM, the more attractive the material may be for malevolent purposes. While it is expected that the primary waste to be handled at a GROA is irradiated reactor fuel, it is possible that the DOE may propose the storage of other types of radioactive waste. Therefore, the Commission has attempted in this proposed rule to develop security and

MC&A requirements that are broad enough to cover the spectrum of waste materials that could potentially be dispositioned at a GROA without the need for future rulemaking. The security requirements that would be established are, in part, based on the attractiveness of the waste material, shape, size, and the potential consequences if the waste were used for malevolent purposes. The MC&A requirements pertain to the SNM content of the waste.

F. What Are the Key Aspects of the Proposed MC&A Requirements?

The proposed rule would establish general performance objectives and corresponding systems capabilities for the GROA MC&A program, with a particular focus on strengthening, streamlining, and consolidating in 10 CFR Part 74 all MC&A regulations specific to a GROA. Proposed objectives for the GROA MC&A program would center on detecting and responding to a potential loss of SNM, including theft and diversion, commensurate with the strategic worth of the SNM. The DOE would be required to submit an MC&A plan describing how those objectives would be achieved through the implementation of specified system capabilities commensurate with safeguards risks.

G. What Kinds of Systems Capabilities Would Be Proposed for the MC&A Program?

The DOE would be required to establish and maintain internal control, inventory, auditing, and recordkeeping capabilities. Internal controls would include comprehensive measures for management structuring, personnel qualification and training, validating receipts and any shipments, item control, collusion protection, measurements, and measurement control for resolving anomalies (as needed). This would include an overall detection and response program and a collusion program to thwart theft or diversion and would include incorporating checks and balances that are sufficient to detect falsification of data and reports that could conceal the theft or diversion of SNM.

Item control of SNM and continuous assurance of its integrity from receipt to emplacement would be important. If necessary, additional item control and physical inventory measures may be required for recovery of waste packages or retrieval of waste packages from emplacement in Yucca Mountain to an alternate storage or an area for possible examination or external shipment.

H. Would Shipper-Receiver Comparisons With Independent Measurements Be Required for Receipts?

No, the DOE would not be required to conduct independent measurements on receipts of HLW or SNM at a GROA. The DOE would be allowed to accept the originator-assigned values. However, the DOE would be required to routinely assure the validity of each originator's assigned SNM content values and the integrity of receipts (with validating physical checking of unique identity, intactness, and tamper-safing) accepted at a GROA. No routine nondestructive assay (NDA) measurements of receipts would be required. The DOE would be required to closely coordinate with originators to adequately understand the technical basis for assigning SNM content and procedures to be followed for packaging and assuring item identification and integrity, (e.g., with reactor fuel burnup calculations, unique serial numbers, and the tamper-safing of canisters and shipment overpacks). Tamper-safing refers to the use of devices on containers in a manner that ensures a clear indication if the device has been removed to allow opening of the container.

For shipments of commercial SNM to the proposed Yucca Mountain repository, the DOE is currently expected to be the shipper as the DOE is expected to take possession of the material at the nuclear reactor. However, for the purposes of reporting to the Nuclear Material Management Safeguards System (NMMSS), power reactor utilities would be expected to complete and file the DOE/NRC Form-741 for transferring the SNM to the GROA using their respective NRC Reporting Identification Symbol (RIS). As a result, following the instructions in NUREG/BR-0007 and NMMSS Report D-24, the transfer for MC&A technical purposes would be made between two NRC RISs—from a power reactor utility RIS to that assigned to the GROA for receiving and possessing SNM under license. This is not a new requirement as licensees are currently required to report transfers of SNM. In their reference to shippers, the MC&A regulations at § 74.15 are addressing the licensed utilities who are originating and reporting the transfers with SNM content values technically assigned by the utility. Any required tamper-safing of shipments to assure their integrity (e.g., the welding of canisters or the affixing of tamper-indicating devices on shipping overpacks) would also be done by such originating shippers from a shipper-receiver validation/comparison.

I. What Measurements Would Be Necessary Under the GROA MC&A Program?

As warranted, independent confirmatory weight and NDA measurements of HLW and SNM would be required for off-normal circumstances (e.g., in resolving certain types of anomalies that may arise and trigger investigations and special reporting of safeguards events). The state-of-the-art for NDA and other practical limitations shall be considered for such nonroutine measurements (e.g., at a wet transfer facility where bare spent fuel assemblies may be handled). At this point, no routine onsite measurements are foreseen as necessary to further validate/accept SNM content values assigned to receipts by the originators.

J. What Would an MC&A Detection and Response Program Involve?

The focus would be on rapidly detecting and responding to indications of SNM loss, including possible theft or diversion. This includes triggering investigations and resolving action on anomalies, as well as a way to thwart any attempts to covertly steal or divert SNM by insiders acting individually or in collusion. The design of measures to counter such a potential internal threat is to include a diversion path analysis or risk analysis of postulated scenarios considering conceivable ways and means potential insiders might try to steal or divert SNM at a GROA.

As background, the general diversion path analysis method that has been used by the NRC is described in the open literature (R. Hawkins, S. Baloga, N. Zack, W. Stanbro, and J. Markin, "Diversion Path Analysis—A New Approach," INMM Proceedings XXI, 763-769, 1992). This technical paper expanded on diversion path analysis methods originally developed by the U.S. Bureau of Standards and published by the U.S. Energy Research and Development Administration (ERDA) (M. Maltese, K. Goodwin, and J. Scheter, "Diversion Path Analysis Handbook," ERDA, October 1976). In addition, diversion path analysis methods have been extensively applied by the International Atomic Energy Agency (IAEA) for designing and implementing its safeguards strategy under the Treaty on the Non-Proliferation of Nuclear Weapons. Regarding the generic safeguarding of geologic repositories, the IAEA has published a comprehensive, multi-volume document ("Safeguards for the Final Disposal of Spent Fuel in Geologic Repositories," STR-312, IAEA,

Department of Safeguards, September 1998), which identifies and analyzes, in considerable detail, resulting diversion paths for a hypothetical facility.

K. What Additional Requirements Would Be Imposed if the DOE Possesses Formula Quantities of Strategic SNM That Is in a Form Other Than as Irradiated Nuclear Reactor Fuel?

Additional requirements would be included for specified system capabilities for strategic SNM. These requirements include additional measures for item monitoring and more rigorous access control, quality assurance, and alarm resolution in concert with any enhanced physical protection to be provided under 10 CFR Part 73.

L. What Special MC&A-Related Needs Exist?

There is a need to consider risk-informed, performance-based alternatives for resolving anomalies, particularly onsite NDA measurements by the DOE in cases where item identity and integrity may have been compromised. Another need is the extent of item control and physical inventorying that would be necessary for SNM (in HLW and other radioactive waste) in underground drifts and at aging pads, especially from a containment, surveillance, and access control perspective, and a worker perspective that involves reducing radiation exposure to personnel to as low as is reasonably achievable, as well as other impact aspects. The MC&A plan also needs to address SNM control and accounting functional aspects of retrievability and alternate storage capabilities that are required by §§ 60.21(c)(12) and 63.21(c)(7).

M. What Is the Objective of the Proposed Physical Security Requirements?

The objective of the proposed physical security requirements is to provide high assurance that activities at a GROA are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. In order to provide a high assurance of protection, the NRC's philosophy is to use a defense-in-depth strategy towards the protection of HLW. Defense-in-depth relies on a holistic approach towards the protection of these materials and other radioactive materials, which includes using people, processes, equipment, and facilities to protect HLW and other radioactive materials from theft or diversion or radiological sabotage for malevolent purposes. The GROA physical security requirements would

be determined using a graded approach related to the projected risk from radiological sabotage, theft, or diversion of HLW and other radioactive materials.

N. What Threat Would a GROA Be Required To Defend Against?

The design basis threat defined in § 73.1(a) would apply to a GROA in the specific circumstances where a radiological sabotage or theft and diversion event may involve formula quantities of SNM. Under the proposed rule, the threat to a GROA is largely defined by specific security scenarios which represent the greatest threats against which GROA security forces must be able to defend against, with a high assurance of success. A GROA would have graded security measures based on the material, waste form, and operations within a particular facility at a GROA. Therefore, depending on the material content, quantity, and consequence from a radiological sabotage event, as well as the theft or diversion of certain material, the security measures may rely on the design basis threat defined in § 73.1(a) or may rely on other Commission requirements. The NRC specifically invites comment on the physical protection protocol for a GROA. We are interested in information concerning: Do we need a specific physical protection protocol for a GROA or should we apply the existing DBT and increased controls as appropriate.

O. Why Do the Security Requirements Differ for Various Aspects of a GROA?

The consequences of radiological and theft or diversion security events are highly dependent on the characteristics and packaging of the HLW and other radioactive materials and their location within a GROA. The activities and operations at a GROA aid in defining the physical security requirements and protective strategies that would be implemented. At this time, the GROA concept of operations has not been fully defined by the DOE; therefore, the NRC is establishing physical security requirements that would be dependent upon the consequences of a potential radiological event and the theft or diversion of certain material. These physical security requirements would be based on five proposed protection levels. The highest protection level would be for waste containing strategic SNM with the protection system designed to protect the material against the design basis threat for both theft or diversion and radiological sabotage. The next protection level would be for radioactive material that could result in a significant radiological sabotage event

releasing radioactive materials in sufficient quantity such that any individual located at the lesser of the controlled area boundary or 400 meters from the source could receive a total effective dose equivalent equal to or greater than 0.25 Sv (25 rem). For these materials, the protection system must be designed to protect against the design basis threat for radiological sabotage. The third protection level would be for radioactive material that could result in a moderate radiological sabotage event releasing radioactive materials in sufficient quantity such that any individual located at the lesser of the controlled area boundary or 400 meters from the source could receive a total effective dose equivalent equal to or greater than 0.05 Sv (5 rem) but less than 0.25 Sv (25 rem). For these materials, the protection system must be designed to protect the material against radiological sabotage. The fourth protection level would be for all other radioactive material containing SNM. The physical protection system would be designed to protect the material against security-related events specified for theft and diversion. The lowest protection level would be for other solidified radioactive material and material that would meet the criteria in appendix P to 10 CFR part 110 (Categories 1 and 2 radioactive materials). The protective strategy for these materials would be equivalent to the increased controls (i.e., prevent or impede removal, locate and prompt recovery, and mitigation of any potential consequence).

P. Would Access Authorization Requirements Apply to a GROA and What Would They Cover?

Yes, access authorization requirements would apply to a GROA. The facilities that possess large radiation sources, such as irradiated nuclear reactor fuels (e.g., SNF), are attractive targets for those who seek to commit radiological malevolent acts. Insiders who have unescorted access to facilities that possess such radiation sources, including a GROA, could pose a threat to the public health and safety or the common defense and security because they may have the ability to commit radiological malevolent acts. Therefore, imposing access authorization requirements is a prudent security measure to ensure that individuals who are granted unescorted access to the protected area of a GROA: (1) Are trustworthy and reliable; (2) do not impose an unreasonable risk to the health and safety of the public or the common defense and security (as a result of increasing the likelihood of an

insider threat); and (3) do not pose a potential threat to commit radiological malevolent acts or theft or diversion of HLW. Fingerprints are required of any individual granted unescorted access to the protected area of a GROA.

Q. Would Criminal History Checks Apply to a GROA?

Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation identification and criminal history records check of any person who is permitted unescorted access to radioactive materials subject to regulation by the Commission, and 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 the radioactive material at a GROA is of such significance and is proposing to implement the requirement for fingerprinting and a FBI identification and criminal history records check of any person who is permitted unescorted access to radioactive materials at a GROA. Background investigations, which include criminal history checks, represent a key element of the access authorization program ensuring that individuals who have unescorted access to a GROA are trustworthy and reliable. To accomplish this task, requirements were developed that focused on accumulating data on an individual's past that would produce an overall perspective of the individual's character and allow the licensee to make a determination of trustworthiness and reliability.

R. What Are the Key Aspects of the Security Requirements?

The key aspects of the security requirements for a GROA are similar to the security requirements for similar types of NRC-licensed material and facilities. The proposed regulations would require an integrated security plan that would implement defense-in-depth concepts and protective strategies based on protecting target sets from various threat scenarios. The requirements are performance based and include an access authorization program and a physical protection system to detect, delay, and respond to postulated threat scenarios in such a way that prevents or mitigates undesirable consequences of malevolent actions. The postulated threat scenarios include the theft or diversion of SNM and HLW as well as radiological sabotage. The access authorization program requirements include measures

necessary to assure that personnel having critical safety or security functions or having access to certain nuclear materials remain trustworthy and reliable. The physical protection system requirements for detection measures include intrusion sensing, alarm communication, alarm assessment, and entry or access controls. Detection would be provided through the use of detection equipment, patrols, access controls, and other program elements required by this proposed rule. It also would provide notification to the licensee that a potential threat is present and where the threat is located. Alarm assessment is the mechanism through which the licensee obtains the information necessary to identify the nature of the threat detected and to determine how to respond. There are access control requirements for personnel, vehicles, and hazardous materials. The requirements for delay measures include barriers to delay adversarial actions to allow a timely response by security personnel. The requirements for responding to malevolent events allow the DOE to develop effective response strategies to challenge intruders so they cannot accomplish actions that are necessary to achieving undesirable consequences. In some instances, the strategy may include neutralizing adversaries to deny access to the nuclear material. The proposed rule uses a risk-informed approach for response requirements that permits protective strategies to be tailored to the type of material being protected, operations that involve handling this material and the potential consequences of postulated threat scenarios.

Security personnel who are responsible for the protection of the radioactive waste would be required to meet minimum requirements and performance criteria. The DOE would have to meet general criteria requirements for selection, training, equipping, testing, qualification, and contingency plans of security forces involved in GROA operations. These requirements would include hiring personnel who function as drill and exercise controllers to ensure that security forces are trained and qualified to execute their assigned duties. Drills and exercises are key elements to assuring the preparedness of the security force and must be conducted in a manner that demonstrates the DOE's ability to execute the protective strategy as described in the site security plans. As for contingency plans, the information required in the safeguards contingency plans includes responses to

threats, up to and including design basis threats, as described in § 73.1(a). The DOE would be required to submit for NRC approval a plan detailing how the prescribed criteria are going to be met.

S. What Is a Target Set as it Applies to a GROA?

As it applies to a GROA, target set means the combination of equipment or operator actions which, if all are prevented from performing their intended safety function or prevented from being accomplished, would likely result in significant operational disruption or radiological contamination barring extraordinary action by site operators. For a GROA, a target set means the quantities and form of HLW and other radioactive material and the protective and mitigative measures to protect against potential large scale releases of fission products from malevolent actions. For example, a target set with respect to spent fuel sabotage at a GROA could be draining the spent fuel pool leaving the spent fuel uncovered for a period of time, allowing spent fuel to heat up, and the associated potential for release of fission products. Due to the sensitivity of this information, specific target sets to the GROA will not be available in a public document.

T. What Weapons Authorization Would Be Necessary for the GROA Operations?

There are two ways weapons may be authorized for use at a GROA. First, section 161A of the AEA allows the NRC to authorize licensees to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns. Section 161A was added to the AEA under the EPAct. Secondly, under section 161k. of the AEA, the DOE has separate authority for authorization of weapons on any of its sites. The DOE, under its own authority under section 161k. of the AEA, may authorize the use of an expanded weapons arsenal, limited arrest authority, and the use of force in accordance with the DOE's current regulations under 10 CFR part 1047. The NRC does not plan to use its authority under Section 161A of the AEA.

U. Would DOE Be Required To Conduct Force-on-Force Exercises for the GROA Facility?

Yes, some type of force-on-force exercises are necessary to test the effectiveness of the DOE's protective strategies for the high-consequence target sets. The requirement for annual force-on-force exercises only applies to formula quantities of strategic SNM and

significant radiological sabotage consequence target sets.

V. How Would the Security Plans Handle Construction at a GROA After Receipt of HLW Begins?

A license to receive and possess source, special nuclear, or byproduct material at a GROA may only be issued by the Commission on a finding that construction of the GROA has been substantially completed. Construction may be considered substantially complete if the construction of surface and interconnecting structures, systems, and components and any underground storage space required for initial operation are substantially complete. Some construction activities could continue once receipt of material begins.

The NRC's security requirements are designed to protect all material at a GROA. Handling, storage, and emplacement operations for HLW and other radioactive materials shall be conducted inside a protected area. The NRC's security requirements are flexible enough to allow the DOE to establish a protected area that could separate remaining construction activities from operations involving HLW and other radioactive material. Any construction activity occurring within the protected area would be subject to the NRC's security requirements. Any construction activities outside the protected area, but within the DOE controlled area, would be subject to some NRC security controls and DOE security orders. The protected area and security plans would be expanded to include new facilities or areas before radioactive material could be received in that new facility or area.

W. Does This Rulemaking Cover Transportation of High-Level Radioactive Waste to a GROA?

No, the NRC's regulatory authority is limited to the operations at a GROA. As an independent Federal Agency, the DOE must comply with its own internal requirements (DOE orders) and Departments of Transportation and Homeland Security regulations when transporting HLW and other radioactive materials to a GROA. However, the DOE must use shipping containers certified by the NRC under the regulations in 10 CFR part 71. Part 71 is not being revised by this proposed rule.

X. Would the Security and MC&A Plans Cover Postclosure?

No, these plans would not cover the postclosure period. Once the NRC license is terminated, the NRC would no longer have regulatory authority. However, the DOE plans for continued

oversight of the Yucca Mountain site after permanent closure.

Y. What Safeguards Reporting Requirements Would Be Proposed for a GROA?

Prompt notification to the NRC of a security event involving an actual or imminent threat would permit the NRC to contact other Federal authorities and other licensees, as appropriate. The Commission would expect the DOE to notify the NRC Operations Center as soon as possible after they notify local law enforcement agencies, but within 15 minutes. A written 60-day report would also be required for these notifications. This new reporting requirement would require the DOE to promptly notify the NRC of any event involving an actual or imminent threat at the GROA.

Four-hour notification would be proposed for suspicious activities, attempts at access, etc., that may indicate pre-operational surveillance, reconnaissance, or intelligence gathering activities targeted against the GROA. This would assist the intelligence and homeland security communities in evaluating threats across critical infrastructure sectors.

The current provision for one-hour notifications for certain safeguards events (e.g., theft or unlawful diversion of SNM, significant physical damage to the facility, entry of an unauthorized person into protected areas) would be retained, with some modifications to include attempted actions and to broaden the scope of the language used for specific areas. The provision for events to be recorded in the safeguards log would also be retained.

Z. Does the NRC Plan To Issue Guidance Documents?

Yes, the NRC intends to issue guidance documents. The NRC intends to issue a GROA-specific regulatory guidance document. This document would address adversary characteristics for the design basis threats and describe details of the GROA security-related threats. Other guidance documents are under consideration. The publication of the guidance documents is planned after the publication of the final rule. Because the guidance documents may contain Safeguards Information and/or classified information, these documents would only be available to those with a need-to-know, and who are qualified to have access to Safeguards Information and/or classified information, as applicable. However, the NRC has determined that access to these guidance documents is not necessary for the public or other stakeholders to provide informed comment on this proposed rule.

AA. Would the GROA Facilities Be Subject to IAEA Safeguards?

The U.S. Government has not yet made a determination as to whether a GROA can be subject to IAEA safeguards.

BB. What Changes Would Be Made to the Emergency Plan Requirements?

The emergency plan requirements would be changed to reflect the need to respond to radiological emergencies instead of radiological accidents. The term radiological emergencies is more inclusive of the types of situations that the emergency plan may need to address. In addition, § 63.21(c)(21) requires a description of the plan for responding to, and recovering from, radiological emergencies; the proposed change is consistent with this language.

CC. What Should I Consider as I Prepare My Comments to NRC?

Tips for preparing your comments—when submitting your comments, remember to:

- i. Identify the rulemaking (RIN 3150–AI06).
- ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iii. Describe any assumptions and provide any technical information and/or data that you used.
- iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- v. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vi. Explain your views as clearly as possible.
- vii. Make sure to submit your comments by the comment period deadline identified.
- viii. See item N of the Discussion portion of this notice for NRC's specific request for comments on the need for a specific physical protection protocol for a GROA. See Section VI of the preamble for the request for comments on the use of plain language and Section XI for the request for comments on the draft regulatory analysis.

III. Discussion of Proposed Amendments by Section

Section 60.21 Content of Application

Paragraph (b)(3) would be revised to change the reference for the security requirements from § 73.51 to the new requirements in § 73.53 and to require a description instead of plans. Paragraph (b)(4) would be revised to change the reference for the MC&A requirements from § 60.78 to the new requirements in

10 CFR Part 74. The actual plans would be submitted after the construction authorization was issued. The security and MC&A plans would not be implemented until SNM is received at the GROA.

Section 60.24 Updating of Application and Environmental Impact Statement

Paragraph (d) would be added to require the DOE to submit the actual security plans and MC&A plan for NRC approval no later than 180 days after the Commission issues the construction authorization. Under the current regulations, the DOE was not required to submit the actual MC&A plan for NRC approval. This requirement corrects that oversight.

Section 60.78 Criticality Reporting

This section would be renamed to reflect the criticality reporting that remains after the MC&A requirements are relocated to 10 CFR part 74. Currently, the criticality reporting requirement is captured by the reference to § 72.74. The section would be revised to include the criticality reporting requirement instead of a reference to another section. The actual requirements would not change.

Section 63.21 Content of Application

Paragraph (b)(3) would be revised to change the reference for the security requirements from § 73.51 to the new requirements in § 73.53 and would clarify that only a description of the program need be submitted with the construction application. Paragraph (b)(4) would be revised to change the reference for the MC&A requirements from § 63.78 to the new requirements in 10 CFR part 74. The actual security and MC&A plans would be submitted after the construction authorization was issued. The security and MC&A plans would not be implemented until SNM is received at the GROA.

Section 63.24 Updating of Application and Environmental Impact Statement

Paragraph (d) would be added to require the DOE to submit the actual security plans and MC&A plan for NRC approval no later than 180 days after the Commission issues the construction authorization. Under the current regulations, the DOE was not required to submit the actual plans for NRC approval. This requirement corrects that oversight.

Section 63.78 Criticality Reporting

This section would be renamed to reflect the criticality reporting that remains after the MC&A requirements are relocated to 10 CFR part 74.

Currently, the criticality reporting requirement is captured by the reference to § 72.74. The section would be revised to include the criticality reporting requirement instead of a reference to another section. The actual requirements would not change.

Section 63.161 Emergency Plan for the Geologic Repository Operations Area Through Permanent Closure

This section would be revised to refer to radiological emergencies instead of radiological accidents. The term radiological emergencies is more inclusive of the types of situations that the emergency plan may need to address. In addition, § 63.21(c)(21) requires a description of the plan for responding to, and recovering from, radiological emergencies; the proposed change is consistent with that language. The reference to develop and implement a plan to “cope with radiological accidents” is changed to a plan to “provide reasonable assurance that adequate protective measures can and would be taken in the event of a radiological emergency.”

Section 73.2 Definitions

This section would be revised to incorporate the definition for high-level radioactive waste in 10 CFR part 63 and to add a definition for target set for application to a GROA.

Section 73.50 Requirements for Physical Protection of Licensed Activities

This section would be revised to include a reference to § 73.53 to retain the exemption for a GROA from the security requirements listed in the section. Requirements for a GROA are specified in proposed § 73.53.

Section 73.51 Requirements for Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste

This section would be revised to remove references to a GROA. The security requirements for an ISFSI and a monitored retrievable storage installation would remain unchanged. The requirements for a GROA would be contained in new section 73.53.

Section 73.53 Requirements for Physical Protection at a Geologic Repository Operations Area

The proposed rule would create a new section for the GROA physical protection requirements. The existing requirements for GROA security are contained in § 73.51(b), (c), and (d). The requirements have been expanded and strengthened to reflect the post-

September 11, 2001, threat environment and placed in this new section.

Paragraph (a) would establish that the physical protection requirements in this section apply to The DOE for the operation of a GROA.

Paragraph (b)(1) would require The DOE to submit a Physical Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan that describe how the requirements of the section would be met. The plans would be submitted no later than 180 days after the NRC issues a construction authorization for a GROA. Paragraph (b)(1) would also establish the implementation timeframe. Paragraph (b)(2) would exempt the DOE from the security requirements after permanent closure of a GROA. This provision is currently located at § 73.51(e).

Paragraph (c) would establish the performance objectives. Paragraph (c)(1) would establish the general performance objective to provide high assurance that activities involving radioactive waste are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. The current general objective does not address common defense and security. Paragraphs (c)(2) and (c)(3) would establish objectives based on the type and form of material and the consequences of a postulated radiological sabotage event. The more risk-significant the material, the higher the level of protection required.

Paragraph (d) would establish general requirements for the physical security program. The DOE would be required to design and implement a program to satisfy the performance requirements and to ensure that no single act can disable the personnel, equipment, or systems necessary to prevent the theft of strategic SNM and significant radiological sabotage. The DOE would also be required to establish and maintain a written performance evaluation program, an access authorization program, an insider mitigation program, and a corrective action program.

Paragraph (e) would require the DOE to develop security plans that describe how the physical protection program would prevent the theft or diversion and radiological sabotage of SNM and byproduct material and to protect safeguards information against unauthorized disclosure. The DOE would be required to establish, implement, and maintain written procedures and to have a process for the DOE's approval of implementing procedures. The DOE would be allowed to make changes to the security plans without NRC approval as long as the

changes do not decrease the plan's effectiveness. The DOE would be required to establish, maintain, and follow a Commission-approved training and qualification plan and a safeguards contingency plan and to establish, implement, and maintain a Commission-approved physical security plan.

Paragraph (f) would require the DOE to establish and maintain a security organization designed, staffed, trained, and equipped to provide early detection, assessment, and response to unauthorized activities within any area of the facility. The Commission expectation would be that the management system oversee all aspects of the onsite physical protection program to ensure the effective implementation of Commission requirements through the approved security plans and implementing procedures. The DOE would also be required to ensure that any written agreement with any contractor used to implement the onsite physical protection program was retained as a record for the duration of the contract and that the contract clearly state several conditions related to training, access authorization, and document availability. Provisions regarding the security organization are currently addressed at § 73.51(d)(5). The proposed requirements would strengthen and expand on the current requirements.

Paragraph (g) would provide a performance-based requirement for determining the use and placement of physical barriers for the protection of personnel, equipment, and systems, the failure of which could directly or indirectly endanger public health and safety. The DOE would be required to establish and maintain physical barriers in the controlled area, as necessary, to deter, delay, or prevent unauthorized access; facilitate the early detection of unauthorized activities; and control approach routes to the facility. Paragraph (g) would establish requirements related to physical barriers (paragraph (g)(3)), isolation zones (paragraph (g)(4)), protected areas (paragraph (g)(5)), vital areas (paragraph (g)(6)), vehicle barrier systems (paragraph (g)(7)), and unattended openings (paragraph (g)(8)). Current provisions addressing physical barriers are located at § 73.51(d)(1). The proposed requirements would strengthen and expand on the current requirements.

Paragraph (h) would require the DOE to develop and identify target sets and document the analyses and methodologies used to determine and group the target set equipment or

elements. The DOE would also be required to implement a program for the oversight of certain facility equipment and systems documented as part of the DOE protective strategy.

Paragraph (i) would require the DOE to establish an access control program for personnel, vehicles, and material. The paragraph would establish the features required for the access control program, including access control points, emergency conditions, vehicles, access control devices, visitors, and escorts. Current provisions addressing access control are found at § 73.51(b)(2), 73.51(d)(7), and 73.51(d)(9). The proposed requirements would strengthen and expand on the current requirements.

Paragraph (j) would establish the requirements for search programs for individuals, packages, and vehicles. This paragraph would expand and strengthen the current requirements located in § 73.51(d)(9).

Paragraph (k) would establish the requirements for the detection and assessment systems. The DOE would be required to establish and maintain an intrusion detection and assessment system that must provide the capability for early detection and assessment of unauthorized persons and activities. This proposed requirement would not mandate specific intrusion detection equipment for any specific area, but rather would require that the system provide detection and assessment capabilities that meet Commission requirements. The current requirements addressing detection and assessment systems are located at § 73.51(b)(2), 73.51(d)(2), 73.51(d)(3), 73.51(d)(4), and 73.51(d)(11). The proposed requirements would strengthen and expand on the current requirements.

Paragraph (l) would require the DOE to establish and maintain continuous communication capability with onsite and offsite resources to ensure effective command and control during both normal and emergency situations. The chosen communication method would be available and operating any time it would be needed to communicate information. The proposed requirements would strengthen and expand on the current requirements located at § 73.51(b)(2), 73.51(d)(6), and 73.51(d)(8).

Paragraph (m) would establish the response requirements for personnel and equipment and armed responders. The DOE would be required to establish and maintain the minimum number of properly trained and equipped personnel required to intercept, challenge, delay and/or neutralize any security related events.

Paragraph (n) would require the DOE to implement a cyber-security program that provides high assurance that computer systems, which if compromised could adversely impact safety, security, and emergency preparedness, are protected from cyber attacks.

Paragraph (o) would establish the requirements for security program reviews and audits. The DOE would be required to review the physical protection program at intervals not to exceed 12 months or as necessary based upon assessments or other performance indicators with each element being reviewed at least every 24 months. The DOE would also be required to conduct quarterly drills and annual exercises in accordance with Section III of Appendix C of 10 CFR part 73 and the DOE performance evaluation program. The proposed requirements expand on the current requirement for a physical protection program review every 24 months that is in § 73.51(d)(12).

Paragraph (p) would require the DOE to implement a maintenance, testing and calibration program to ensure that security programs and equipment are tested for operability and performance at predetermined intervals, are maintained in operable condition, and are capable of performing their intended function when needed.

Paragraph (q) would require the DOE to identify measures and criteria needed to compensate for the loss or reduced performance of personnel, equipment systems, and components that are required to meet the requirements.

Paragraph (r) would authorize the DOE to suspend implementation of affected requirements of § 73.53 in an emergency when action is immediately needed to protect the public health and safety and during severe weather when the suspension is needed to protect personnel from a life threatening situation. In both cases, a designated senior site manager would need to approve the suspension before taking the action.

Paragraph (s) would require the DOE to maintain all records required to be kept until the Commission terminates the license and to maintain superseded portions of these records for at least 3 years after the record is superseded.

Paragraph (t) would require the DOE to develop and implement a process to inform and coordinate safety and security activities to ensure that these requirements do not adversely affect the capabilities of the security organization to satisfy the security requirements or overall GROA safety.

Paragraph (u) would provide a mechanism for the DOE to receive

approval for use of alternative measures to those required by § 73.53. Current provisions for alternative measures are covered by § 73.51(d).

Paragraph (v) would contain additional performance capabilities that must be met if the DOE were to possess formula quantities of strategic SNM, unless otherwise approved by the Commission. These additional measures include requirements on the security organization; physical barrier subsystem; access control subsystem and procedures; search programs; detection, surveillance, and alarm subsystems and procedures; and response requirements.

Section 73.56a Personnel Access Authorization Requirements for a Geologic Repository Operations Area

This section would be added to address the requirements for the personnel access authorization program for a GROA. The current regulations require the DOE to grant access to the protected area only to individuals who are authorized to enter the protected area; however, there are no specific requirements for the access authorization program. The proposed program addresses the integration of the access authorization requirements and security program requirements. The proposed performance objective is to provide high assurance that individuals granted unescorted access are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage, theft, or diversion. The proposed rule would establish requirements for the background investigation (paragraph (d)), psychological assessments (paragraph (e)), behavioral observation (paragraph (f)), arrest reporting (paragraph (g)), granting unescorted access authorization (paragraph (h)), maintaining access authorization (paragraph (i)), access to vital areas (paragraph (j)), trustworthiness and reliability of background screeners and authorization program personnel (paragraph (k)), review procedures (paragraph (l)), protection of information (paragraph (m)), audits and corrective action (paragraph (n)), and records (paragraph (o)). The proposed requirements are nearly identical as those proposed for power reactors (71 FR 62664; October 26, 2006).

Section 73.57 Requirements for Criminal History Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility or the Protected Area of a Geologic Repository Operations Area, or Access to Safeguards Information by Power Reactor Licensees

This section would be retitled to include the protected area of a GROA. New paragraph (a)(4) would be added to require the DOE to comply with the requirements for criminal history checks contained in this section upon receipt of Commission authorization to receive and possess source, special nuclear, or byproduct material at a GROA. Paragraph (b)(2)(iii) would be added to expand the requirements for criminal history checks to anyone granted unescorted access to the protected area of a GROA. Paragraphs (b)(1), (b)(4), (b)(4)(i), (b)(5), (b)(8), (c)(1), (d)(1), (f)(2), and (f)(5) would be revised to expand the requirements to individuals granted unescorted access to the protected area of a GROA.

Section 73.70 Records

The introductory paragraph would be revised to include a reference to § 73.53. Paragraph (c)(1) would be added to include a reference to § 73.53(i)(7). A new paragraph (c)(1) is being proposed because changes to paragraph (c) have been proposed in the power security rule and it could cause confusion to stakeholders to propose additional changes to the same section. This section would establish the requirements for record retention. Record retention requirements are currently located in § 73.51(c), 73.51(d)(10), and 73.51(d)(13). The record retention period remains 3 years or termination of the license, depending on the record type.

Section 73.71a Reporting of Safeguards Events for a GROA

Section 73.71a would be created to contain the safeguards reporting events that are specific to a GROA. A new section is being proposed because significant changes to this section have been proposed in the power reactor security rule and it could cause significant confusion to stakeholders to propose additional changes to the same section. A new reporting requirement is proposed that would require the DOE to promptly notify the NRC of any event involving an actual or imminent threat. Four-hour notification is being proposed for suspicious events and tampering events not otherwise covered under Appendix G. The provision for one-hour notifications for certain safeguards events (e.g., theft or unlawful diversion

of SNM, significant physical damage to any facility, entry of an unauthorized person into protected areas.) would be retained, with some modifications to include attempted actions and to broaden the scope of the language used for specified areas. The provisions for events to be recorded in the safeguards log would be retained with minor revisions. Requirements for making the required telephonic and written notifications are also proposed.

Appendix B to 10 CFR Part 73—General Criteria for Security Personnel

A new Section VII, “Geologic Repository Operations Area Training and Qualification Plan,” would contain the training and qualification requirements for security personnel. These new requirements would include additional physical requirements for unarmed security personnel to assure the personnel performing these functions meet physical requirements commensurate with their duties. Proposed new requirements also include a minimum age requirement of 18 years for unarmed responders, qualification scores for testing required by the training and qualification plan, qualification requirements for security trainers, qualification requirements of personnel assessing psychological qualifications, armorer certification requirements, and program requirements for on-the-job training.

Appendix C to 10 CFR Part 73—Licensee Safeguards Contingency Plans

A new Section III, “Geologic repository operations area safeguards contingency plans,” would establish the requirements that govern the development of the safeguards contingency plan for a GROA. Proposed requirements include specific references to personnel who function as drill and exercise controllers to ensure these persons are trained and qualified to execute their assigned duties. Drills and exercises are key elements to assuring the preparedness of the GROA security force and must be conducted in a manner that demonstrates the DOE’s ability to execute the protective strategy as described in the site security plans. Additionally drills and exercises must be performed properly to assure they do not negatively impact personnel or facility safety.

Appendix G to 10 CFR Part 73—Reportable Safeguards Events

The introductory paragraph would be revised to include a reference to §§ 73.71a and 73.53 to address the reporting provisions that would apply specifically to a GROA. The reporting

requirements would be revised to support the revised reporting requirements from proposed § 73.71a. Paragraph V would be added to require prompt reporting (not later than 15 minutes of discovery) after the discovery of an imminent or actual threat against the facility. Paragraph VI would contain the reports to be reported within one (1) hour. Paragraph VII would contain the events to be reported with four (4) hours. Paragraph VIII would contain the events to be recorded in the safeguards log.

Section 74.1 Purpose

Paragraph (b) would be revised to include a reference to §§ 60.21 and 63.21 to cover submittal of a license application for a GROA.

Section 74.2 Scope

Paragraph (b) would be revised to include a reference to the proposed Subpart F.

Section 74.4 Definitions

This section would be revised to add definitions for accounting, custodian, high-level radioactive waste, item control area, item control program, and material balance area.

Section 74.13 Material Status Reports

Paragraph (a) would be revised to require the submittal of Material Status Reports within 60 calendar days of the GROA physical inventory. This requirement was previously covered by § 72.76.

Section 74.17 Special Nuclear Material Physical Inventory Summary Report

Paragraph (d) would be added to require the DOE to submit Special Nuclear Material Physical Inventory Summary Reports for the GROA.

Section 74.19 Recordkeeping

Paragraphs (a) and (c) would be revised to exempt a GROA from the recordkeeping requirements because the recordkeeping requirements for a GROA would be specified in a new Subpart F.

Subpart F—Geologic Repository Operations Area

This new subpart would contain the MC&A requirements that are specific for a GROA. The new Subpart would contain requirements that are both risk informed and performance based.

Section 74.71 Nuclear Material Control and Accounting for a Geologic Repository Operations Area (GROA)

This new section would contain the MC&A general performance objectives (paragraph (a)), the systems capabilities

(paragraph (b)), and the implementation dates (paragraph (c)) for a GROA. Required systems capabilities and features would be commensurate with the kind, amount, and specifications of the SNM proposed to be possessed at a GROA.

Paragraph (a) would require the DOE to establish, implement, and maintain a Commission-approved MC&A program that meets the following performance objectives: (1) Maintain accurate, current, and reliable information on, and confirm the quantities and locations of, SNM; (2) detect, respond to, and resolve any anomalies indicating a possible loss of SNM; (3) permit rapid determination of whether an actual loss of a significant amount of SNM has occurred; (4) generate and provide, as requested, information to aid in the investigation and recovery of missing SNM; and (5) control access to MC&A information that might assist adversaries in possible attempts to carry out a theft or diversion, or to help target HLW for radiological sabotage.

Paragraph (b) would require the DOE to include the capabilities and features specified in Section 74.73 in the MC&A program.

Paragraph (c) would require the DOE to submit an MC&A plan that describes how the performance objectives would be achieved and the system capabilities would be met. The plan would be submitted no later than 180 days after the NRC issues a construction authorization for the GROA. Paragraph (c) would also require the DOE to implement the Commission-approved MC&A plan upon issuance of a license to receive and possess source, special nuclear, or byproduct material at the GROA or by a date specified in a license condition.

Section 74.73 Internal Controls, Inventory, and Records

This new section would establish the internal controls (paragraphs (b), (c), (d), (e), (f), (g), and (h)), inventory requirements (paragraph (i)), additional provisions for receipt of strategic SNM (paragraph (j)), and the recordkeeping requirements (paragraph (k)) for the MC&A program.

Paragraph (a) would require the DOE to establish and maintain the internal control, inventory, and recordkeeping capabilities that would be required by paragraphs (b) through (k).

Paragraph (b) would require the DOE to establish, document, and maintain a management structure that assures clear overall responsibility for the MC&A program, would be independent of other operations, and would provide for separation of key responsibilities. The

DOE would also be required to provide for the adequate review, approval, and use of written procedures.

Paragraph (c) would require the DOE to assure that personnel that work in key positions are trained to maintain a high-level of safeguards awareness and are qualified to perform their duties.

Paragraph (d) would require the DOE to perform and document independent reviews and assessments of the total MC&A program at intervals not to exceed 24 months.

Paragraph (e) would require the DOE to establish, document, implement, and maintain an item control program that: (1) Provides current knowledge of all HLW items with respect to unique identity, element and isotope content, and location from receipt to underground emplacement and possible retrieval and alternate storage; (2) assures that the integrity of items is maintained such that the unauthorized removal of SNM would be readily apparent; (3) maintains and follows procedures for any tamper-safing program that is to be used for assuring the validity of prior measurements; and (4) stipulates the use of the 2-person rule for sealing operations, affixing tamper-indicating devices, handling of bare fuel assemblies, performing physical inventories, and internal transfers.

Paragraph (f) would require the DOE to establish, implement, and maintain an anomaly, detection, and response program that incorporates checks and balances sufficient to thwart attempts to divert SNM and to detect falsification of data and reports that could conceal the theft or diversion of SNM. The program would also be required to detect and respond to a potential loss or misuse of SNM, including the theft or diversion of SNM by an internal threat using collusion, stealth, and deceit. The overall design of the detection and response program would need to include an analysis of conceivable ways and means through which clandestine attempts of theft, diversion, or other misuse might occur.

Paragraph (g) would require the DOE to establish, document, implement, and maintain a program to reasonably assure the validity of assigned SNM quantities, including a measurement system and a measurement control program that maintains a level of effectiveness sufficient to satisfy the capabilities required for resolving anomalies, as needed.

Paragraph (h) would require the DOE to provide information to the NRC or other agencies deemed necessary for conducting an investigation of actual (or highly suspected) events pertaining to

missing SNM and information relevant to recovery of the SNM.

Paragraph (i) would require the DOE to perform a facility-wide physical inventory of all possessed SNM to close material balances at intervals not to exceed 12 calendar months. The paragraph would further require the DOE to provide written instructions for conducting the physical inventories. Within 60 days after the start of the inventory, the DOE would be required to reconcile and adjust the book record, as appropriate, to the results of the physical inventory and to investigate and resolve, or report any unresolved inventory difference or discrepancy to the NRC.

Paragraph (j) would require the DOE to establish additional measures, if the DOE were to receive formula quantities of strategic SNM that are in a form other than irradiated reactor fuel or high-level radioactive waste. These additional measures include: (1) Item-monitoring features as specified in § 74.55; (2) alarm resolution as specified in § 74.57; (3) quality assurance and accounting capabilities as specified in § 74.59; (4) establishment of controlled areas for strategic SNM; and (5) semi-annual physical inventories of all strategic SNM.

Paragraph (k) would require the DOE to establish records that demonstrate that the requirements have been met, to maintain the records in duplicate in an auditable form, and to retain the records until the Commission terminates the GROA license. The paragraph also requires the DOE to retain procedures until the Commission terminates the license, with superceded portions of a procedure to be retained for 3 years after the portion is superceded. The DOE would also be required to maintain adequate safeguards against tampering with and loss of records. The DOE must also satisfy the requirements of 10 CFR 60.71 or 63.71 for records on the receipt, handling, and disposition of radioactive waste at a GROA.

IV. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), as amended, the Commission is proposing to amend 10 CFR parts 60, 63, 73, and 74 under one or more of Sections 161b, 161i, or 161o of the AEA. Criminal penalties, as they apply to regulations in part 73, are discussed in § 73.81. The new §§ 73.53, 73.56a, and 73.71a are issued under Sections 161b, 161i, or 161o of the AEA, and are not included in § 73.81(b). Criminal penalties, as they apply to regulations in part 74, are discussed in § 74.84. The new §§ 74.71 and 74.73 are issued under Sections 161b, 161i, or

1610 of the AEA, and are not included in § 74.84(b). Willful violations of the rule would be subject to criminal enforcement.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations.

VI. Plain Language

The Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would establish security and MC&A requirements for a GROA. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Finding of No Significant Environmental Impact

Pursuant to Section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of Section 102(2) of such act.

IX. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule of limited applicability affect one respondent, which is a federal entity. Therefore, Office of Management and Budget approval is not required pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

X. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing of one entity, the DOE, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552; the NRC is proposing to adopt the following amendments to 10 CFR parts 60, 63, 73, and 74:

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. In § 60.21, paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 60.21 Content of application.

* * * * *

(b) * * *

(3) A description of the security measures for physical protection of high-level radioactive waste and other radioactive material in accordance with § 73.53 of this chapter. This description must include a description of the design for physical protection, the safeguards contingency plan, and security organization personnel training and qualification plan. The description must list tests, inspections, audits, and other

means to be used to demonstrate compliance with such requirements.

(4) A description of the material control and accounting program to meet the requirements of §§ 74.11, 74.13, 74.15, 74.17, 74.71, and 74.73 of this chapter.

* * * * *

3. In § 60.24, paragraph (d) is added to read as follows:

§ 60.24 Updating of application and environmental impact statement.

* * * * *

(d) DOE shall supplement its application no later than 180 days after the NRC issues a construction authorization for the GROA with the submittal of the following plans:

- (1) Physical Security Plan;
- (2) Training and Qualification Plan;
- (3) Safeguards Contingency Plan; and
- (4) Material Control and Accounting Plan.

4.

Section 60.78 is revised to read as follows:

§ 60.78 Criticality reporting.

(a) DOE shall notify the NRC Operations Center³ within one hour of discovery of any case of accidental criticality.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if DOE is party to that system. If the Emergency Notification System is inoperative or unavailable, DOE shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

5. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

6. In § 63.21, paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 63.21 Content of application.

* * * * *

(b) * * *

(3) A description of the security measures for physical protection of high-level radioactive waste and other radioactive material in accordance with § 73.53 of this chapter. This description must include the description of the design for physical protection, the safeguards contingency plan, and security organization personnel training and qualification plan. The description must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

(4) A description of the material control and accounting program to meet the requirements of §§ 74.11, 74.13, 74.15, 74.17, 74.71, and 74.73 of this chapter.

* * * * *

7. In § 63.24, paragraph (d) is added to read as follows:

§ 63.24 Updating of application and environmental impact statement.

* * * * *

(d) DOE shall supplement its application no later than 180 days after the NRC issues a construction authorization for the GROA with the submittal of the following plans:

- (1) Physical Security Plan;
- (2) Training and Qualification Plan;
- (3) Safeguards Contingency Plan; and
- (4) Material Control and Accounting Plan.

8. Section 63.78 is revised to read as follows:

§ 63.78 Criticality reporting.

(a) DOE shall notify the NRC Operations Center³ within one hour of discovery of any case of accidental criticality.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if DOE is party to that system. If the Emergency Notification System is inoperative or unavailable, DOE shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour.

9. Section 63.161 is revised to read as follows:

§ 63.161 Emergency plan for the geologic repository operations area through permanent closure.

DOE shall develop and be prepared to implement a plan to provide reasonable assurance that adequate protective

measures can and will be taken in the event of a radiological emergency at the geologic repository operations area, at any time before permanent closure and decontamination or decontamination and dismantlement of surface facilities. The emergency plan must be based on the criteria of § 72.32(b) of this chapter.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

10. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169) and under sec. 652, Pub. L. 109–58, 119 Stat. 810 (42 U.S.C. 2169).

11. In § 73.2, definitions for “*high-level radioactive waste*” and “*target set for a geologic repository operations area*” are added in alphabetical order to read as follows:

§ 73.2 Definitions.

* * * * *

High-level radioactive waste or *HLW* means:

- (1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;
- (2) Irradiated reactor fuel; and
- (3) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

* * * * *

Target set for a geologic repository operations area means the combination of equipment or operator actions which, if all are prevented from performing their intended safety function or prevented from being accomplished, would likely result in significant operational disruption or radiological contamination barring extraordinary action by site operators. For a geological repository operations area (GROA), a target set means quantities and form of high-level radioactive waste and other radioactive material and the protective and mitigative measures to protect against potential large scale releases of

³ Commercial telephone number of the NRC Operations Center is (301) 816–5100.

³ Commercial telephone number of the NRC Operations Center is (301) 816–5100.

fission products from malevolent actions.

* * * * *

12. In § 73.50, the introductory paragraph is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

Each licensee who is not subject to §§ 73.51 or 73.53, but who possesses, uses, or stores formula quantities of strategic special nuclear material that are not readily separable from other radioactive material and which have total external radiation dose rates in excess of 100 rems per hour at a distance of 3 feet from any accessible surfaces without intervening shielding other than at a nuclear reactor facility licensed pursuant to part 50 of this chapter, shall comply with the following:

* * * * *

13. In § 73.51, the heading is revised and paragraph (a) is revised to read as follows:

§ 73.51 Requirements for physical protection of stored spent nuclear fuel and high-level radioactive waste.

(a) *Applicability.* Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to each licensee that stores spent nuclear fuel and high-level radioactive waste pursuant to paragraphs (a)(1) and (2) of this section. This includes spent nuclear fuel and high-level radioactive waste stored under a specific license issued pursuant to part 72 of this chapter:

(1) At an independent spent fuel storage installation (ISFSI) or

(2) At a monitored retrievable storage (MRS) installation.

* * * * *

14. Section 73.53 is added to read as follows:

§ 73.53 Requirements for physical protection of a geologic repository operations area.

(a) *Applicability.* Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to DOE for its activities at the geologic repository operations area (GROA) pursuant to a license issued under Part 60 or 63 of this chapter.

(b) *Submittal and implementation dates.* (1) DOE shall submit a Physical Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan that delineate how the requirements of this section will be met. The security plans must be submitted no later than 180 days after the NRC issues a construction authorization for

the GROA. The Commission-approved security plans must be implemented upon the Commission's issuance of a license to receive and possess source, special nuclear, or byproduct material at the GROA or by the date specified in a license condition.

(2) DOE is exempt from the requirements of this section after permanent closure of the GROA.

(c) *Performance objectives*—(1) *General.* DOE shall establish, implement, and maintain an onsite physical protection program and security organization which will have as its objective to provide high assurance that activities involving radioactive waste are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.

(2) *Radioactive waste containing strategic special nuclear material.* For formula quantities of strategic special nuclear material, DOE shall establish and maintain, or make arrangements for, a physical protection system designed to detect, assess, intercept, challenge, delay, and neutralize security-related events specified for theft or diversion of strategic special nuclear material and radiological sabotage as stated in § 73.1(a).

(3) *Radioactive waste not containing strategic special nuclear material.* (i) For radioactive material that could result in a significant radiological sabotage event releasing radioactive materials in sufficient quantity such that any individual located at the controlled area boundary, or 400 meters (1300 ft), whichever is less, could receive a total effective dose equivalent equal to or greater than 0.25 Sv (25 rem), DOE shall establish and maintain, or make arrangements for, a physical protection system designed to detect, assess, intercept, challenge, delay and neutralize security-related events specified for radiological sabotage as stated in § 73.1(a)(1).

(ii) For radioactive material that could result in a moderate radiological sabotage event releasing radioactive materials in sufficient quantity such that any individual located at the controlled area boundary, or 400 meters (1300 ft), whichever is less, could receive a total effective dose equivalent equal to or greater than 0.05 Sv (5 rem) but less than 0.25 Sv (25 rem), DOE shall establish and maintain, or make arrangements for, a physical protection system designed to detect, assess, intercept, challenge, delay and neutralize, impede, or mitigate security-related events specified for radiological sabotage. DOE must protect against an adversary force that is well-trained

(including military training and skills) and contains dedicated individuals. The adversary force may include assistance from an inside knowledgeable individual participating in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both. The adversary force may be armed with suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, and be equipped with hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying the facility, transporter, or container integrity or features of the safeguards system. The adversary force may use a four-wheel drive land vehicle used for transporting personnel and their hand-carried equipment or land vehicle bomb to the proximity of vital areas.

(iii) For all other radioactive material containing special nuclear material, DOE shall establish and maintain, or make arrangements for, a physical protection system designed to detect, assess, intercept, challenge, delay, and prevent the removal of special nuclear material from the protected area for security-related events specified for theft or diversion. DOE must protect against an adversary force that is well-trained (including military training and skills) and contains dedicated individuals. The adversary force may include assistance from an inside knowledgeable individual participating in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both. The adversary force may be armed with suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, and be equipped with hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying the facility, transporter, or container integrity or features of the safeguards system. The adversary force may use a four-wheel drive land vehicle used for transporting personnel and their hand-carried equipment or land vehicle bomb to the proximity of vital areas.

(iv) For other solidified radioactive material and Appendix P to part 110—Category 1 and 2 Radioactive Material, DOE shall establish and maintain or make arrangements for a physical protection system designed to:

(A) Minimize the possibilities for unauthorized access to the radioactive material;

(B) Prevent or impede the removal of the radioactive material from the controlled area;

(C) Facilitate the location and prompt recovery of lost, stolen, or missing radioactive material; and

(D) Mitigate potential consequences of such security-related events.

(d) *General requirements.* DOE shall:

(1) Design and implement the physical protection program to satisfy the performance requirements of this section and ensure that no single act can disable the personnel, equipment, or systems necessary to prevent the theft of strategic special nuclear material and significant radiological sabotage. The physical protection program must include diverse and redundant equipment, systems, technology, programs, supporting processes, and implementing procedures;

(2) Establish and maintain a written performance evaluation program in accordance with Appendix B and Appendix C to this part, to demonstrate and assess the effectiveness of armed responders and armed security officers to perform their assigned duties and responsibilities to protect target sets described in paragraph (h) of this section and Appendix C to this part, through implementation of the DOE protective strategy. Except, the requirement for annual force-on-force exercises only applies to formula quantities of strategic special nuclear material and significant radiological sabotage consequence target sets;

(3) Establish, maintain, and follow an access authorization program for protected and vital areas that meets the requirements of § 73.56a and § 73.57;

(4) Develop, implement, and maintain an insider mitigation program. The insider mitigation program must be designed to oversee and monitor the initial and continuing trustworthiness and reliability of individuals granted or retaining unescorted access authorization to a protected or vital area and implement defense-in-depth methodologies to minimize the potential for an insider to adversely affect, either directly or indirectly, DOE capability to prevent theft, diversion, and radiological sabotage of high-level radioactive waste; and

(5) Ensure that its corrective action program assures that failures, malfunctions, deficiencies, deviations, defective equipment, and nonconformances in security program components, functions, or personnel are promptly identified and corrected. Measures shall ensure that the cause of

any of these conditions is determined and that corrective action is taken to preclude repetition.

(e) *Security plans.* DOE shall:

(1) Develop security plans that implement Commission requirements and that identify:

(i) How the physical protection program will prevent the theft or diversion and radiological sabotage of special nuclear and byproduct materials through the establishment and maintenance of a security organization, the use of security equipment and technology, the training and qualification of security personnel, and the implementation of predetermined response plans and strategies; and

(ii) Site-specific conditions that affect implementation of Commission requirements.

(2) Protect the security plans and other related safeguards information against unauthorized disclosure in accordance with the requirements of § 73.21 or Executive Order 12958, as appropriate.

(3) Establish, implement, and maintain written procedures that document the structure of the security organization, detail the specific duties and responsibilities of each position, and implement Commission requirements through the approved security plans. Implementing procedures must detail the specific actions to be taken and decisions to be made by each position of the security organization to implement the approved security plans.

(4) Develop, implement, and maintain a process for DOE's written approval of implementing procedures and revisions to those procedures. The process shall ensure that implementing procedures and revisions to the procedures do not decrease the effectiveness of the security plans.

(5) Revise approved security plans as necessary to ensure the effective implementation of Commission regulations and DOE's protective strategy. Commission approval of revisions made pursuant to this paragraph is not required, provided that the revisions make no change that would decrease the effectiveness of any security plan prepared pursuant to this section. DOE shall submit a report containing a description of each change within six months after the change is made. DOE shall submit any change that decreases the effectiveness of any security plan for NRC approval pursuant to §§ 60.45 or 63.45 of this chapter.

(6) Establish, implement, and maintain a Commission-approved physical security plan that identifies how the performance objective and

requirements set forth in this section will be implemented. The physical security plan must describe the facility location and layout; the security organization and structure; duties and responsibilities of personnel; and defense-in-depth implementation that describes components, equipment, and technology used. The physical security plan must include an assessment of radiological sabotage security events against the radiological dose criteria to determine the appropriate protective strategy for identified target sets described in paragraph (h) of this section.

(7) Establish, maintain, and follow a Commission-approved training and qualification plan that identifies how the criteria set forth in Appendix B, "General Criteria for Security Personnel," Section VII, to this part will be implemented. The training and qualification plan must describe the process by which armed and unarmed security personnel, watch persons, and other members of the security organization will be selected, trained, equipped, tested, qualified, and requalified to ensure that these individuals possess and maintain the knowledge, skills, and abilities required to carry out their assigned duties and responsibilities effectively.

(8) Establish, implement, and maintain a Commission-approved safeguards contingency plan that describes how the criteria set forth in Appendix C, "Licensee Safeguards Contingency Plans," Section III, to this part will be implemented. The safeguards contingency plan must describe predetermined actions, plans, and strategies designed to respond to security related events.

(f) *Security organization.* DOE:

(1) Shall establish and maintain a security organization designed, staffed, trained, and equipped to provide early detection, assessment, and response to unauthorized activities within any area of the facility. The security organization must include:

(i) A management system that provides oversight of the onsite physical protection program; and

(ii) At least one member, onsite and available at all times, who has the authority to direct the activities of the security organization and who is assigned no other duties that would interfere with this individual's ability to perform these duties in accordance with the approved security plans and licensee's protective strategy.

(2) Shall not permit any individual to act as a member of the security organization unless the individual has been trained, equipped, and qualified to

perform assigned duties and responsibilities in accordance with the requirements of Appendix B, Section VII, to this part and the Commission-approved training and qualification plan.

(3) Shall not assign an individual to any position involving detection, assessment, or response to unauthorized activities unless that individual has satisfied the requirements of § 73.56a.

(4) Shall ensure that any written agreement with any contractor used to implement the onsite physical protection program must be retained as a record for the duration of the contract, and the agreement must clearly state the following conditions:

(i) DOE is responsible to the Commission for maintaining the physical protection program in accordance with Commission orders, Commission regulations, and the approved security plans;

(ii) The Commission may inspect, copy, retain, and remove all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether the reports and documents are kept by DOE or the contractor;

(iii) An individual may not be assigned to any position involving detection, assessment, or response to unauthorized activities unless that individual has satisfied the requirements of § 73.56a;

(iv) An individual may not be assigned duties and responsibilities required to implement the approved security plans or DOE protective strategy unless that individual has been properly trained, equipped, and qualified to perform his or her assigned duties and responsibilities in accordance with Appendix B, Section VII, to this part and the Commission-approved training and qualification plan; and

(v) Upon the request of an authorized representative of the Commission, the contractor security employees shall demonstrate the ability to perform their assigned duties and responsibilities effectively.

(g) *Physical barriers.* DOE shall establish and maintain physical barriers in the controlled area to deter, delay, or prevent unauthorized access; facilitate the early detection of unauthorized activities; and control approach routes to the facility. Based upon DOE's protective strategy, analyses, and site conditions that affect the use and placement of physical barriers, DOE shall install and maintain physical barriers that are designed and constructed as necessary to deter, delay, and prevent the introduction of

unauthorized personnel, vehicles, or materials into areas for which access must be controlled or restricted.

(1) DOE shall describe in the approved security plans, the design, construction, and function of physical barriers and barrier systems used and shall ensure that each barrier and barrier system is designed and constructed to satisfy the stated function of the barrier and barrier system.

(2) DOE shall retain in accordance with § 73.70, all analyses, comparisons, and descriptions of the physical barriers and barrier systems used to satisfy the requirements of this section, and shall protect these records as safeguards information in accordance with the requirements of § 73.21.

(3) Physical barriers must:

(i) Clearly delineate the boundaries of the area(s) for which the physical barrier provides protection or a function, such as protected and vital area boundaries and standoff distance;

(ii) Be designed and constructed to protect against security-related events as specified by the Commission, commensurate to the required function of each barrier and in support of the DOE's protective strategy;

(iii) Provide visual deterrence, delay, and support access control measures; and

(iv) Support effective implementation of DOE's protective strategy.

(4) *Isolation zone.* (i) An isolation zone must be maintained in outdoor areas adjacent to the protected area perimeter barrier. The isolation zone shall be:

(A) Designed and of sufficient size, typically 6.1 m (20 feet) wide, to permit unobstructed observation and assessment of activities on either side of the protected area barrier; and

(B) Equipped with intrusion detection equipment capable of detecting both attempted and actual penetration of the protected area perimeter barrier and assessment equipment capable of facilitating timely evaluation of the detected unauthorized activities before completed penetration of the protected area perimeter barrier.

(ii) Assessment equipment in the isolation zone must provide real-time and play-back/recorded video images in a manner that allows timely evaluation of any detected unauthorized activities before and after each alarm annunciation.

(iii) Parking facilities, storage areas, or other obstructions that could provide concealment or otherwise interfere with the DOE's capability to meet the requirements of paragraphs (g)(5)(i)(A) and (g)(5)(i)(B) must be located outside of the isolation zone.

(5) *Protected area.* (i) The protected area perimeter must be protected by physical barriers designed and constructed to meet Commission requirements, and all penetrations through this barrier must be secured in a manner that prevents or delays and detects the exploitation of any penetration.

(ii) The protected area perimeter physical barriers must be separated from any other barrier designated as a vital area physical barrier, unless otherwise identified in the approved physical security plan.

(iii) All emergency exits in the protected area must be secured by locking devices that allow exit only and are alarmed.

(iv) The central alarm station and the location, within which the last access control function for access to the protected area is performed, must be bullet-resisting.

(v) All exterior areas within the protected area must be periodically checked to detect and deter unauthorized activities, personnel, vehicles, and materials.

(6) *Vital areas.* (i) Vital equipment must be located only within vital areas, which in turn must be located within protected areas so that access to vital equipment requires passage through at least two physical barriers designed and constructed to perform the required function, except as otherwise approved by the Commission in accordance with paragraph (h)(3) of this section.

(ii) More than one vital area may be located within a single protected area.

(iii) Secondary power supply systems for intrusion detection and assessment equipment, nonportable communications equipment, and the alarm stations, must be provided protection equivalent to vital equipment located within a vital area.

(iv) Vital equipment that is undergoing maintenance or is out of service, or any other change to site conditions that could adversely affect plant safety or security, must be identified in accordance with paragraph (t) of this section, and adjustments must be made to the site protective strategy, site procedures, and approved security plans, as necessary.

(v) DOE shall protect all vital areas, vital area access portals, and vital area emergency exits with intrusion detection equipment and locking devices. Emergency exit locking devices shall be designed to permit exit only.

(vi) Unoccupied vital areas must be locked.

(7) *Vehicle barrier system.* DOE must:

(i) Prevent unauthorized vehicle access or proximity to any area from

which any vehicle, its personnel, or its contents could disable the personnel, equipment, or systems necessary to meet the performance objectives and requirements described in paragraphs (c) and (d) of this section, as appropriate;

(ii) Limit and control all vehicle approach routes;

(iii) Design and install a vehicle barrier system, to include passive and active barriers, at a standoff distance adequate to protect personnel, equipment, and systems against security-related events as specified by Commission requirements;

(iv) Deter, detect, delay, or prevent vehicle use as a means of transporting unauthorized personnel or materials to gain unauthorized access beyond a vehicle barrier system, gain proximity to a protected area or vital area, or otherwise penetrate the protected area perimeter;

(v) Periodically check the operation of active vehicle barriers and provide a secondary power source or a means of mechanical or manual operation, in the event of a power failure, to ensure that the active barrier can be placed in the denial position within the time line required to prevent unauthorized vehicle access beyond the required standoff distance; and

(vi) Provide surveillance and observation of vehicle barriers and barrier systems to detect unauthorized activities and to ensure the integrity of each vehicle barrier and barrier system.

(8) *Unattended openings.* Unattended openings in any barrier established to meet the requirements of this section that are 620 cm² (96.1 in²) or greater in total area and have a smallest dimension of 15 cm (5.9 in) or greater, must be secured and monitored at a frequency that would prevent exploitation of the opening consistent with the intended function of each barrier.

(h) *Target sets.* DOE shall:

(1) Document in site procedures the process used to develop and identify target sets, to include analyses and methodologies used to determine and group the target set equipment or elements.

(2) Consider the effects that cyber attacks may have upon individual equipment or elements of each target set or grouping.

(3) Explicitly identify in the approved security plans any target set equipment or elements that are not contained within a protected or vital area. Protective measures for such equipment or elements must be addressed by DOE's protective strategy in accordance with Appendix C to this part.

(4) Implement a program for the oversight of plant equipment and systems documented as part of DOE's protective strategy to ensure that changes to the configuration of the identified equipment and systems do not compromise DOE's capability to prevent or mitigate radiological sabotage.

(i) *Access control.* DOE shall establish an access control program with the features described in paragraphs (i)(1) through (i)(8) of this section.

(1) *General.* DOE shall:

(i) Control all points of personnel, vehicle, and material access into any area, or beyond any physical barrier or barrier system, established to meet the requirements of this section;

(ii) Control all points of personnel and vehicle access into vital areas in accordance with access authorization lists;

(iii) During nonemergency conditions, limit unescorted access to the protected area and vital areas to only those individuals who require unescorted access to perform assigned duties and responsibilities;

(iv) Monitor and ensure the integrity of access control systems;

(v) Provide supervision and control over the badging process to prevent unauthorized bypass of control equipment located at or outside of the protected area;

(vi) Isolate the individual responsible for the last control function (controlling admission to the protected area) within a bullet-resisting structure to assure the ability to respond or to summon assistance in response to unauthorized activities; and

(vii) In response to a specific threat and security information, implement a two (2) person (line-of-sight) rule for all personnel in vital areas so that no one individual is permitted unescorted access to vital areas. Under these conditions, DOE shall implement measures to verify that the two-person rule has been met when a vital area is accessed.

(2) *Confirmation, verification, and search.* In accordance with the approved security plans and before granting unescorted access through an access control point, DOE shall:

(i) Confirm the identity of individuals;

(ii) Verify the authorization for access of individuals, vehicles, and materials; and

(iii) Search individuals, vehicles, packages, deliveries, and materials in accordance with paragraph (j) of this section.

(3) *Access control points.* Access control points must be:

(i) Equipped with locking devices, intrusion detection equipment, and monitoring, observation, and surveillance equipment, as appropriate; and

(ii) Located outside or concurrent with, the physical barrier system through which it controls access.

(4) *Emergency conditions.* DOE shall:

(i) Design the access control system to accommodate the potential need for rapid ingress or egress of authorized individuals during emergency conditions or situations that could lead to emergency conditions;

(ii) Under emergency conditions, implement procedures to ensure that:

(A) Authorized emergency personnel are provided prompt access to affected areas and equipment;

(B) Attempted or actual unauthorized entry to vital equipment is detected; and

(C) The capability to prevent or mitigate radiological sabotage is maintained.

(iii) Ensure that restrictions for site access and egress during emergency conditions are coordinated with responses by emergency support organizations identified in the emergency plans required by § 60.21(c)(9) or § 63.161 of this chapter.

(5) *Vehicles.* (i) DOE shall exercise control over all vehicles while inside the protected area and vital areas to ensure that they are used only by authorized persons and for authorized purposes.

(ii) Vehicles inside the protected area or vital areas must be operated by an individual authorized unescorted access to the area, or must be escorted by an individual trained, qualified, and equipped to perform vehicle escort duties, while inside the area.

(iii) Vehicles inside the protected area must be limited to facility functions or emergencies, and must be disabled when not in use.

(iv) Vehicles transporting hazardous materials inside the protected area must be escorted by an armed member of the security organization.

(6) *Access control devices—(i) Identification badges.* DOE shall implement a numbered photo identification badge/key-card system for all individuals authorized unescorted access to the protected area and vital areas.

(A) Identification badges may be removed from the protected area only when measures are in place to confirm the true identity and authorization for unescorted access of the badge holder before allowing unescorted access to the protected area.

(B) Except where operational safety concerns require otherwise,

identification badges must be clearly displayed by all individuals while inside the protected area and vital areas.

(C) DOE shall maintain a record, to include the name and areas to which unescorted access is granted, of all individuals to whom photo identification badge/key-cards have been issued.

(ii) *Keys, locks, combinations, and passwords.* All keys, locks, combinations, passwords, and related access control devices used to control access to protected areas, vital areas, security systems, and safeguards information must be controlled and accounted for to reduce the probability of compromise. DOE shall:

(A) Issue access control devices only to individuals who require unescorted access to perform official duties and responsibilities;

(B) Maintain a record, to include name and affiliation, of all individuals to whom access control devices have been issued, and implement a process to account for access control devices at least annually;

(C) Implement compensatory measures upon discovery or suspicion that any access control device may have been compromised. Compensatory measures must remain in effect until the compromise is corrected;

(D) Retrieve, change, rotate, deactivate, or otherwise disable access control devices that have been, or may have been, compromised; and

(E) Retrieve, change, rotate, deactivate, or otherwise disable all access control devices issued to individuals who no longer require unescorted access to the areas for which the devices were designed.

(7) *Visitors.* (i) DOE may permit escorted access to the protected area to individuals who do not have unescorted access authorization in accordance with the requirements of § 73.56a of this part and part 26 of this chapter. DOE shall:

(A) Implement procedures for processing, escorting, and controlling visitors;

(B) Confirm the identity of each visitor through physical presentation of a recognized identification card issued by a local, State, or Federal Government agency that includes a photo or contains physical characteristics of the individual requesting escorted access;

(C) Maintain a visitor control register in which all visitors shall register their name, date, time, purpose of visit, employment affiliation, citizenship, and name of the individual to be visited before being escorted into any protected or vital area;

(D) Issue a visitor badge to all visitors that clearly indicates that an escort is required; and

(E) Escort all visitors, at all times, while inside the protected area and vital areas.

(ii) Individuals not employed by DOE, but who require frequent and extended unescorted access to the protected area and vital areas, shall satisfy the access authorization requirements of § 73.56a and part 26 of this chapter and shall be issued a nonemployee photo identification badge that is easily distinguished from other identification badges before being allowed unescorted access to the protected area. Nonemployee photo identification badges must indicate:

(A) Nonemployee, no escort required;

(B) Areas to which access is authorized;

(C) The period for which access is authorized;

(D) The individual's employer; and

(E) A means to determine the individual's emergency plan assembly area.

(8) *Escorts.* DOE shall ensure that all escorts are trained in accordance with Section VII of Appendix B to this part, the approved training and qualification plan, and DOE policies and procedures.

(i) Escorts shall be authorized unescorted access to all areas in which they will perform escort duties.

(ii) Individuals assigned to escort visitors shall be provided a means of timely communication with both alarm stations in a manner that ensures the ability to summon assistance when needed.

(iii) Individuals assigned to vehicle escort duties shall be provided a means of continuous communication with both alarm stations to ensure the ability to summon assistance when needed.

(iv) Escorts shall be knowledgeable of those activities that are authorized to be performed within the areas for which they are assigned to perform escort duties and must also be knowledgeable of those activities that are authorized to be performed by any individual for which the escort is assigned responsibility.

(v) Visitor-to-escort ratios shall be limited to 10 to 1 in the protected area and 5 to 1 in vital areas, provided that the necessary observation and control requirements of this section can be maintained by the assigned escort over all visitor activities.

(j) *Search programs.* (1) At each designated access control point into the DOE-controlled area and protected areas, DOE shall search individuals, vehicles, packages, deliveries, and materials in accordance with the

requirements of this section and the approved security plans, before granting access.

(i) The objective of the search program must be to deter, detect, and prevent the introduction of unauthorized firearms, explosives, incendiary devices, or other unauthorized materials and devices into designated areas in which the unauthorized items could be used to disable personnel, equipment, and systems necessary to meet the performance objectives and requirements of paragraphs (c) and (d) of this section, as appropriate.

(ii) The search requirements for unauthorized firearms, explosives, incendiary devices, or other unauthorized materials and devices must be accomplished through the use of equipment capable of detecting these unauthorized items and through visual and hands-on physical searches, as needed to ensure all items are identified before granting access.

(iii) Only trained and qualified members of the security organization, and other trained and qualified personnel designated by DOE, shall perform search activities or be assigned duties and responsibilities required to satisfy observation requirements for the search activities.

(2) DOE shall establish and implement written search procedures for all access control points before granting access to any individual, vehicle, package, delivery, or material.

(i) Search procedures must ensure that items possessed by an individual, or contained within a vehicle or package, must be clearly identified as not being a prohibited item before granting access beyond the access control point for which the search is conducted.

(ii) DOE shall visually and physically hand search all individuals, vehicles, and packages containing items that cannot be or are not clearly identified by search equipment.

(3) Whenever search equipment is out of service or is not operating satisfactorily, trained and qualified members of the security organization shall conduct a hands-on physical search of all individuals, vehicles, packages, deliveries, and materials that would otherwise have been subject to equipment searches.

(4) When an attempt to introduce unauthorized items has occurred or is suspected, DOE shall implement actions to ensure that the suspect individuals, vehicles, packages, deliveries, and materials are denied access and shall perform a visual and hands-on physical search to determine the absence or existence of a threat.

(5) Vehicle search procedures must be performed by at least two (2) properly trained and equipped security personnel, at least one of whom is positioned to observe the search process and provide a timely response to unauthorized activities, if necessary.

(6) Vehicle areas to be searched must include, but are not limited to, the cab, engine compartment, undercarriage, and cargo area.

(7) Vehicle search checkpoints must be equipped with video surveillance equipment that must be monitored by an individual capable of initiating and directing a timely response to unauthorized activity.

(8) Exceptions to the search requirements of this section must be submitted to the Commission for prior review and approval and must be identified in the approved security plans.

(i) Vehicles and items that may be excepted from the search requirements of this section must be escorted by an armed individual who is trained and equipped to observe offloading and perform search activities at the final destination within the protected area.

(ii) To the extent practicable, items excepted from search must be off loaded only at specified receiving areas that are not adjacent to a vital area.

(iii) The excepted items must be searched at the receiving area and opened at the final destination by an individual familiar with the items.

(k) *Detection and assessment systems.*

(1) DOE shall establish and maintain an intrusion detection and assessment system that must provide, at all times, the capability for early detection and assessment of unauthorized persons and activities.

(2) Intrusion detection equipment must annunciate, and video assessment equipment images shall display, concurrently in at least two (2) continuously staffed onsite alarm stations, both of which must be protected in accordance with the requirements of paragraphs (g)(5)(iv), (g)(6)(iii), and (k)(8)(ii) of this section.

(3) DOE's intrusion detection system must be designed to ensure that both alarm station operators:

(i) Are concurrently notified of the alarm annunciation;

(ii) Are capable of making a timely assessment of the cause of each alarm annunciation; and

(iii) Possess the capability to initiate a timely response in accordance with the approved security plans, licensee protective strategy, and implementing procedures.

(4) Both alarm stations must be equipped with equivalent capabilities

for detection and communication, and must be equipped with functionally equivalent assessment, monitoring, observation, and surveillance capabilities to support the effective implementation of the approved security plans and DOE protective strategy in the event that either alarm station is disabled.

(i) DOE shall ensure that a single act cannot remove the capability of both alarm stations to detect and assess unauthorized activities, respond to an alarm, summon assistance, implement the protective strategy, provide command and control, or otherwise prevent radiological sabotage or mitigate consequences.

(ii) The alarm station functions in paragraph (k)(4) of this section must remain operable from an uninterruptible backup power supply in the event of the loss of normal power.

(5) *Detection.* Detection capabilities must be provided by security organization personnel and intrusion detection equipment, and shall be defined in implementing procedures. Intrusion detection equipment must be capable of operating as intended under the conditions encountered at the facility.

(6) *Assessment.* Assessment capabilities must be provided by security organization personnel and video assessment equipment, and shall be described in implementing procedures. Video assessment equipment must be capable of operating as intended under the conditions encountered at the facility and must provide video images from which accurate and timely assessments can be made in response to an alarm annunciation or other notification of unauthorized activity.

(7) *Intrusion system capabilities.* DOE intrusion detection and assessment system must:

(i) Ensure that the duties and responsibilities assigned to personnel, the use of equipment, and the implementation of procedures provide the detection and assessment capabilities necessary to meet the requirements of paragraph (d) of this section;

(ii) Ensure that annunciation of an alarm indicates the type and location of the alarm;

(iii) Ensure that alarm devices, to include transmission lines to annunciators, are tamper indicating and self-checking;

(iv) Provide visual and audible alarm annunciation and concurrent video assessment capability to both alarm stations in a manner that ensures timely recognition, acknowledgment and

response by each alarm station operator in accordance with written response procedures;

(v) Provide an automatic indication when the alarm system or a component of the alarm system fails, or when the system is operating on the backup power supply; and

(vi) Maintain a record of all alarm annunciations, the cause of each alarm, and the disposition of each alarm.

(8) *Alarm stations.* (i) Both alarm stations must be continuously staffed by at least one trained and qualified member of the security organization.

(ii) The interior of the alarm stations must not be visible from the perimeter of the protected area.

(iii) DOE must not permit any activities to be performed within either alarm station that would interfere with an alarm station operator's ability to effectively execute assigned detection, assessment, surveillance, and communication duties and responsibilities.

(iv) DOE shall assess and respond to all alarms and other indications of unauthorized activities in accordance with the approved security plans and implementing procedures.

(v) DOE's implementing procedures must ensure that both alarm station operators are knowledgeable of all alarm annunciations, assessments, and final disposition of all alarms, to include, but not limited to, a prohibition from changing the status of a detection point or deactivating a locking or access control device at a protected or vital area portal, without the knowledge and concurrence of the other alarm station operator.

(9) *Surveillance, observation, and monitoring.*

(i) The physical protection program must include the capability for surveillance, observation, and monitoring in a manner that provides early detection and assessment of unauthorized activities.

(ii) DOE shall provide continual surveillance, observation, and monitoring of all areas identified in the approved security plans as requiring surveillance, observation, and monitoring to ensure early detection of unauthorized activities and to ensure the integrity of physical barriers or other components of the physical protection program.

(A) Continual surveillance, observation, and monitoring responsibilities must be performed by security personnel during routine patrols or by other trained and equipped personnel designated as a component of the protective strategy.

(B) Surveillance, observation, and monitoring requirements may be accomplished by direct observation or video technology.

(iii) DOE shall provide random patrols of all accessible areas containing target set equipment.

(A) Armed security patrols shall periodically check designated areas and shall inspect vital area entrances, portals, and external barriers.

(B) Physical barriers must be inspected at random intervals to identify tampering and degradation.

(C) Security personnel shall be trained to recognize indications of tampering, as necessary, to perform assigned duties and responsibilities as they relate to safety and security systems and equipment.

(iv) Unattended openings that are not monitored by intrusion detection equipment must be observed by security personnel at a frequency that would prevent exploitation of that opening.

(v) Upon detection of unauthorized activities, tampering, or other threats, DOE shall initiate actions consistent with the approved security plans, DOE protective strategy, and implementing procedures.

(10) *Video technology.* DOE shall:

(i) Maintain in operable condition all video technology used to satisfy the monitoring, observation, surveillance, and assessment requirements of this section. Video technology must be:

(A) Displayed concurrently at both alarm stations;

(B) Designed to provide concurrent observation, monitoring, and surveillance of designated areas from which an alarm annunciation or a notification of unauthorized activity is received;

(C) Capable of providing a timely visual display from which positive recognition and assessment of the detected activity can be made and a timely response initiated; and

(D) Used to supplement and limit the exposure of security personnel to possible attack.

(ii) Implement controls for personnel assigned to monitor video technology to ensure that assigned personnel maintain the level of alertness required to effectively perform the assigned duties and responsibilities.

(11) *Illumination.* DOE shall:

(i) Ensure that all areas of the facility, to include appropriate portions of the DOE controlled area, are provided with illumination necessary to satisfy the requirements of this section;

(ii) Provide a minimum illumination level of 2.2 Lux (0.2 foot-candle) measured horizontally at ground level, in the isolation zones and all exterior

areas within the protected area, or augment the facility illumination system, to include patrols, responders, and video technology, with low-light technology capable of meeting the detection, assessment, surveillance, observation, monitoring, and response requirements of this section; and

(iii) Describe in the approved security plans how the lighting requirements of this section are met and, if used, the type(s) and application of low-light technology used.

(l) *Communication requirements.* (1) DOE shall establish and maintain continuous communication capability with onsite and offsite resources to ensure effective command and control during both normal and emergency situations.

(2) Individuals assigned to each alarm station shall be capable of calling for assistance in accordance with the approved security plans, licensee integrated response plan, and licensee procedures.

(3) Each on-duty security officer, watch-person, vehicle escort, and armed response force member shall be capable of maintaining continuous communication with an individual in each alarm station.

(4) The following continuous communication capabilities must terminate in both alarm stations required by this section:

(i) Conventional telephone service;

(ii) Radio or microwave transmitted two-way voice communication, either directly or through an intermediary; and

(iii) A system for communication with on-duty operations personnel, escorts, local, State, and Federal law enforcement agencies, and all other personnel necessary to coordinate necessary responses.

(5) Nonportable communications equipment must remain operable from independent power sources in the event of the loss of normal power.

(6) DOE shall identify site areas where communication could be interrupted or cannot be maintained and shall establish alternative communication measures for these areas in implementing procedures.

(m) *Response requirements.* (1) DOE shall:

(i) Establish and maintain, at all times, the minimum number of properly trained and equipped personnel required to intercept, challenge, delay, and/or neutralize security-related events as specified by the Commission for radiological sabotage and theft or diversion of special nuclear material.

(ii) Provide and maintain firearms, ammunition, and equipment capable of performing functions commensurate to

the needs of each armed member of the security organization to carry out their assigned duties and responsibilities in accordance with the approved security plans, DOE's protective strategy, implementing procedures, and the site-specific conditions under which the firearms, ammunition, and equipment will be used.

(iii) Describe, in the approved security plans, all firearms and equipment to be possessed by, and readily available to, armed personnel to implement the protective strategy and carry out all assigned duties and responsibilities. This description must include the general distribution and assignment of firearms, ammunition, body armor, and other equipment used.

(iv) Ensure that all firearms, ammunition, and equipment required by the protective strategy and security plans are in sufficient supply, are in working condition, and are readily available for use in accordance with DOE protective strategy and predetermined timelines.

(v) Ensure that all armed members of the security organization are trained in the proper use and maintenance of assigned weapons and equipment in accordance with Section VII of Appendix B of this part

(2) DOE shall:

(i) Instruct each armed response person to prevent or impede attempted acts of theft or radiological sabotage by using force sufficient to counter the force directed at that person, including the use of deadly force in accordance with the requirements of Part 1047 of this title, when the armed response person has a reasonable belief that the use of such force is necessary in self-defense or in the defense of others, or any other circumstances as authorized by applicable Federal law;

(ii) Provide an armed response consisting of a tactical response team, armed responders, and armed security officers to carry out response duties, within predetermined timelines;

(iii) Determine, subject to Commission approval, the minimum number of armed security officers and armed responders necessary to protect against security events and document the numbers in the approved security plans;

(iv) Have armed responders available at all times inside the protected area. The armed responders may not be assigned any other duties or responsibilities that could interfere with assigned response duties. Armed security officers designated to strengthen response capabilities shall be onsite and available at all times to carry out assigned response duties; and

(v) Ensure that training and qualification requirements accurately reflect the duties and responsibilities to be performed.

(3) DOE shall describe, in the approved security plans, procedures for responding to an unplanned incident that reduces the number of available armed response team members below the minimum number documented by DOE in the approved security plans.

(4) DOE shall develop, maintain, and implement a written protective strategy in accordance with the requirements of this section and Appendix C to this part.

(5) DOE shall ensure that all personnel authorized unescorted access to the protected area are trained and understand their roles and responsibilities during security incidents, to include hostage and duress situations.

(6) Upon receipt of an alarm or other indication of threat, DOE shall:

(i) Determine the existence of a threat in accordance with assessment procedures;

(ii) Identify the level of threat present through the use of assessment methodologies and procedures;

(iii) Determine the response necessary to intercept, challenge, delay, and neutralize, impede, or mitigate the threat in accordance with the requirements of Section III of Appendix C of this part, the Commission-approved safeguards contingency plan, and the DOE response strategy; and

(iv) If required, notify offsite support agencies such as local law enforcement, in accordance with site procedures.

(7) If offsite support is required, DOE shall document and maintain a pre-arranged plan with local, State, and/or Federal law enforcement agencies for assistance, in response to an actual theft of radioactive material.

(n) *Digital computer and communication networks*—(1) *Cyber-security program*. DOE shall implement a cyber-security program that provides high assurance that computer systems, which if compromised would likely adversely impact safety, security, and emergency preparedness, are protected from cyber attacks.

(i) DOE shall describe the cyber-security program requirements in the approved security plans.

(ii) DOE shall incorporate the cyber-security program into the physical protection program.

(iii) The cyber-security program must be designed to detect and prevent cyber attacks on protected computer systems.

(2) *Cyber-security assessment*. DOE shall implement a cyber security assessment program to systematically assess and manage cyber risks.

(3) *Policies, requirements, and procedures*. (i) DOE shall apply cyber-security requirements and policies that identify management expectations and requirements for the protection of computer systems.

(ii) DOE shall develop and maintain implementing procedures to ensure that cyber-security requirements and policies are implemented effectively.

(4) *Incident response and recovery*. (i) DOE shall implement a cyber-security incident response and recovery plan to minimize the adverse impact of a cyber-security incident on safety, security, or emergency preparedness systems.

(ii) The cyber-security incident response and recovery plan must be described in the integrated response plan required by Section III of Appendix C to this part.

(iii) The cyber-security incident response and recovery plan must ensure the capability to respond to cyber-security incidents, minimize loss and destruction, mitigate and correct the weaknesses that were exploited, and restore systems and/or equipment affected by a cyber-security incident.

(5) *Protective strategies*. DOE shall implement defense-in-depth protective strategies to protect computer systems from cyber attacks, detecting, isolating, and neutralizing unauthorized activities in a timely manner.

(6) *Configuration and control management program*. DOE shall implement a configuration and control management program, to include cyber-risk analysis, to ensure that modifications to computer system designs, access control measures, configuration, operational integrity, and management process do not adversely impact facility safety, security, and emergency preparedness systems before implementation of those modifications.

(7) *Cyber-security awareness and training*. (i) DOE shall implement a cyber-security awareness and training program.

(ii) The cyber-security awareness and training program must ensure that appropriate personnel, including contractors, are aware of cyber-security requirements and that they receive the training required to effectively perform their assigned duties and responsibilities.

(o) *Security program reviews and audits*. (1) DOE shall review the physical protection program at intervals not to exceed twelve (12) months, or

(i) As necessary based upon assessments or other performance indicators; or

(ii) Within twelve (12) months after a change occurs in personnel, procedures,

equipment, or facilities that potentially could adversely affect security.

(2) As a minimum, each element of the physical protection program must be reviewed at least every twenty-four (24) months.

(i) The onsite physical protection program review must be documented and performed by individuals independent of those personnel responsible for program management and any individual who has direct responsibility for implementing the onsite physical protection program.

(ii) Physical protection program reviews and audits must include, but not be limited to, an evaluation of the effectiveness of the approved security plans, implementing procedures, response commitments from any response forces by local, State, and Federal law enforcement authorities, cyber-security programs, safety/security interface, and the testing, maintenance, and calibration program.

(3) DOE shall periodically review the approved security plans, the integrated response plan, DOE protective strategy, and licensee implementing procedures to evaluate their effectiveness and potential impact on facility and personnel safety.

(4) DOE shall periodically evaluate the cyber-security program for effectiveness and shall update the cyber-security program as needed to ensure protection against changes to internal and external threats.

(5) DOE shall conduct quarterly drills and annual exercises in accordance with Section III of Appendix C to this part and the DOE performance evaluation program. Except, the requirements for annual force-on-force exercises only apply to formula quantities of strategic special nuclear material and significant radiological sabotage consequence target sets.

(6) The results and recommendations of the physical protection program reviews and audits, management's findings regarding program effectiveness, and any actions taken as a result of recommendations from prior program reviews must be documented in a report for DOE's management at least one level higher than that having responsibility for day-to-day facility operation.

(7) Findings from onsite physical protection program reviews, audits, and assessments must be entered into the site's corrective action program and protected as safeguards information, if applicable.

(8) DOE shall make changes to the approved security plans and implementing procedures as a result of findings from security program reviews,

audits, and assessments, where necessary, to ensure the effective implementation of Commission regulations and DOE protective strategy.

(9) Unless otherwise specified by the Commission, physical protection program reviews, audits, and assessments may be conducted up to thirty (30) days prior to, but no later than thirty (30) days after the scheduled date without adverse impact upon the next scheduled annual audit date.

(p) *Maintenance, testing, and calibration.*

(1) DOE shall:

(i) Implement a maintenance, testing, and calibration program to ensure that security systems and equipment are tested for operability and performance at predetermined intervals, are maintained in operable condition, and are capable of performing their intended function when needed;

(ii) Describe the maintenance, testing, and calibration program in the approved physical security plan. Implementing procedures must specify operational and technical details required to perform maintenance, testing, and calibration activities to include, but not be limited to, purpose of activity, actions to be taken, acceptance criteria, the intervals or frequency at which the activity will be performed, and compensatory actions required;

(iii) Document problems, failures, deficiencies, and other findings, to include the cause of each, and enter each in the site's corrective action program. DOE shall protect this information as safeguards information, if applicable; and

(iv) Implement compensatory measures in a timely manner to ensure that the effectiveness of the onsite physical protection program is not reduced by failure or degraded operation of security-related components or equipment.

(2) Each intrusion alarm must be tested for operability at the beginning and end of any period that it is used for security, or if the period of continuous use exceeds seven (7) days, the intrusion alarm must be tested at least once every seven (7) days.

(3) Intrusion detection and access control equipment must be performance tested in accordance with the approved security plans.

(4) Equipment required for communications onsite must be tested for operability not less frequently than once at the beginning of each security personnel work shift.

(5) Communication systems between the alarm stations and each control room, and between the alarm stations and offsite support agencies, to include

backup communication equipment, must be tested for operability at least once each day.

(6) Search equipment must be tested for operability at least once each day and tested for performance at least once during each seven-day period and before being placed back in service after each repair or inoperative state.

(7) All intrusion detection equipment, communication equipment, physical barriers, and other security-related devices or equipment, to include backup power supplies, must be maintained in operable condition.

(8) A program for testing or verifying the operability of devices or equipment located in hazardous areas must be specified in the approved security plans and must define alternate measures to be taken to ensure the timely completion of testing or maintenance when the hazardous condition or radiation restrictions are no longer applicable.

(q) *Compensatory measures.* DOE shall identify measures and criteria needed to compensate for the loss or reduced performance of personnel, equipment, systems, and components that are required to meet the requirements of this section. Compensatory measures must be designed and implemented to provide a level of protection that is equivalent to the protection that was provided by the degraded or inoperable personnel, equipment, system, or components. Compensatory measures must be implemented within specific timelines necessary to meet the requirements stated in paragraph (d) of this section and described in the approved security plans.

(r) *Suspension of safeguards measures.* DOE:

(1) May suspend implementation of affected requirements of this section under the following conditions:

(i) DOE may suspend any safeguards measures, pursuant to this section, in an emergency, when this action is immediately needed to protect the public health and safety, and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This suspension of safeguards measures must be approved at a minimum by a designated senior site manager prior to taking this action; and

(ii) During severe weather when the suspension is immediately needed to protect personnel whose assigned duties and responsibilities, in meeting the requirements of this section, would otherwise constitute a life threatening situation, and no action consistent with

the requirements of this section that can provide equivalent protection is immediately apparent. Suspension of safeguards due to severe weather must be initiated by the security supervisor and approved by a designated senior site manager prior to taking this action.

(2) Must reimplement suspended security measures as soon as conditions permit; and

(3) Must report and document the suspension of safeguards measures in accordance with the provisions of § 73.71 of this part.

(s) *Records.* DOE shall maintain all records required to be kept by Commission regulations, orders, or license conditions, as a record until the Commission terminates the license for which the records were developed and shall maintain superseded portions of these records for at least three (3) years after the record is superseded, unless otherwise specified by the Commission. The Commission may inspect, copy, retain, and remove copies of all records required to be kept by Commission regulations, orders, or license conditions whether the records are kept by DOE or a contractor.

(t) *Safety/security interface.* DOE shall develop and implement a process to inform and coordinate safety and security activities to ensure that these activities do not adversely affect the capabilities of the security organization to satisfy the requirements of this section, or overall GROA safety:

(1) DOE shall assess and manage the potential for adverse effects on safety and security, including the site emergency plan, before implementing changes to GROA operations, facility conditions, or security.

(2) The scope of changes to be assessed and managed must include planned and emergent activities (such as, but not limited to, physical modifications, procedural changes, changes to operator actions or security assignments, maintenance activities, system reconfiguration, access modification or restrictions, and changes to the security plan and its implementation).

(3) Where potential adverse interactions are identified, DOE shall communicate them to appropriate licensee personnel and take compensatory and/or mitigative actions to maintain safety and security under applicable Commission regulations, requirements, and license conditions.

(u) *Alternative measures.* (1) The Commission may authorize DOE to provide a measure for protection against radiological sabotage or theft or diversion other than one required by this section if DOE demonstrates that:

(i) The measure meets the same performance objectives and requirements as specified in paragraphs (c) and (d) of this section, as appropriate; and

(ii) The proposed alternative measure provides protection against radiological sabotage or theft or diversion equivalent to that which would be provided by the specific requirement for which it would substitute.

(2) DOE shall submit each proposed alternative measure to the Commission for review and approval in accordance with § 60.45 or § 63.45, of this chapter, before implementation.

(3) DOE shall submit a technical basis for each proposed alternative measure, to include any analysis or assessment conducted in support of a determination that the proposed alternative measure provides a level of protection that is at least equal to that which would otherwise be provided by the specific requirement of this section.

(4) In the case of alternative vehicle barrier systems required by paragraph (g)(7) of this section, DOE shall demonstrate that the alternative measure provides substantial protection against a vehicle bomb.

(v) *Additional requirements for Strategic Special Nuclear Material.* In addition to any other requirements of this section, for formula quantities of strategic special nuclear material, DOE shall establish and maintain, or arrange for physical protection systems, subsystems, components, and procedures that provide the following additional performance capabilities for fixed site protection unless otherwise authorized by the Commission:

(1) *Security organization.*

(i) DOE's management system shall include written security procedures which detail the duties of the Tactical Response Team responsible for responding to security events involving strategic special nuclear material.

(ii) Tactical Response Team members shall also be trained and qualified in accordance with Section VII of Appendix B to this part. Upon the request of an authorized representative of the Commission, DOE shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities.

(iii) Within any given period of time, a member of the security organization may not be assigned to, or have direct operational control over, more than one of the redundant elements of a physical protection subsystem if such assignment or control could result in the loss of effectiveness of the subsystem.

(2) *Physical barrier subsystems.*

(i) In addition to the requirements in paragraph (g)(6) of this section, access to vital equipment, related to strategic special nuclear material, requires passage through at least three physical barriers.

(ii) Strategic special nuclear material must be stored or handled only in a material access area located within a protected area so that access to strategic special nuclear material requires passage through at least three physical barriers. (NOTE: A waste package or a cask is considered to be a barrier.)

(iii) The inner barrier of the protected area perimeter must be positioned and constructed to delay attempts at unauthorized exit from the protected area.

(iv) The physical barriers at the perimeter of the protected area shall be separated from any other barrier designated as a physical barrier for a vital area or material access area within the protected area.

(3) *Access control subsystems and procedures.*

(i) In addition to the requirements of paragraph (i) of this section:

(A) Access to vital equipment, related to strategic special nuclear material and material access areas, shall include at least two individuals;

(B) Authorization for such individuals shall be indicated by the issuance of specially coded numbered badges indicating material access areas, and controlled access areas to which access is authorized; and

(C) No activities other than those which require access to strategic special nuclear material or to equipment used in the processing, use, or storage of strategic special nuclear material, or necessary maintenance, shall be permitted within a material access area.

(ii) DOE shall establish and follow written procedures that will permit access control personnel to identify those vehicles that are authorized and those materials that are not authorized entry to material access areas.

(iii) DOE shall control all points of personnel and vehicle access to material access areas, strategic special nuclear material vital areas, and strategic special nuclear material controlled access areas.

(A) At least two (2) armed guards, trained in accordance with the provisions contained in paragraph (d)(3) of this section and Section VII of Appendix B of this part, shall be posted at each material access area control point whenever in use.

(B) Identification and authorization of personnel and vehicles must be verified at the material access area control point.

(C) Prior to entry into a material access area, packages must be searched

for firearms, explosives, and incendiary devices.

(4) *Search programs.*

(i) All vehicles, materials, and packages, including trash, wastes, tools, and equipment exiting from a material access area, must be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area.

(ii) Each individual exiting a material access area shall undergo at least two (2) separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

(iii) Before exiting from a material access area, containers of contaminated wastes must be drum scanned and tamper sealed by at least two (2) individuals, working and recording their findings as a team, who do not have access to material processing and storage areas.

(5) *Detection, surveillance, and alarm subsystems and procedures.* (i) All emergency exits in each material access and strategic special nuclear material vital area shall be locked to prevent entry from the outside and alarmed to provide local visible and audible alarm annunciation.

(ii) All unoccupied strategic special nuclear material vital areas and material access areas shall be locked and protected by an intrusion alarm subsystem which will alarm upon the entry of a person anywhere into the area, upon exit from the area, and upon movement of an individual within the area.

(iii) Vaults that contain strategic special nuclear material that has not been alloyed or encapsulated shall also be under the surveillance of closed circuit television that is monitored in both alarm stations. Additionally, means shall be employed which require that an individual other than an alarm station operator be present at, or have knowledge of access to, such unoccupied vaults or process areas.

(iv) Methods to observe individuals within material access areas to assure that strategic special nuclear material is not moved to unauthorized locations or in an unauthorized manner shall be provided and used on a continuing basis.

(v) Alarms occurring within unoccupied vaults and unoccupied material access areas containing unalloyed or unencapsulated strategic special nuclear material shall be assessed by at least two (2) security

personnel using closed circuit television or other remote means.

(vi) Alarms occurring within unoccupied material access areas that contain only alloyed or encapsulated strategic special nuclear material shall be assessed by at least two (2) security personnel using closed circuit television or other remote means, or by at least two (2) security personnel who shall undergo a search before exiting the material access area.

(6) *Response requirements.* In addition to the armed response team, a Tactical Response Team consisting of a minimum of five (5) members must be available at the facility to fulfill assessment and response requirements.

(i) The size and availability of the Tactical Response Force must be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to neutralize security-related events consistent with DOE's protective strategy.

(ii) Each Tactical Response Team member shall be armed with a 9mm semiautomatic pistol. All but one member of the Tactical Response Team shall be additionally armed with a covered weapon as described in Section VII of Appendix B of this part.

(iii) The rationale for the total number, availability, and arming of Tactical Response Team personnel must be included in the security plans submitted to the Commission for approval.

(iv) DOE shall establish, maintain, and follow a Commission-approved safeguards contingency plan for responding to threats up to and including the design basis threats described in § 73.1(a), for theft or diversion and radiological sabotage related to formula quantities of strategic special nuclear material.

15. Section 73.56a is added to read as follows:

§ 73.56a Personnel access authorization requirements for a geologic repository operations area.

(a) *Applicability.* (1) DOE, as a licensee under part 60 or part 63 of this chapter, shall satisfy the requirements of this section upon receipt of Commission authorization to receive and possess source, special nuclear, or byproduct material at the geologic repository operations area. DOE shall submit the access authorization program for review and approval.

(2) DOE is responsible to the Commission for maintaining the authorization program in accordance with Commission regulations and related Commission-directed orders

through the implementation of the approved program and site implementing procedures.

(3) Contractors and vendors (C/Vs) who implement authorization programs or program elements shall develop, implement, and maintain authorization programs or program elements that meet the requirements of this section, to the extent that DOE relies upon those C/V authorization programs or program elements to meet the requirements of this section. In any case, only DOE shall grant or permit an individual to maintain unescorted access to the protected and vital areas of a GROA.

(b) *Individuals who are subject to an authorization program.*

(1) The following individuals shall be subject to an authorization program:

(i) Any individual to whom a DOE grants unescorted access to protected and vital areas of a GROA;

(ii) Any individual whose assigned duties and responsibilities permit the individual to take actions by electronic means, either onsite or remotely, that could adversely impact the operational safety, security, or emergency response capabilities;

(iii) Any individual who has responsibilities for implementing DOE's protective strategy, including, but not limited to, armed security force officers, alarm station operators, and tactical response team leaders; and

(iv) DOE's or the C/V's reviewing official.

(2) At DOE's or the C/V's discretion, other individuals who are designated in access authorization program procedures may be subject to an authorization program that meets the requirements of this section.

(c) *General performance objective.* Access authorization programs must provide high assurance that the individuals who are specified in paragraph (b)(1) of this section, and, if applicable, paragraph (b)(2) of this section are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage, theft, or diversion.

(d) *Background investigation.* In order to grant unescorted access authorization to an individual, DOE and the C/Vs specified in paragraph (a) of this section shall ensure that the individual has been subject to a background investigation. The background investigation must include, but is not limited to, the following elements:

(1) *Informed consent.* DOE and the C/Vs specified in paragraph (a) of this section may not initiate any element of

a background investigation without the knowledge and written consent of the subject individual. DOE and C/Vs shall inform the individual of his or her right to review information collected to assure its accuracy and provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed by DOE and C/Vs about the individual.

(i) The subject individual may withdraw his or her consent at any time. DOE or the C/V to whom the individual has applied for unescorted access authorization shall inform the individual that withdrawal of his or her consent will withdraw the individual's current application for access authorization under DOE's or the C/V's authorization program; and

(ii) If an individual withdraws his or her consent, DOE and the C/Vs specified in paragraph (a) of this section may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent, but shall complete any background investigation elements that are in progress at the time consent is withdrawn.

(iii) DOE and the C/Vs specified in paragraph (a) of this section shall inform, in writing, any individual who is applying for unescorted access authorization that the following actions related to providing and sharing the personal information under this section are sufficient cause for denial or unfavorable termination of unescorted access authorization:

(A) Refusal to provide written consent for the background investigation;

(B) Refusal to provide or the falsification of any personal history information required under this section, including the failure to report any previous denial or unfavorable termination of unescorted access authorization; and

(C) Failure to report any arrests or formal actions specified in paragraph (g) of this section.

(2) *Personal history disclosure.*

(i) Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by DOE's or the C/V's authorization program and any information that may be necessary for the reviewing official to make a determination of the individual's trustworthiness and reliability.

(ii) DOE and the C/Vs may not require an individual to disclose an administrative withdrawal of unescorted access authorization under the requirements of paragraphs (g), (h)(7), or (i)(1)(v) of this section, if the individual's unescorted access

authorization was not subsequently denied or terminated unfavorably by DOE or a C/V.

(3) *Verification of true identity.* DOE and C/Vs shall verify the true identity of an individual who is applying for unescorted access authorization in order to ensure that the applicant is the person that he or she has claimed to be. At a minimum, DOE and C/Vs shall validate the social security number that the individual has provided and, in the case of foreign nationals, the alien registration number that the individual provides. In addition, DOE and C/Vs shall also determine whether the results of the fingerprinting required under § 73.21 confirm the individual's claimed identity, if such results are available.

(4) *Employment history evaluation.* DOE and C/Vs shall ensure that an employment history evaluation has been completed, by questioning the individual's present and former employers, and by determining the activities of individuals while unemployed.

(i) For the claimed employment period, the employment history evaluation must ascertain the reason for termination, eligibility for rehire, and other information that could reflect on the individual's trustworthiness and reliability.

(ii) If the claimed employment was military service, DOE or the C/V who is conducting the employment history evaluation shall request a characterization of service, reason for separation, and any disciplinary actions that could affect a trustworthiness and reliability determination.

(iii) Periods of self-employment or unemployment may be verified by any reasonable method. If education is claimed in lieu of employment, DOE or the C/V shall request information that could reflect on the individual's trustworthiness and reliability and, at a minimum, verify that the individual was actively participating in the educational process during the claimed period.

(iv) If a company, previous employer, or educational institution to whom DOE or the C/V has directed a request for information refuses to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, DOE or the C/V shall document this refusal, inability, or unwillingness in DOE's, or the C/V's, record of the investigation, and obtain a confirmation of employment or educational enrollment and attendance from at least one alternate source, with questions answered to the best of the alternate source's ability. This alternate source

may not have been previously used by DOE or the C/V to obtain information about the individual's character and reputation. If DOE or the C/V uses an alternate source because employment information is not forthcoming within 3 business days of the request, DOE or the C/V need not delay granting unescorted access authorization to wait for any employer response, but shall evaluate and document the response if it is received.

(v) When DOE, or any C/V specified in paragraph (a) of this section, is legitimately seeking the information required for an unescorted access authorization decision under this section and has obtained a signed release from the subject individual authorizing the disclosure of such information, DOE or a C/V who is subject to this section shall disclose whether the subject individual's unescorted access authorization was denied or terminated unfavorably. DOE or the C/V who receives the request for information shall make available the information upon which the denial or unfavorable termination of unescorted access authorization was based.

(vi) In conducting an employment history evaluation, DOE or the C/V may obtain information and documents by electronic means, including, but not limited to, telephone, facsimile, or email. DOE or the C/V shall make a record of the contents of the telephone call and shall retain that record, and any documents or files obtained electronically, in accordance with paragraph (o) of this section.

(5) *Credit history evaluation.* DOE and the C/Vs specified in paragraph (a) of this section shall ensure that the full credit history of any individual who is applying for unescorted access authorization has been evaluated. A full credit history evaluation must include, but would not be limited to, an inquiry to detect potential fraud or misuse of social security numbers or other financial identifiers, and a review and evaluation of all of the information that is provided by a national credit-reporting agency about the individual's credit history.

(6) *Character and reputation.* DOE and the C/Vs specified in paragraph (a) of this section shall ascertain the character and reputation of an individual who has applied for unescorted access authorization by conducting reference checks. Reference checks may not be conducted with any person who is known to be a close member of the individual's family, including, but not limited to, the individual's spouse, parents, siblings, or children, or any individual who resides

in the individual's permanent household. The reference checks must focus on the individual's reputation for trustworthiness and reliability.

(7) *Criminal history review.* DOE's or the C/V's reviewing official shall evaluate the entire criminal history record of an individual who is applying for unescorted access authorization to assist in determining whether the individual has a record of criminal activity that may adversely impact his or her trustworthiness and reliability. The criminal history record must be obtained in accordance with the requirements of § 73.57.

(e) *Psychological assessment.* In order to assist in determining an individual's trustworthiness and reliability, DOE and the C/Vs specified in paragraph (a) of this section shall ensure that a psychological assessment has been completed of the individual who is applying for unescorted access authorization. The psychological assessment must be designed to evaluate the possible adverse impact of any noted psychological characteristics on the individual's trustworthiness and reliability.

(1) A licensed clinical psychologist or psychiatrist shall conduct the psychological assessment.

(2) The psychological assessment must be conducted in accordance with the applicable ethical principles for conducting such assessments established by the American Psychological Association or American Psychiatric Association.

(3) At a minimum, the psychological assessment must include the administration and interpretation of a standardized, objective, professionally accepted psychological test that provides information to identify indications of disturbances in personality or psychopathology that may have implications for an individual's trustworthiness and reliability. Predetermined thresholds must be applied in interpreting the results of the psychological test, to determine whether an individual shall be interviewed by a psychiatrist or licensed clinical psychologist under paragraph (e)(4)(i) of this section.

(4) The psychological assessment must include a clinical interview—

(i) If an individual's scores on the psychological test in paragraph (e)(3) of this section identify indications of disturbances in personality or psychopathology that may have implications for an individual's trustworthiness and reliability; or

(ii) If DOE's Physical Security Plan requires a clinical interview based on job assignments.

(5) If, in the course of conducting the psychological assessment, the licensed clinical psychologist or psychiatrist identifies indications of, or information related to, a medical condition that could adversely impact the individual's fitness for duty or trustworthiness and reliability, the psychologist or psychiatrist shall inform the reviewing official, who shall ensure that an appropriate evaluation of the possible medical condition is conducted under the requirements of part 26 of this chapter.

(f) *Behavioral observation.* Access authorization programs must include a behavioral observation element that is designed to detect behaviors or activities that may constitute an unreasonable risk to the health and safety of the public and common defense and security, including a potential threat to commit radiological sabotage, theft, or diversion.

(1) DOE and the C/Vs specified in paragraph (a) of this section shall ensure that the individuals specified in paragraph (b)(1) of this section and, if applicable, paragraph (b)(2) of this section are subject to behavioral observation.

(2) The individuals specified in paragraph (b)(1) and, if applicable, paragraph (b)(2) of this section shall observe the behavior of other individuals. DOE and the C/Vs specified in paragraph (a) of this section shall ensure that individuals who are subject to this section also successfully complete behavioral observation training.

(i) Behavioral observation training must be completed before DOE or the C/V grants an initial unescorted access authorization, as defined in paragraph (h)(5) of this section, and must be current before DOE or the C/V grants an unescorted access authorization update, as defined in paragraph (h)(6) of this section, or an unescorted access authorization reinstatement, as defined in paragraph (h)(7) of this section;

(ii) Individuals shall complete refresher training on a nominal 12-month frequency, or more frequently where the need is indicated. Individuals may take and pass a comprehensive examination that meets the requirements of paragraph (f)(2)(iii) of this section in lieu of completing annual refresher training;

(iii) Individuals shall demonstrate the successful completion of behavioral observation training by passing a comprehensive examination that addresses the knowledge and abilities necessary to detect behavior or activities that have the potential to constitute an unreasonable risk to the health and

safety of the public and common defense and security, including a potential threat to commit radiological sabotage, theft or diversion. Remedial training and re-testing are required for individuals who fail to satisfactorily complete the examination.

(iv) Initial and refresher training may be delivered using a variety of media (including, but not limited to, classroom lectures, required reading, video, or computer-based training systems). DOE or the C/V shall monitor the completion of training.

(3) Individuals who are subject to an authorization program under this section shall report to the reviewing official any concerns arising from behavioral observation, including, but not limited to, concerns related to any questionable behavior patterns or activities of others.

(g) *Arrest reporting.* Any individual who has applied for or is maintaining unescorted access authorization under this section shall promptly report to the reviewing official any formal action(s) taken by a law enforcement authority or court of law to which the individual has been subject, including an arrest, an indictment, the filing of charges, or a conviction. On the day that the report is received, the reviewing official shall evaluate the circumstances related to the formal action(s) and determine whether to grant, maintain, administratively withdraw, deny, or unfavorably terminate the individual's unescorted access authorization.

(h) *Granting unescorted access authorization.* DOE and the C/Vs specified in paragraph (a) of this section shall implement the requirements of this paragraph for granting initial unescorted access authorization, updated unescorted access authorization, and reinstatement of unescorted access authorization.

(1) *Accepting unescorted access authorization from other authorization programs.* DOE and the C/Vs who are seeking to grant unescorted access authorization to an individual who is subject to another authorization program that complies with this section may rely on the program elements completed by the transferring authorization program to satisfy the requirements of this section. An individual may maintain his or her unescorted access authorization if he or she continues to be subject to either DOE or the receiving C/V's authorization program or the transferring licensee's, applicant's, or C/V's authorization program, or a combination of elements from both programs that collectively satisfy the requirements of this section. The

receiving authorization program shall ensure that the program elements maintained by the transferring program remain current.

(2) *Information sharing.* To meet the requirements of this section, DOE and C/Vs may rely upon the information that other C/Vs who are subject to this section have gathered about individuals who have previously applied for unescorted access authorization and developed about individuals during periods in which the individuals maintained unescorted access authorization.

(3) *Requirements applicable to all unescorted access authorization categories.* Before granting unescorted access authorization to individuals in any category, including individuals whose unescorted access authorization has been interrupted for a period of 30 or fewer days, DOE or the C/V shall ensure that—

(i) The individual's written consent to conduct a background investigation, if necessary, has been obtained and the individual's true identity has been verified, in accordance with paragraphs (d)(2) and (d)(3) of this section, respectively;

(ii) A credit history evaluation or re-evaluation has been completed in accordance with the requirements of paragraphs (d)(5) or (i)(1)(v) of this section, as applicable;

(iii) The individual's character and reputation have been ascertained, in accordance with paragraph (d)(6) of this section;

(iv) The individual's criminal history record has been obtained and reviewed or updated, in accordance with paragraphs (d)(7) and (i)(1)(v) of this section, as applicable;

(v) A psychological assessment or reassessment of the individual has been completed in accordance with the requirements of paragraphs (e) or (i)(1)(v) of this section, as applicable;

(vi) The individual has successfully completed the initial or refresher, as applicable, behavioral observation training that is required under paragraph (f) of this section; and

(vii) The individual has been informed, in writing, of his or her arrest-reporting responsibilities under paragraph (g) of this section.

(4) *Interruptions in unescorted access authorization.* For individuals who have previously held unescorted access authorization under this section or § 73.56 but whose unescorted access authorization has since been terminated under favorable conditions, DOE or the C/V shall implement the requirements in this paragraph for initial unescorted access authorization in paragraph (h)(5)

of this section, updated unescorted access authorization in paragraph (h)(6) of this section, or reinstatement of unescorted access authorization in paragraph (h)(7) of this section, based upon the total number of days that the individual's unescorted access authorization has been interrupted, to include the day after the individual's last period of unescorted access authorization was terminated and the intervening days until the day upon which DOE or the C/V grants unescorted access authorization to the individual. If potentially disqualifying information is disclosed or discovered about an individual, DOE and C/V's shall take additional actions, as specified in the physical security plan, in order to grant or maintain the individual's unescorted access authorization.

(5) *Initial unescorted access authorization.* Before granting unescorted access authorization to an individual who has never held unescorted access authorization under this section or whose unescorted access authorization has been interrupted for a period of 3 years or more and whose last period of unescorted access authorization was terminated under favorable conditions, DOE or the C/V shall ensure that an employment history evaluation has been completed in accordance with paragraph (d)(4) of this section. The period of the employment history that the individual shall disclose, and DOE or the C/V shall evaluate, must be the past 3 years or since the individual's eighteenth birthday, whichever is shorter. For the 1-year period immediately preceding the date upon which the individual applies for unescorted access authorization, DOE or the C/V shall ensure that the employment history evaluation is conducted with every employer, regardless of the length of employment. For the remaining 2-year period, DOE or the C/V shall ensure that the employment history evaluation is conducted with the employer by whom the individual claims to have been employed the longest within each calendar month, if the individual claims employment during the given calendar month.

(6) *Updated unescorted access authorization.* Before granting unescorted access authorization to an individual whose unescorted access authorization has been interrupted for more than 365 days but fewer than 3 years and whose last period of unescorted access authorization was terminated under favorable conditions, DOE or the C/V shall ensure that an employment history evaluation has been completed in accordance with

paragraph (d)(4) of this section. The period of the employment history that the individual shall disclose, and DOE or the C/V shall evaluate, must be the period since unescorted access authorization was last terminated, up to and including the day the applicant applies for updated unescorted access authorization. For the 1-year period immediately preceding the date upon which the individual applies for updated unescorted access authorization, DOE or the C/V shall ensure that the employment history evaluation is conducted with every employer, regardless of the length of employment. For the remaining period since unescorted access authorization was last terminated, DOE or the C/V shall ensure that the employment history evaluation is conducted with the employer by whom the individual claims to have been employed the longest within each calendar month, if the individual claims employment during the given calendar month.

(7) *Reinstatement of unescorted access authorization (31 to 365 days).* In order to grant authorization to an individual whose unescorted access authorization has been interrupted for a period of more than 30 days but no more than 365 days and whose last period of unescorted access authorization was terminated under favorable conditions, DOE or the C/V shall ensure that an employment history evaluation has been completed in accordance with the requirements of paragraph (d)(4) of this section within 5 business days of reinstating unescorted access authorization. The period of the employment history that the individual shall disclose, and DOE or the C/V shall evaluate, must be the period since the individual's unescorted access authorization was terminated, up to and including the day the applicant applies for reinstatement of unescorted access authorization. DOE or the C/V shall ensure that the employment history evaluation has been conducted with the employer by whom the individual claims to have been employed the longest within the calendar month, if the individual claims employment during a given calendar month. If the employment history evaluation is not completed within 5 business days due to circumstances that are outside of DOE's or the C/V's control and DOE or the C/V is not aware of any potentially disqualifying information regarding the individual within the past 5 years, DOE or the C/V may maintain the individual's unescorted access authorization for an additional 5 business days. If the employment

history evaluation is not completed within 10 business days of reinstating unescorted access authorization, DOE or the C/V shall administratively withdraw the individual's unescorted access authorization until the employment history evaluation is completed.

(8) *Determination basis.* DOE's or the C/V's reviewing official shall determine whether to grant, deny, unfavorably terminate, or maintain or amend an individual's unescorted access authorization status, based on an evaluation of all pertinent information that has been gathered about the individual as a result of any application for unescorted access authorization or developed during or following in any period during which the individual maintained unescorted access authorization. DOE's or the C/V's reviewing official may not determine whether to grant unescorted access authorization to an individual or maintain an individual's unescorted access authorization until all of the required information has been provided to the reviewing official and he or she determines that the accumulated information supports a positive finding of trustworthiness and reliability.

(9) *Unescorted access for NRC-certified personnel.* DOE shall grant unescorted access to all individuals who have been certified by the NRC as suitable for such access including, but not limited to, contractors to the NRC and NRC employees.

(i) *Maintaining access authorization.*

(1) Individuals may maintain unescorted access authorization under the following conditions:

(i) The individual remains subject to a behavioral observation program that complies with the requirements of paragraph (f) of this section;

(ii) The individual successfully completes behavioral observation refresher training or testing on the nominal 12-month frequency required in paragraph (f)(2)(ii) of this section;

(iii) The individual complies with DOE's or the C/V's authorization program policies and procedures to which he or she is subject, including the arrest-reporting responsibility specified in paragraph (g) of this section;

(iv) The individual is subject to a supervisory interview at a nominal 12-month frequency, conducted in accordance with the requirements of DOE's Physical Security Plan; and

(v) DOE or the C/V determines that the individual continues to be trustworthy and reliable. This determination must be made as follows:

(A) DOE or the C/V shall complete a criminal history update, credit history re-evaluation, and psychological re-

assessment of the individual within 5 years of the date on which these elements were last completed, or more frequently, based on job assignment;

(B) The reviewing official shall complete an evaluation of the information obtained from the criminal history update, credit history re-evaluation, psychological re-assessment, and the supervisory interview required under paragraph (i)(1)(iv) of this section within 30 calendar days of initiating any one of these elements;

(C) The results of the criminal history update, credit history re-evaluation, psychological re-assessment, and the supervisory interview required under paragraph (i)(1)(iv) of this section must support a positive determination of the individual's continued trustworthiness and reliability; and

(D) If the criminal history update, credit history re-evaluation, psychological re-assessment, and supervisory review have not been completed and the information evaluated by the reviewing official within 5 years of the initial completion of these elements or the most recent update, re-evaluation, and re-assessment under this paragraph, or within the time period specified in the Physical Security Plans, DOE or the C/V shall administratively withdraw the individual's unescorted access authorization until these requirements have been met.

(2) If an individual who has unescorted access authorization is not subject to an authorization program that meets the requirements of this part for more than 30 continuous days, then DOE or the C/V shall terminate the individual's unescorted access authorization and the individual shall meet the requirements in this section, as applicable, to regain unescorted access authorization.

(j) *Access to vital areas.* DOE shall establish, implement, and maintain a list of individuals who are authorized to have unescorted access to specific vital areas to assist in limiting access to those vital areas during non-emergency conditions. The list must include only those individuals who require access to those specific vital areas in order to perform their duties and responsibilities. The list must be approved by a cognizant manager, or supervisor who is responsible for directing the work activities of the individual who is granted unescorted access to each vital area, and updated and re-approved no less frequently than every 31 days.

(k) *Trustworthiness and reliability of background screeners and authorization program personnel.* DOE and C/Vs shall

ensure that any individuals who collect, process, or have access to personal information that is used to make unescorted access authorization determinations under this section have been determined to be trustworthy and reliable.

(1) *Background screeners.* DOE and C/Vs who rely on individuals who are not directly under their control to collect and process information that will be used by a reviewing official to make unescorted access authorization determinations shall ensure that a background check of such individuals has been completed and determines that such individuals are trustworthy and reliable. At a minimum, the following checks are required:

(i) Verification of the individual's identity;

(ii) A local criminal history review and evaluation from the State of the individual's permanent residence;

(iii) A credit history review and evaluation;

(iv) An employment history review and evaluation for the past 3 years; and

(v) An evaluation of character and reputation.

(2) *Authorization program personnel.* DOE and C/Vs shall ensure that any individual who evaluates personal information for the purpose of processing applications for unescorted access authorization including, but not limited to a clinical psychologist of psychiatrist who conducts psychological assessments under paragraph (e) of this section; has access to the files, records, and personal information associated with individuals who have applied for unescorted access authorization; or is responsible for managing any databases that contain such files, records, and personal information has been determined to be trustworthy and reliable, as follows:

(i) The individual is subject to an authorization program that meets requirements of this section; or (ii) DOE or the C/V determines that the individual is trustworthy and reliable based upon an evaluation that meets the requirements of paragraphs (d)(1) through (d)(5) and (e) of this section and a local criminal history review and evaluation from the State of the individual's permanent residence.

(l) *Review procedures.* DOE and each C/V who is implementing an authorization program under this section shall include a procedure for the review, at the request of the affected individual, of a denial or unfavorable termination of unescorted access authorization. The procedure must require that the individual is informed of the grounds for the denial or

unfavorable termination and allow the individual an opportunity to provide additional relevant information, and provide an opportunity for an objective review of the information on which the denial or unfavorable termination of unescorted access authorization was based. The procedure may be an impartial and independent internal management review. DOE may not grant or permit the individual to maintain unescorted access authorization during the review process.

(m) *Protection of information.* DOE or each C/V who is subject to this section who collects personal information about an individual for the purpose of complying with this section, shall establish and maintain a system of files and procedures to protect the personal information.

(1) DOE and C/Vs shall obtain a signed consent from the subject individual that authorizes the disclosure of the personal information collected and maintained under this section before disclosing the personal information, except for disclosures to the following individuals:

(i) The subject individual or his or her representative, when the individual has designated the representative in writing for specified unescorted access authorization matters;

(ii) NRC representatives;

(iii) Appropriate law enforcement officials under court order;

(iv) DOE's or the C/V's representatives who have a need to have access to the information in performing assigned duties, including determinations of trustworthiness and reliability, and audits of authorization programs;

(v) The presiding officer in a judicial or administrative proceeding that is initiated by the subject individual;

(vi) Persons deciding matters under the review procedures in paragraph (k) of this section; and

(vii) Other persons pursuant to court order.

(2) Personal information that is collected under this section must be disclosed to DOE and other C/Vs, or their authorized representatives, who are seeking the information for unescorted access authorization determinations under this section and who have obtained a signed release from the subject individual.

(3) Upon receipt of a written request by the subject individual or his or her designated representative, DOE or the C/V possessing such records shall promptly provide copies of all records pertaining to a denial or unfavorable termination of the individual's unescorted access authorization.

(4) DOE's or a C/V's contracts with any individual or organization who collects and maintains personal information that is relevant to an unescorted access authorization determination must require that such records be held in confidence, except as provided in paragraphs (m)(1) through (m)(3) of this section.

(5) DOE and C/Vs who collect and maintain personal information under this section, and any individual or organization who collects and maintains personal information on behalf of DOE or a C/V, shall establish, implement, and maintain a system and procedures for the secure storage and handling of the personal information collected.

(6) This paragraph does not authorize DOE or the C/V to withhold evidence of criminal conduct from law enforcement officials.

(n) *Audits and corrective action.* DOE shall be responsible for the continuing effectiveness of the authorization program, including authorization program elements that are provided by C/Vs, and the authorization programs of any C/Vs that are accepted by DOE. DOE and each C/V who is subject to this section shall ensure that authorization programs and program elements are audited to confirm compliance with the requirements of this section and that comprehensive actions are taken to correct any non-conformance that is identified.

(1) DOE and each C/V who is subject to this section shall ensure that their entire authorization program is audited as needed, but no less frequently than nominally every 24 months. DOE and C/Vs are responsible for determining the appropriate frequency, scope, and depth of additional auditing activities within the nominal 24-month period based on the review of program performance indicators, such as the frequency, nature, and severity of discovered problems, personnel or procedural changes, and previous audit findings.

(2) Authorization program services that are provided to DOE by C/V personnel who are off site or are not under the direct daily supervision or observation of DOE's personnel must be audited on a nominal 12-month frequency. In addition, any authorization program services that are provided to C/Vs by subcontractor personnel who are off site or are not under the direct daily supervision or observation of the C/V's personnel must be audited on a nominal 12-month frequency.

(3) DOE's contracts with C/Vs must reserve the right to audit the C/V and the C/V's subcontractors providing authorization program services at any

time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the performance of the program.

(4) DOE's contracts with C/Vs, and a C/V's contracts with subcontractors, must also require that DOE shall be provided with, or permitted access to, copies of any documents and take away any documents that may be needed to assure that the C/V and its subcontractors are performing their functions properly and that staff and procedures meet applicable requirements.

(5) Audits must focus on the effectiveness of the authorization program or program element(s), as appropriate. At least one member of the audit team shall be a person who is knowledgeable of and practiced with meeting authorization program performance objectives and requirements. The individuals performing the audit of the authorization program or program element(s) shall be independent from both the subject authorization program's management and from personnel who are directly responsible for implementing the authorization program(s) being audited.

(6) The result of the audits, along with any recommendations, must be documented and reported to senior site management. Each audit report must identify conditions that are adverse to the proper performance of the authorization program, the cause of the condition(s), and, when appropriate, recommended corrective actions, and corrective actions taken. DOE or the C/V shall review the audit findings and take any additional corrective actions, to include re-auditing of the deficient areas where indicated, to preclude, within reason, repetition of the condition. The resolution of the audit findings and corrective actions must be documented.

(7) DOE may jointly conduct audits, or may accept audits of C/Vs that were conducted by other licensees and applicants who are subject to § 73.56, if the audit addresses the services obtained from the C/V by each of the sharing licensees and applicants. C/Vs may jointly conduct audits, or may accept audits of its subcontractors that were conducted by other licensees, applicants, and C/Vs who are subject to this section or § 73.56, if the audit addresses the services obtained from the subcontractor by each of the sharing licensees, applicants, and C/Vs.

(i) DOE and C/Vs shall review audit records and reports to identify any areas that were not covered by the shared or accepted audit and ensure that

authorization program elements and services upon which DOE or the C/V relies are audited, if the program elements and services were not addressed in the shared audit.

(ii) Sharing licensees and applicants need not re-audit the same C/V for the same period of time. Sharing C/Vs need not re-audit the same subcontractor for the same period of time.

(iii) DOE and each C/V shall maintain a copy of the shared audit, including findings, recommendations, and corrective actions.

(o) *Records.* DOE and each C/V who is subject to this section shall maintain the records that are required by the regulations in this section for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility's license or other regulatory approval.

(1) All records may be stored and archived electronically, provided that the method used to create the electronic records meets the following criteria:

(i) Provides an accurate representation of the original records;

(ii) Prevents unauthorized access to the records;

(iii) Prevents the alteration of any archived information and/or data once it has been committed to storage; and

(iv) Permits easy retrieval and re-creation of the original records.

(2) DOE and each C/V who is subject to this section shall retain the following records for at least 5 years after DOE or the C/V terminates or denies an individual's unescorted access authorization or until the completion of all related legal proceedings, whichever is later:

(i) Records of the information that must be collected under paragraphs (d) and (e) of this section that results in the granting of unescorted access authorization;

(ii) Records pertaining to denial or unfavorable termination of unescorted access authorization and related management actions; and

(iii) Documentation of the granting and termination of unescorted access authorization.

(3) DOE and each C/V who is subject to this section shall retain the following records for at least 3 years or until the completion of all related legal proceedings, whichever is later:

(i) Records of behavioral observation training conducted under paragraph (f)(2) of this section; and

(ii) Records of audits, audit findings, and corrective actions taken under paragraph (n) of this section.

(4) DOE and C/Vs shall retain written agreements for the provision of services

under this section for the life of the agreement or until completion of all legal proceedings related to a denial or unfavorable termination of unescorted access authorization that involved those services, whichever is later.

(5) DOE and C/Vs shall retain records of the background checks, and psychological assessments of authorization program personnel, conducted under paragraphs (d) and (e) of this section, for the length of the individual's employment by or contractual relationship with DOE or the C/V, or until the completion of any legal proceedings relating to the actions of such authorization program personnel, whichever is later.

(6) If DOE or a C/V administratively withdraws an individual's unescorted access authorization under the requirements of this section, DOE or the C/V may not record the administrative action to withdraw the individual's unescorted access authorization as an unfavorable termination and may not disclose it in response to a suitable inquiry conducted under the provisions of part 26 of this chapter, a background investigation conducted under the provisions of this section, or any other inquiry or investigation. Immediately upon favorable completion of the background investigation element that caused the administrative withdrawal, DOE or the C/V shall ensure that any matter that could link the individual to the temporary administrative action is eliminated from the subject individual's access authorization or personnel record and other records, except if a review of the information obtained or developed causes the reviewing official to unfavorably terminate the individual's unescorted access.

16. In § 73.57, the heading is revised, paragraph (a)(4) is added; paragraphs (b)(2)(iii) and (b)(2)(iv) are redesignated as (b)(2)(iv) and (b)(2)(v); a new paragraph (b)(2)(iii) is added; and paragraphs (b)(1), (b)(4), (b)(4)(i), (b)(5), (b)(8), (c)(1), (d)(1), (d)(3)(ii), (f)(2), and (f)(5) are revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility, the protected area of a geologic repository operations area, or access to Safeguards Information by power reactor licensees.

(a) * * *

(4) DOE, as a licensee under part 60 or part 63 of this chapter, shall comply with the requirements of this section upon receipt of Commission authorization to receive and possess source, special nuclear, or byproduct material at the geologic repository operations area.

(b) * * *

(1) Except those listed in paragraph (b)(2) of this section, each licensee subject to the provisions of this section shall fingerprint each individual who is permitted unescorted access to the nuclear power facility or access to Safeguards Information or unescorted access to the protected area of a GROA. Individuals who have unescorted access authorization on April 1, 1987 will retain such access pending licensee receipt of the results of the criminal history check on the individual's fingerprints, so long as the cards were submitted by September 28, 1987. The licensee will then review and use the information received from the Federal Bureau of Investigation (FBI), and based on the provisions contained in this rule, determine either to continue to grant or to deny further unescorted access to the facility or Safeguards Information for that individual. Individuals who do not have unescorted access or access to Safeguards Information after April 1, 1987 shall be fingerprinted by the licensee and the results of the criminal history records check shall be used prior to making a determination for granting unescorted access to the nuclear power facility, the protected area of a GROA, or access to Safeguards Information.

(2) * * *

(iii) For unescorted access to the protected area of a GROA, NRC employees and NRC contractors on official agency business; individuals responding to a site emergency in accordance with the provisions of § 73.53(s); a representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement at designated facilities who has been certified by the NRC; law enforcement personnel acting in an official capacity; State or local government employees who have had equivalent reviews of FBI criminal history data; and individuals employed at a facility who possess "Q" or "L" clearances or possess another active government granted security clearance, i.e., Top Secret, Secret, or Confidential;

* * * * *

(4) Fingerprinting is not required if the utility is reinstating the unescorted access to the nuclear power facility, unescorted access to the protected area of a GROA, or access to Safeguards Information granted an individual if:

(i) The individual returns to the same nuclear power utility or GROA that granted access and such access has not been interrupted for a continuous period of more than 365 days; and

* * * * *

(5) Fingerprints need not be taken, in the discretion of the licensee, if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to a nuclear power facility, unescorted access to the protected area of a GROA, or to Safeguards Information by another licensee, based in part on a criminal history records check under this section. The criminal history check file may be transferred to the gaining licensee in accordance with the provisions of paragraph (f)(3) of this section.

* * * * *

(8) A licensee shall use the 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 nuclear power facility, unescorted access to the protected area of a GROA, or access to Safeguards Information.

(c) * * *

(1) A licensee may not base a final determination to deny an individual unescorted access to the nuclear power facility, unescorted access to the protected area of a GROA, or access to Safeguards Information solely on the basis of information received from the FBI involving:

* * * * *

(d) * * *

(1) For the purpose of complying with this section, licensees shall, using an appropriate method listed in § 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint record for each individual requiring unescorted access to the nuclear power facility, unescorted access to the protected area of a GROA, or access to Safeguards Information, to the Director of the NRC's 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) 415-7232, or by e-mail to forms@nrc.gov. Guidance on what alternative formats might be practicable is referenced in § 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.

* * * * *

(3) * * *

(ii) The application fee 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 nuclear plant licensee or GROA licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission publishes the amount of the fingerprint check application fee on the NRC public Web site. (To Find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/eie.html> and select the link for the Criminal History Program.) The Commission will directly notify licensees who are subject to this regulation of any fee changes.

* * * * *

(f) * * *

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to the nuclear power facility, unescorted access to the protected area of a GROA, or access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.

* * * * *

(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, on an individual (including data indicating no record) for 1 year after termination or denial of unescorted access to the nuclear power facility or unescorted access to the protected area of a GROA, or access to Safeguards Information.

17. In § 73.70, the introductory paragraph is revised and paragraph (c)(1) is added to read as follows:

§ 73.70 Records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the

capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records. Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.53, 73.55, or 73.60 shall keep the following records:

* * * * *

(c) * * *

(1) A register of visitors, vendors, and other individuals not employed by DOE pursuant to § 73.53(i)(7)(i)(c). DOE shall retain this register as a record, available for inspection, for three (3) years after the last entry is made in the register.

* * * * *

18. Section 73.71a is added to read as follows:

§ 73.71a Reporting of safeguards events for a GROA.

(a) DOE, as a licensee subject to the provisions of § 73.53, shall notify the NRC Operations Center as soon as possible but not later than 15 minutes after discovery of an imminent or actual safeguards threat against the facility and other safeguards events described in paragraph V of Appendix G to this part.

(1) When making a report under paragraph (a) of this section, the licensee shall:

(i) Identify the facility name; and

(ii) Briefly describe the nature of the threat or event, including:

(A) Type of threat or event (e.g., armed assault, vehicle bomb, credible bomb threat, etc.); and

(B) Threat or event status (i.e., imminent, in progress, or neutralized).

(2) Notifications must be made according to paragraph (d) of this section, as applicable.

(b) DOE shall notify the NRC Operations Center within 1 hour of discovery of the safeguards events described in paragraph VI of Appendix G to this part. Notifications must be made according to paragraph (d) of this section, as applicable.

(c) DOE shall notify the NRC Operations Center, as soon as possible but not later than four (4) hours after discovery of the safeguards events described in paragraph VII of Appendix G to this part. Notifications must be made according to paragraph (d) of this section, as applicable.

(d) DOE shall make the telephonic notifications required by paragraphs (a), (b), and (c) of this section to the NRC Operations Center via the Emergency Notification System, or other dedicated

telephonic system that may be designated by the Commission, if the licensee has access to that system.

(1) If the Emergency Notification System or other designated telephonic system is inoperative or unavailable, DOE shall make the required notification via commercial telephonic service or any other methods that will ensure that a report is received by the NRC Operations Center within the timeliness requirements of paragraph (a), (b), and (c) of this section, as applicable.

(2) Telephonic reports required by this section shall be made by DOE using secure telecommunications equipment approved for the transmission of safeguards information and classified information.

(3) For events reported under paragraph (a) of this section, the licensee may be requested by the NRC to maintain an open, continuous communication channel with the NRC Operations Center, once the licensee has completed other required notifications under this section, and any immediate actions to stabilize the facility. When established, the continuous communications channel shall be staffed by a knowledgeable individual in the licensee's security or operations organizations (e.g., a security supervisor, an alarm station operator, operations personnel, etc.) from a location deemed appropriate by the licensee. The continuous communications channel may be established via the Emergency Notification System or dedicated telephonic system that may be designated by the Commission, if the licensee has access to these systems, or a commercial telephonic system.

(4) For events reported under paragraph (b) of this section, the licensee shall maintain an open, continuous communication channel with the NRC Operations Center upon request from the NRC.

(5) For events reported under paragraph (c) of this section, the licensee is not required to maintain an open, continuous communication channel with the NRC Operations Center.

(e) DOE shall maintain a current safeguards event log.

(1) DOE shall record the safeguards events described in paragraph VI of Appendix G to this part within 24 hours of discovery.

(2) DOE shall retain the log of events recorded under this section as a record for three (3) years after the last entry is made in each log or until termination of the license.

(f) DOE shall make written reports as follows:

(1) DOE shall make an initial telephonic notification under paragraphs (a) and (b) of this section and shall also submit a written report to the NRC within a 60-day period by an appropriate method listed in § 73.4.

(2) DOE is not required to submit a written report following a telephonic notification made under paragraph (c) of this section.

(3) DOE shall submit to the Commission written reports that are of a quality that will permit legible reproduction and processing.

(4) DOE shall prepare the written report in letter format.

(5) In addition to the addressees specified in § 73.4, DOE shall also provide one copy of the written report addressed to the Director, Office of Nuclear Security and Incident Response.

(6) The report must include sufficient information for NRC analysis and evaluation.

(7) Significant supplemental information which becomes available after the initial telephonic notification to the NRC Operations Center or after the submission of the written report must be telephonically reported to the NRC Operations Center under paragraph (d) of this section and also submitted in a revised written report (with the revisions indicated) as required under paragraph (f)(5) of this section.

(8) Errors discovered in a written report must be corrected in a revised report with revisions indicated.

(9) The revised report must replace the previous report; the update must be complete and not be limited to only supplementary or revised information.

(10) DOE shall maintain a copy of the written report of an event submitted under this section as a record for a period of three (3) years from the date of the report.

19. In Appendix B to Part 73, a new Section VII is added to the table of contents, the introductory text is revised by adding a new paragraph between the first and second undesignated paragraphs, and Section VII is added to read as follows:

Appendix B to Part 73—General Criteria for Security Personnel

Table of Contents

*	*	*	*	*
VII. Geologic Repository Operations Area Training and Qualification Plan				
A. General requirements and introduction				
B. Employment suitability and qualification				
C. Duty training				
D. Duty qualification and requalification				

- E. Weapons training
- F. Weapons qualification and requalification program
- G. Weapons, personal equipment, and maintenance
- H. Records
- I. Audits and reviews
- J. Definitions

* * * * *

Insofar as DOE is subject to the requirements of § 73.53 of this part, DOE shall comply only with the requirements in Section VII of this appendix. All other licensees, applicants, or certificate holders shall comply only with Sections I through V of this appendix .

* * * * *

VII. Geologic Repository Operations Area Training and Qualification Plan

A. General requirements and introduction.

1. DOE shall ensure that all individuals who are assigned duties and responsibilities required to prevent high-level radioactive waste theft or diversion and radiological sabotage and who implement the Commission-approved security plans, DOE response strategy, and implementing procedures, meet minimum training and qualification requirements to ensure that each individual possesses the knowledge, skills, and abilities required to effectively perform the assigned duties and responsibilities.

2. To ensure that those individuals who are assigned to perform duties and responsibilities required for the implementation of the Commission-approved security plans, DOE response strategy, and implementing procedures are properly suited, trained, equipped, and qualified to perform their assigned duties and responsibilities, the Commission has developed minimum training and qualification requirements that must be implemented through a Commission-approved training and qualification plan.

3. DOE shall establish, maintain, and follow a Commission-approved training and qualification plan, describing how the minimum training and qualification requirements set forth in this appendix will be met, to include the processes by which all members of the security organization will be selected, trained, equipped, tested, and qualified.

4. Each individual assigned to perform security program duties and responsibilities required to effectively implement the Commission-approved security plans, DOE protective strategy, and the DOE implementing procedures shall demonstrate the knowledge, skills, and abilities required to effectively perform the assigned duties and responsibilities before the individual is assigned the duty or responsibility.

5. DOE shall ensure that the training and qualification program simulates, as closely as practicable, the specific conditions under which the individual shall be required to perform assigned duties and responsibilities.

6. DOE may not allow any individual to perform any security function, assume any security duties or responsibilities, or return to security duty, until that individual satisfies the training and qualification

requirements of this appendix and the Commission-approved training and qualification plan, unless specifically authorized by the Commission.

7. Annual requirements must be scheduled at a nominal twelve-(12) month periodicity. Annual requirements may be completed up to three (3) months before or three (3) months after the scheduled date. However, the next annual training must be scheduled twelve (12) months from the previously scheduled date rather than the date the training was actually completed.

B. Employment suitability and qualification.

1. Suitability.

a. Before employment, or assignment to the security organization, an individual shall:

(1) Possess a high school diploma or pass an equivalent performance examination designed to measure basic mathematical, language, and reasoning skills, abilities, and knowledge required to perform security duties and responsibilities; and

(2) Have attained the age of 21 for an armed capacity or the age of 18 for an unarmed capacity.

b. An unarmed individual assigned to the security organization may not have any felony convictions that reflect on the individual's reliability.

c. The qualification of each individual to perform assigned duties and responsibilities must be documented by a qualified training instructor and attested to by a security supervisor.

2. Physical qualifications.

a. General physical qualifications.

(1) Individuals whose duties and responsibilities are directly associated with the effective implementation of the Commission-approved security plans, DOE protective strategy, and implementing procedures, may not have any physical conditions that would adversely affect their performance.

(2) Armed and unarmed members of the security organization shall be subject to a physical examination designed to measure the individual's physical ability to perform assigned duties and responsibilities as identified in the Commission-approved security plans, DOE protective strategy, and implementing procedures.

(3) This physical examination must be administered by a licensed health professional with final determination being made by a licensed physician to verify the individual's physical capability to perform assigned duties and responsibilities.

(4) DOE shall ensure that both armed and unarmed members of the security organization, who are assigned security duties and responsibilities identified in the Commission-approved security plans, the DOE protective strategy, and implementing procedures, meet the following minimum physical requirements, as required to effectively perform their assigned duties.

b. Vision.

(1) For each individual, distant visual acuity in each eye shall be correctable to 20/30 (Snellen or equivalent) in the better eye and 20/40 in the other eye with eyeglasses or contact lenses.

(2) Near visual acuity, corrected or uncorrected, shall be at least 20/40 in the better eye.

(3) Field of vision must be at least 70 degrees horizontal meridian in each eye.

(4) The ability to distinguish red, green, and yellow colors is required.

(5) Loss of vision in one eye is disqualifying.

(6) Glaucoma is disqualifying, unless controlled by acceptable medical or surgical means, provided that medications used for controlling glaucoma do not cause undesirable side effects which adversely affect the individual's ability to perform assigned security job duties, and provided the visual acuity and field of vision requirements are met.

(7) On-the-job evaluation must be used for individuals who exhibit a mild color vision defect.

(8) If uncorrected distance vision is not at least 20/40 in the better eye, the individual shall carry an extra pair of corrective lenses in the event that the primaries are damaged. Corrective eyeglasses must be of the safety glass type.

(9) The use of corrective eyeglasses or contact lenses may not interfere with an individual's ability to effectively perform assigned duties and responsibilities during normal or emergency conditions.

c. Hearing.

(1) Individuals may not have hearing loss in the better ear greater than 30 decibels average at 500 Hz, 1,000 Hz, and 2,000 Hz with no level greater than 40 decibels at any one frequency.

(2) A hearing aid is acceptable provided that suitable testing procedures demonstrate auditory acuity equivalent to the hearing requirement.

(3) The use of a hearing aid may not decrease the effective performance of the individual's assigned security job duties during normal or emergency operations.

d. Existing medical conditions.

(1) Individuals may not have an established medical history or medical diagnosis of existing medical conditions which could interfere with or prevent the individual from effectively performing assigned duties and responsibilities.

(2) If a medical condition exists, the individual shall provide medical evidence that the condition can be controlled with medical treatment in a manner which does not adversely affect the individual's fitness-for-duty, mental alertness, physical condition, or capability to otherwise effectively perform assigned duties and responsibilities.

e. Addiction. Individuals may not have any established medical history or medical diagnosis of habitual alcoholism or drug addiction or, where this type of condition has existed, the individual shall provide certified documentation of having completed a rehabilitation program which would give a reasonable degree of confidence that the individual would be capable of effectively performing assigned duties and responsibilities.

f. Other physical requirements. An individual who has been incapacitated due to a serious illness, injury, disease, or operation,

which could interfere with the effective performance of assigned duties and responsibilities shall, before resumption of assigned duties and responsibilities, provide medical evidence of recovery and ability to perform these duties and responsibilities.

3. Psychological qualifications.

a. Armed and unarmed members of the security organization shall demonstrate the ability to apply good judgment, mental alertness, and the capability to implement instructions and assigned tasks, and shall possess the acuity of senses and ability of expression sufficient to permit accurate communication by written, spoken, audible, visible, or other signals required by assigned duties and responsibilities.

b. A licensed clinical psychologist, psychiatrist, or physician, trained in part to identify emotional instability, shall determine whether armed members of the security organization and alarm station operators, in addition to meeting the requirement stated in paragraph a. of this section, have no emotional instability that would interfere with the effective performance of assigned duties and responsibilities.

c. A person professionally trained to identify emotional instability shall determine whether unarmed members of the security organization, in addition to meeting the requirement stated in paragraph B.3.a. of this section, have no emotional instability that would interfere with the effective performance of assigned duties and responsibilities.

4. Medical examinations and physical fitness qualifications.

a. Armed members of the security organization shall be subject to a medical examination by a licensed physician to determine the individual's fitness to participate in physical fitness tests. DOE shall obtain and retain a written certification from the licensed physician that no medical conditions were disclosed by the medical examination that would preclude the individual's ability to participate in the physical fitness tests or meet the physical fitness attributes or objectives associated with assigned duties.

b. Before assignment, armed members of the security organization shall demonstrate physical fitness for assigned duties and responsibilities by performing a practical physical fitness test.

(1) The physical fitness test must consider physical conditions, such as strenuous activity, physical exertion, levels of stress, and exposure to the elements as they pertain to each individual's assigned security job duties, for both normal and emergency operations and must simulate site-specific conditions under which the individual will be required to perform assigned duties and responsibilities.

(2) DOE shall describe the physical fitness test in the Commission-approved training and qualification plan.

(3) The physical fitness test must include physical attributes and performance objectives which demonstrate the strength, endurance, and agility, consistent with assigned duties in the Commission-approved security plans, DOE protective strategy, and

implementing procedures during normal and emergency conditions.

(4) The physical fitness qualification of each armed member of the security organization must be documented by a qualified training instructor and attested to by a security supervisor.

5. Physical requalification.

a. At least annually, armed and unarmed members of the security organization shall be required to demonstrate the capability to meet the physical requirements of this appendix and the training and qualification plan.

b. The physical requalification of each armed and unarmed member of the security organization must be documented by a qualified training instructor and attested to by a security supervisor.

C. Duty training.

1. Duty training and qualification requirements. All personnel, who are assigned to perform any security-related duty or responsibility, shall be trained and qualified to perform assigned duties and responsibilities to ensure that each individual possesses the minimum knowledge, skills, and abilities required to effectively carry out those assigned duties and responsibilities.

a. The areas of knowledge, skills, and abilities that are required to perform assigned duties and responsibilities must be identified in the Commission-approved training and qualification plan.

b. Each individual who is assigned duties and responsibilities identified in the Commission-approved security plans, DOE protective strategy, and implementing procedures shall, before assignment:

(1) Be trained to perform assigned duties and responsibilities in accordance with the requirements of this appendix and the Commission-approved training and qualification plan;

(2) Meet the minimum qualification requirements of this appendix and the Commission-approved training and qualification plan; and

(3) Be trained and qualified in the use of all equipment or devices required to effectively perform all assigned duties and responsibilities.

2. On-the-job training.

a. The DOE training and qualification program must include on-the-job training performance standards and criteria to ensure that each individual demonstrates the requisite knowledge, skills, and abilities needed to effectively carry-out assigned duties and responsibilities in accordance with the Commission-approved security plans, DOE protective strategy, and implementing procedures, before the individual is assigned the duty or responsibility.

b. In addition to meeting the requirement stated in paragraph C.2.a. of this section, before assignment, individuals assigned duties and responsibilities to implement the Safeguards Contingency Plan shall complete a minimum of 40 hours of on-the-job training to demonstrate their ability to effectively apply the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities in accordance

with the approved security plans, DOE protective strategy, and implementing procedures. On-the-job training must be documented by a qualified training instructor and attested to by a security supervisor.

c. On-the-job training for contingency activities and drills must include, but is not limited to, hands-on application of knowledge, skills, and abilities related to:

- (1) Response team duties;
- (2) Use of force;
- (3) Tactical movement;
- (4) Cover and concealment;
- (5) Defensive positions;
- (6) Fields-of-fire;
- (7) Re-deployment;
- (8) Communications (primary and alternate);
- (9) Use of assigned equipment;
- (10) Target sets;
- (11) Table top drills; and
- (12) Command and control duties.

3. Tactical response team drills and exercises.

a. DOE shall demonstrate response capabilities through a performance evaluation program as described in Appendix C to this part.

b. DOE shall conduct drills and exercises in accordance with Commission-approved security plans, DOE protective strategy, and implementing procedures.

(1) Drills and exercises must be designed to challenge participants in a manner which requires each participant to demonstrate requisite knowledge, skills, and abilities.

(2) Tabletop exercises may be used to supplement drills and exercises to accomplish desired training goals and objectives.

D. Duty qualification and requalification.

1. Qualification demonstration.

a. Armed and unarmed members of the security organization shall demonstrate the required knowledge, skills, and abilities to carry out assigned duties and responsibilities as stated in the Commission-approved security plans, DOE protective strategy, and implementing procedures.

b. This demonstration must include an annual written exam and hands-on performance demonstration.

(1) Written Exam. The written exams must include those elements listed in the Commission-approved training and qualification plan and shall require a minimum score of 80 percent to demonstrate an acceptable understanding of assigned duties and responsibilities, to include the recognition of potential tampering involving both safety and security equipment and systems.

(2) Hands-on Performance Demonstration. Armed and unarmed members of the security organization shall demonstrate hands-on performance for assigned duties and responsibilities by performing a practical hands-on demonstration for required tasks. The hands-on demonstration must ensure that theory and associated learning objectives for each required task are considered and each individual demonstrates the knowledge, skills, and abilities required to effectively perform the task.

c. Upon request by an authorized representative of the Commission, any

individual assigned to perform any security-related duty or responsibility shall demonstrate the required knowledge, skills, and abilities for each assigned duty and responsibility, as stated in the Commission-approved security plans, DOE protective strategy, or implementing procedures.

2. Requalification.

a. Armed and unarmed members of the security organization shall be requalified at least annually in accordance with the requirements of this appendix and the Commission-approved training and qualification plan.

b. The results of requalification must be documented by a qualified training instructor and attested to by a security supervisor.

E. Weapons training.

1. General firearms training.

a. Armed members of the security organization shall be trained and qualified in accordance with the requirements of this appendix and the Commission-approved training and qualification plan.

b. Firearms instructors.

(1) Each armed member of the security organization shall be trained and qualified by a certified firearms instructor for the use and maintenance of each assigned weapon to include, but not limited to, qualification scores, assembly, disassembly, cleaning, storage, handling, clearing, loading, unloading, and reloading, for each assigned weapon.

(2) Firearms instructors shall be certified from a national or State recognized entity.

(3) Certification must specify the weapon or weapon type(s) for which the instructor is qualified to teach.

(4) Firearms instructors shall be recertified in accordance with the standards recognized by the certifying national or State entity, but in no case shall recertification exceed three (3) years.

c. Annual firearms familiarization. DOE shall conduct annual firearms familiarization training in accordance with the Commission-approved training and qualification plan.

d. The Commission-approved training and qualification plan shall include, but is not limited to, the following areas:

- (1) Mechanical assembly, disassembly, range penetration capability of weapon, and bull's-eye firing;
- (2) Weapons cleaning and storage;
- (3) Combat firing, day and night;
- (4) Safe weapons handling;
- (5) Clearing, loading, unloading, and reloading;
- (6) Drawing and pointing a weapon;
- (7) Rapid fire techniques;
- (8) Closed-quarter firing;
- (9) Stress firing;
- (10) Zeroing assigned weapon(s) (sight and sight/scope adjustments);
- (11) Target engagement;
- (12) Weapon malfunctions;
- (13) Cover and concealment;
- (14) Weapon transition between strong (primary) and weak (support) hands; and
- (15) Weapon familiarization.

e. DOE shall ensure that each armed member of the security organization is instructed on the use of deadly force as authorized by applicable Federal or State law.

f. Armed members of the security organization shall participate in weapons range activities on a nominal four (4) month periodicity. Performance may be conducted up to five (5) weeks before to five (5) weeks after the scheduled date. The next scheduled date must be four (4) months from the originally scheduled date.

F. Weapons qualification and requalification program.

1. General weapons qualification requirements.

a. Qualification firing must be accomplished in accordance with Commission requirements and the Commission-approved training and qualification plan for assigned weapons.

b. The results of weapons qualification and requalification must be documented and retained as a record.

c. Each individual shall be requalified at least annually.

2. Alternate weapons qualification. Upon written request by DOE, the Commission may authorize DOE to provide firearms qualification programs other than those listed in this appendix if DOE demonstrates that the alternative firearm qualification program satisfies Commission requirements. Written requests must provide information regarding the proposed firearms qualification programs and describe how the proposed alternative satisfies Commission requirements.

3. Tactical weapons qualification. The DOE Training and Qualification Plan must describe the firearms used, the firearms qualification program, and other tactical training required to implement the Commission-approved security plans, DOE protective strategy, and implementing procedures. DOE-developed qualification and requalification courses for each firearm must describe the performance criteria needed, including the site-specific conditions (such as lighting, elevation, fields-of-fire) under which assigned personnel shall be required to carryout their assigned duties.

4. Firearms qualification courses. DOE shall conduct the following qualification courses for weapons used.

a. Annual daylight qualification course. Qualifying score must be an accumulated total of 70 percent with handgun and shotgun, and 80 percent with semiautomatic rifle and/or enhanced weapons, of the maximum obtainable target score.

b. Annual night fire qualification course. Qualifying score must be an accumulated total of 70 percent with handgun and shotgun, and 80 percent with semiautomatic rifle and/or enhanced weapons of the maximum obtainable target score.

c. Annual tactical qualification course. Qualifying score must be an accumulated total of 80 percent of the maximum obtainable score.

5. Courses of fire.

a. Handgun.

(1) Armed members of the security organization, assigned duties and responsibilities involving the use of a revolver or semiautomatic pistol, shall qualify in accordance with standards and scores established by a law enforcement course or an equivalent nationally recognized course.

(2) Qualifying scores must be an accumulated total of 70 percent of the maximum obtainable target score.

b. Semiautomatic rifle.

(1) Armed members of the security organization, assigned duties and responsibilities involving the use of a semiautomatic rifle, shall qualify in accordance with the standards and scores established by a law enforcement course or an equivalent nationally recognized course.

(2) Qualifying scores must be an accumulated total of 80 percent of the maximum obtainable score.

c. Shotgun.

(1) Armed members of the security organization, assigned duties and responsibilities involving the use of a shotgun, shall qualify in accordance with standards and scores established by a law enforcement course or an equivalent nationally recognized course.

(2) Qualifying scores must be an accumulated total of 70 percent of the maximum obtainable target score.

d. Enhanced weapons.

(1) Armed members of the security organization, assigned duties and responsibilities involving the use of any weapon or weapons not described in paragraph F.5. shall qualify in accordance with applicable standards and scores established by a law enforcement course or an equivalent nationally recognized course for these weapons.

(2) Qualifying scores must be an accumulated total of 80 percent of the maximum obtainable score.

6. Requalification.

a. Armed members of the security organization shall be requalified for each assigned weapon at least annually in accordance with Commission requirements and the Commission-approved training and qualification plan.

b. Firearms requalification must be conducted using the courses of fire outlined in paragraph 5 of this section.

G. Weapons, personal equipment, and maintenance.

1. Weapons.

DOE shall provide armed personnel with weapons that are capable of performing the function stated in the Commission-approved security plans, DOE protective strategy, and implementing procedures.

2. Personal equipment.

a. DOE shall ensure that each individual is equipped or has ready access to all personal equipment or devices required for the effective implementation of the Commission-approved security plans, DOE protective strategy, and implementing procedures.

b. DOE shall provide armed security personnel, at a minimum, but is not limited to, the following:

- (1) Gas mask, full face;
- (2) Body armor (bullet-resistant vest);
- (3) Ammunition/equipment belt;
- (4) Duress alarms; and
- (5) Two-way portable radios (handi-talkie)

2 channels minimum, 1 operating and 1 emergency.

c. Based upon the DOE protective strategy and the specific duties and responsibilities assigned to each individual, DOE should provide, but is not limited to, the following:

- (1) Flashlights and batteries;
- (2) Baton or other non-lethal weapons;
- (3) Handcuffs;
- (4) Binoculars;
- (5) Night vision aids (e.g., goggles, weapons sights);
- (6) Hand-fired illumination flares or equivalent; and
- (7) Tear gas or other non-lethal gas.

3. Maintenance.
Firearms maintenance program. DOE shall implement a firearms maintenance and accountability program in accordance with the Commission regulations and the Commission-approved training and qualification plan. The program must include:

- (1) Semiannual test firing for accuracy and functionality;
- (2) Firearms maintenance procedures that include cleaning schedules and cleaning requirements;
- (3) Program activity documentation;
- (4) Control and accountability (weapons and ammunition);
- (5) Firearm storage requirements; and
- (6) Armorer certification.

H. Records.

1. DOE shall retain all reports, records, or other documentation required by this appendix in accordance with the requirements of § 73.53(s).

2. DOE shall retain each individual's initial qualification record for three (3) years after termination of the individual's employment and shall retain each requalification record for three (3) years after it is superseded.

3. DOE shall document data and test results from each individual's suitability, physical, and psychological qualification and shall retain this documentation as a record for three years from the date of obtaining and recording these results.

I. Audits and reviews.

DOE shall review the Commission-approved training and qualification plan in accordance with the requirements of § 73.55(o).

J. Definitions.

Terms defined in parts 60, 63, and 73 of this chapter have the same meaning when used in this appendix.

20. In Appendix C to Part 73, a heading for Section I and a new introductory paragraph are added after the "Introduction" section and before the heading "Content of the Plan," the heading Audit and Review is revised to read Section II: Audit and Review, and a new Section III is added at the end of the Appendix to read as follows:

Appendix C to Part 73—Licensee Safeguards Contingency Plans

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Section I: Safeguards Contingency Plans

Introduction

Licensee, applicants, and certificate holders, with the exception of those who are subject to the requirements of § 73.53, shall comply with the requirements of Section I of this appendix.

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Section II: Audit and Review

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Section III: Geologic repository operations area safeguards contingency plans.

(a) Introduction.

The safeguards contingency plan must describe how the criteria set forth in this appendix will be satisfied through implementation and must provide specific goals, objectives and general guidance to personnel to facilitate the initiation and completion of predetermined and exercised responses to threat scenarios, up to and including the design basis threat described in § 73.1(a), for radioactive waste containing strategic special nuclear material.

Contents of the Plan

(b) Each safeguards contingency plan must include the following twelve (12) categories of information:

- (1) Background.
- (2) Generic planning base.
- (3) DOE planning base.
- (4) Responsibility matrix.
- (5) Primary security functions.
- (6) Response capabilities.
- (7) Protective strategy.
- (8) Integrated response plan.
- (9) Threat warning system.
- (10) Performance evaluation program.
- (11) Records, audits and reviews.
- (12) Implementing procedures.

(c) Background.

(1) Consistent with the design basis threat specified in § 73.1(a), DOE shall identify and describe the perceived dangers, threats, and incidents against which the safeguards contingency plan is designed to protect up to and including the design basis threat as specified in § 73.1(a).

(2) DOE shall describe the general goals and operational concepts underlying implementation of the approved safeguards contingency plan to include, but not be limited to, the following:

- (i) The types of incidents covered;
- (ii) The specific goals and objectives to be accomplished;

(iii) The different elements of the onsite physical protection program shall provide at all times the capability to detect, assess, deter, intercept, challenge, delay, and neutralize threats up to and including the design basis threat relative to the perceived dangers and incidents described in the Commission-approved safeguards contingency plan. DOE shall include preplanned strategies for the GROA of potential events, including those that may result in the loss of large areas of the facility due to explosions or fire;

(iv) How the onsite response effort is organized and coordinated to ensure that the capability to prevent high-level radioactive waste theft and sabotage is maintained throughout each type of incident covered;

(v) How the onsite response effort is integrated to include specific procedures, guidance, and strategies to restore the facility, using existing or readily available resources (equipment and personnel) that can be effectively implemented under the circumstances associated with loss of large areas of the facility due to explosions or fires; and

(vi) A list of terms and their definitions used in describing operational and technical aspects of the approved safeguards contingency plan.

(d) Generic planning base.

(1) DOE shall define the criteria for initiation and termination of responses to threats to include the specific decisions, actions, and supporting information needed to respond to each type of incident covered by the approved safeguards contingency plan.

(2) DOE shall ensure early detection of unauthorized activities and shall respond to all alarms or other indications of a threat condition such as tampering, bomb threats, unauthorized barrier penetration (vehicle or personnel), missing or unaccounted for nuclear material, escalating civil disturbances, imminent threat notification, or other threat warnings.

(3) The safeguards contingency plan must:

(i) Identify the types of events that signal the beginning or initiation of a safeguards contingency event;

(ii) Provide predetermined and structured responses to each type of postulated event;

(iii) Define specific goals and objectives for response to each postulated event;

(iv) Identify the predetermined decisions and actions which are required to satisfy the written goals and objectives for each postulated event;

(v) Identify the data, criteria, procedures, mechanisms, and logistical support necessary to implement the predetermined decisions and actions;

(vi) Identify the individuals, groups, or organizational entities responsible for each predetermined decision and action;

(vii) Define the command-and-control structure required to coordinate each individual, group, or organizational entity carrying out predetermined actions; and

(viii) Describe how effectiveness will be measured and demonstrated to include the effectiveness of the capability to detect, assess, intercept, challenge, delay, and neutralize threats up to and including the design basis threat.

(e) DOE planning base.

DOE shall describe the site-specific factors affecting contingency planning and shall develop plans for actions to be taken in response to postulated threats. The following topics must be addressed:

(1) Organizational structure. The safeguards contingency plan must describe the organization's chain of command and delegation of authority during safeguards contingencies to include a description of how command-and-control functions will be coordinated and maintained.

(2) Physical layout. The safeguards contingency plan must include a site description, to include maps and drawings, of the physical structures and their locations.

(i) Site description. The site description must address the site location in relation to nearby towns, transportation routes (e.g., rail, water, air, roads), pipelines, hazardous material facilities, onsite independent spent fuel storage installations, and pertinent environmental features that may have an effect upon coordination of response operations.

(ii) Approaches. Particular emphasis must be placed on main and alternate entry routes for law enforcement or other offsite support agencies and the location of control points for marshaling and coordinating response activities.

(3) Safeguards systems hardware. The safeguards contingency plan must contain a description of the physical security and material accounting system hardware that influence how DOE will respond to an event.

(4) Law enforcement assistance.

(i) The safeguards contingency plan must contain a listing of available local, State, and Federal law enforcement agencies and a general description of response capabilities to include the number of personnel, types of weapons, and estimated response timelines.

(ii) The safeguards contingency plan must contain a discussion of working agreements with offsite law enforcement agencies to include criteria for response, command and control protocols, and communication procedures.

(5) Policy constraints and assumptions. The safeguards contingency plan must contain a discussion of Federal laws, State laws, local ordinances, and policies and practices that govern DOE response to incidents and must include, but not be limited to, the following:

(i) Use of deadly force;

(ii) Recall of off-duty employees;

(iii) Site jurisdictional boundaries; and

(iv) Use of enhanced weapons, if applicable.

(6) Administrative and logistical considerations. The safeguards contingency plan must contain a description of DOE practices which influence how DOE responds to a threat to include, but not be limited to, a description of the procedures that will be used for ensuring that all equipment needed to effect a successful response will be readily accessible, in good working order, and in sufficient supply to provide redundancy in case of equipment failure.

(f) Responsibility matrix.

(1) The safeguards contingency plan must describe the organizational entities that are responsible for each decision and action associated with responses to threats.

(i) For each identified initiating event, a tabulation must be made for each response depicting the assignment of responsibilities for all decisions and actions to be taken.

(ii) The tabulations described in the responsibility matrix must provide an overall description of response actions and interrelationships.

(2) DOE shall ensure that duties and responsibilities required by the approved safeguards contingency plan do not conflict with or prevent the execution of other site emergency plans.

(3) DOE shall identify and discuss potential areas of conflict between site plans in the integrated response plan required by Section III(b)(8) of this appendix.

(4) DOE shall address safety/security interface issues in accordance with the requirements of § 73.53(t) to ensure that activities by the security organization, maintenance, operations, and other onsite entities are coordinated in a manner that precludes conflict during both normal and emergency conditions.

(g) Primary security functions.

(1) DOE shall establish and maintain, at all times, the capability to detect, assess, and respond to all threats to the facility up to and including the design basis threat.

(2) To facilitate initial response to a threat, DOE shall ensure the capability to observe all areas of the facility in a manner that ensures early detection of unauthorized activities and limits exposure of responding personnel to possible attack.

(3) DOE shall generally describe how the primary security functions are integrated to provide defense in depth and are maintained despite the loss of any single element of the onsite physical protection program.

(4) The DOE description must begin with physical protection measures implemented in the outermost facility perimeter and must move inward through those measures implemented to protect vital and target set equipment.

(h) Response capabilities.

(1) DOE shall establish and maintain at all times the capability to intercept, challenge, delay, and neutralize threats up to and including the design basis threat.

(2) DOE shall identify the personnel, equipment, and resources necessary to perform the actions required to prevent sabotage in response to postulated events.

(3) DOE shall ensure that predetermined actions can be completed under the postulated conditions.

(4) DOE shall provide at all times an armed response team comprised of trained and qualified personnel who possess the knowledge, skills, abilities, and equipment required to implement the Commission-approved safeguards contingency plan and site protective strategy. The plan must include a description of the armed response team including the following:

(i) The authorized minimum number of armed responders, available at all times inside the protected area.

(ii) The authorized minimum number of armed security officers, available onsite at all times.

(5) The total number of armed responders and armed security officers must be documented in the approved security plans and documented as a component of the protective strategy.

(6) DOE shall ensure that individuals assigned duties and responsibilities to implement the safeguards contingency plan are trained and qualified in accordance with appendix B of this part and the Commission-approved security plans.

(i) Protective strategy.

(1) DOE shall develop, maintain, and implement a written protective strategy that describes the deployment of the armed response team relative to the general goals, operational concepts, performance objectives, and specific actions to be accomplished by each individual in response to postulated events.

(2) The protective strategy must:

(i) Be designed to prevent high-level radioactive waste theft or diversion and radiological sabotage through the coordinated implementation of specific actions and strategies required to intercept, challenge, delay, and neutralize, impede, or mitigate security-related threats;

(ii) Describe and consider site-specific conditions, to include but not be limited to, facility layout, the location of target set equipment and elements, target set equipment that is in maintenance or out of service, and the potential effects that unauthorized electronic access to safety and security systems may have on the protective strategy capability to prevent high-level radioactive waste theft or diversion or sabotage;

(iii) Identify predetermined actions and timelines for the deployment of armed personnel;

(iv) Provide bullet resisting protected positions with appropriate fields of fire; and

(v) Limit exposure of security personnel to possible attack.

(3) DOE shall provide a command and control structure, to include response by offsite law enforcement agencies, which ensures that decisions and actions are coordinated and communicated in a timely manner and that facilitates response in accordance with the integrated response plan.

(j) Integrated Response Plan.

(1) DOE shall document, maintain, and implement an Integrated Response Plan which must identify, describe, and coordinate actions to be taken by DOE personnel and offsite agencies during a contingency event or other emergency situation.

(2) The Integrated Response Plan must:

(i) Be designed to integrate and coordinate all actions to be taken in response to an emergency event in a manner that will ensure that each site plan and procedure can be successfully implemented without conflict from other plans and procedures;

(ii) Include specific procedures, guidance, and strategies to restore the facility using existing or readily available resources (equipment and personnel) that can be effectively implemented under the circumstances associated with loss of large areas of the facility due to explosions or fires;

(iii) Ensure that onsite staffing levels, facilities, and equipment required for response to any identified event are readily available and capable of fulfilling their intended purpose;

(iv) Provide emergency action levels to ensure that threats result in at least a notification of unusual event, and implement procedures for the assignment of a predetermined classification to specific events; and

(v) Include specific procedures, guidance, and strategies describing cyber incident response and recovery.

(3) DOE shall:

(i) Reconfirm on an annual basis, liaison with local, State, and Federal law enforcement agencies, established in accordance with § 73.53(m)(8), to include communication protocols, command and control structure, marshaling locations, estimated response times, and anticipated response capabilities and specialized equipment.

(ii) Provide required training personnel in accordance with site procedures to ensure the operational readiness of personnel commensurate with assigned duties and responsibilities.

(iii) Periodically train personnel in accordance with site procedures to respond to a hostage or duress situation.

(iv) Determine the possible effects that nearby hazardous material facilities may have upon site response plans and modify response plans, procedures, and equipment as necessary.

(v) Ensure that identified actions are achievable under postulated conditions.

(k) Threat warning system.

(1) DOE shall implement a "Threat warning system" which identifies specific graduated protective measures and actions to be taken to increase preparedness against a heightened or imminent threat of attack.

(2) DOE shall ensure that the specific protective measures and actions identified for each threat level are consistent with the Commission-approved safeguards contingency plan, and other site security, and emergency plans and procedures.

(3) Upon notification by an authorized representative of the Commission, DOE shall implement the specific protective measures assigned to the threat level indicated by the Commission representative.

(l) Performance Evaluation Program.

(1) DOE shall document and maintain a Performance Evaluation Program that describes how the DOE will demonstrate and assess the effectiveness of the onsite physical protection program to prevent significant radiological sabotage events and to include the capability of armed personnel to carry out their assigned duties and responsibilities.

(2) The Performance Evaluation Program must include procedures for the conduct of quarterly drills and annual force-on-force exercises that are designed to demonstrate the effectiveness of DOE's capability to detect, assess, intercept, challenge, delay, and neutralize a simulated threat.

(i) The scope of drills conducted for training purposes must be determined by DOE as needed, and can be limited to specific portions of the site protective strategy.

(ii) Drills, exercises, and other training must be conducted under conditions that simulate as closely as practical the site specific conditions under which each member will, or may be, required to perform assigned duties and responsibilities.

(iii) DOE shall document each performance evaluation to include, but not be limited to, scenarios, participants, and critiques.

(iv) Each drill and exercise must include a documented post-exercise critique in which participants identify failures, deficiencies, or other findings in performance, plans, equipment, or strategies.

(v) DOE shall enter all findings, deficiencies, and failures identified by each performance evaluation into the corrective action program to ensure that timely corrections are made to the onsite physical protection program, and necessary changes are made to the approved security plans, DOE protective strategy, and implementing procedures.

(vi) DOE shall protect all findings, deficiencies, and failures relative to the effectiveness of the onsite physical protection program in accordance with the requirements of § 73.21.

(3) For the purpose of drills and exercises, DOE shall:

(i) Use no more than the number of armed personnel specified in the approved security plans to demonstrate effectiveness;

(ii) Minimize the number and effects of artificialities associated with drills and exercises;

(iii) Implement the use of systems or methodologies that simulate the realities of armed engagement through visual and audible means and that reflect the capabilities of armed personnel to neutralize a target through the use of firearms during drills and exercises; and

(iv) Ensure that each scenario used is capable of challenging the ability of armed personnel to perform assigned duties and implement required elements of the protective strategy.

(4) The Performance Evaluation Program must be designed to ensure that:

(i) Each member of each shift who is assigned duties and responsibilities required to implement the approved safeguards contingency plan and DOE protective strategy participates in at least one (1) drill on a quarterly basis and one (1) force-on-force exercise on an annual basis, as appropriate;

(ii) The mock adversary force replicates, as closely as possible, adversary characteristics and capabilities in the design basis threat described in § 73.1(a) of this part, and is capable of exploiting and challenging the DOE protective strategy, personnel, command and control, and implementing procedures;

(iii) Protective strategies are evaluated and challenged through tabletop demonstrations;

(iv) Drill and exercise controllers are trained and qualified to ensure each controller has the requisite knowledge and experience to control and evaluate exercises; and

(v) Drills and exercises are conducted safely in accordance with site safety plans.

(5) Members of the mock adversary force used for NRC-observed exercises shall be independent of both the security program management and personnel who have direct responsibility for implementation of the security program, including contractors, to avoid the possibility for a conflict-of-interest.

(6) Scenarios.

(i) DOE shall develop and document multiple scenarios for use in conducting quarterly drills and annual force-on-force exercises.

(ii) DOE scenarios must be designed to test and challenge any component, or combination of components, of the onsite physical protection program and protective strategy.

(iii) Each scenario must use a unique target set or target sets, and varying combinations of adversary equipment, strategies, and tactics, to ensure that the combination of all scenarios challenges every component of the onsite physical protection program and protective strategy to include, but not be limited to, equipment, implementing procedures, and personnel.

(iv) DOE shall ensure that scenarios used for required drills and exercises are not repeated within any twelve (12) month

period for drills and three (3) years for exercises.

(m) Records, audits, and reviews.

(1) DOE shall review and audit the Commission-approved safeguards contingency plan in accordance with the requirements § 73.53(o).

(2) DOE shall make necessary adjustments to the Commission-approved safeguards contingency plan to ensure successful implementation of Commission regulations and the site protective strategy.

(3) The safeguards contingency plan review must include an audit of implementing procedures and practices, the site protective strategy, and response agreements made by local, State, and Federal law enforcement authorities.

(4) DOE shall retain all reports, records, or other documentation required by this appendix in accordance with the requirements of § 73.53(s).

(n) Implementing procedures.

(1) DOE shall establish and maintain written implementing procedures that provide specific guidance and operating details that identify the actions to be taken and decisions to be made by each member of the security organization who is assigned duties and responsibilities required for the effective implementation of the Commission-approved security plans and the site protective strategy.

(2) DOE shall ensure that implementing procedures accurately reflect the information contained in the responsibility matrix required by this appendix, the Commission-approved security plans, the Integrated Response Plan, and other site plans.

(3) Implementing procedures need not be submitted to the Commission for approval but are subject to inspection.

21. In Appendix G to part 73, a paragraph is added after the introductory paragraph, paragraphs III and IV are reserved, and paragraphs V, VI, VII and VIII are added to read as follows:

Appendix G to Part 73—Reportable Safeguards Events

* * * * *

Under the provisions of § 73.71a DOE, as a licensee subject to the provisions of § 73.53, shall report or record, as appropriate, the following safeguards events under paragraphs V, VI, VII, and VIII of this appendix. DOE shall make such reports to the Commission under the provisions of 73.71a.

* * * * *

III [Reserved]

IV [Reserved]

V. *Events at a GROA to be reported as soon as possible, but no later than 15 minutes after discovery, followed by a written report within sixty (60) days.*

(a) The initiation of a security response consistent with DOE's physical security plan, safeguards contingency plan, or defensive strategy based on actual or imminent threat.

(b) DOE is not required to report security responses initiated as a result of information communicated to the licensee by the

Commission, such as the threat warning system addressed in Appendix C to this part.

VI. *Events at a GROA to be reported within one (1) hour of discovery, followed by a written report within sixty (60) days.*

(a) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(1) A theft or unlawful diversion of special nuclear material; or

(2) Significant physical damage to the GROA facility if it possesses strategic special nuclear material; or

(3) Interruption of normal operation of the GROA through the unauthorized use of or tampering with its components, or controls including the security system.

(b) An actual or attempted entry of an unauthorized person into any area or transport for which DOE is required by Commission regulations to control access.

(c) Any failure, degradation, or the discovered vulnerability in a safeguard system that could allow unauthorized or undetected access to any area or transport for which DOE is required by Commission regulations to control access and for which compensatory measures have not been employed.

(d) The actual or attempted introduction of contraband into any area or transport for which DOE is required by Commission regulations to control access.

VII. *Events at a GROA to be reported within four (4) hours of discovery. No written followup report is required.*

(a) Any other information received by the licensee of suspicious surveillance activities or attempts at access, including:

(1) Any security-related incident involving suspicious activity that may be indicative of potential pre-operational surveillance, reconnaissance, or intelligence-gathering activities directed against the facility. Such activity may include, but not be limited to, attempted surveillance or reconnaissance activity, elicitation of information from security or other site personnel relating to the security or safe operation of the facility, or challenges to security systems (e.g., failure to stop for security checkpoints or possible tests of security response and security screening equipment.

(2) Any security-related incident involving suspicious aircraft overflight activity. Commercial or military aircraft activity considered routine by DOE is not required to be reported.

(3) Any incident resulting in the notification of local, state or national law enforcement, or law enforcement response to the site not included in paragraphs V or VI of this appendix;

(b) The unauthorized use of or tampering with the components or controls, including the security system.

(c) Follow-up communications regarding events reported under paragraph VII of this appendix will be completed through the NRC threat assessment process via the NRC Operations Center.

VIII. *Events at a GROA to be recorded within 24 hours of discovery in the safeguards event log.*

(a) Any failure, degradation, or discovered vulnerability in a safeguards system that

could have allowed unauthorized or undetected access to any area or transport in which the licensee is required by Commission regulations to control access had compensatory measures not been established.

(b) Any other threatened, attempted, or committed act not previously defined in this appendix with the potential for reducing the effectiveness of the physical protection program below that described in a licensee physical security or safeguards contingency plan, or the actual condition of such reduction in effectiveness.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

22. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

23. In § 74.1, paragraph (b) is revised to read as follows:

§ 74.1 Purpose.

* * * * *

(b) The general conditions and procedures for the submittal of a license application for the activities covered in this part are detailed in §§ 60.21, 63.21, or 70.22 of this chapter.

24. In § 74.2, paragraph (b) is revised to read as follows:

§ 74.2 Scope.

* * * * *

(b) In addition, specific control and accounting requirements are included in subparts C, D, E, and F of this part for certain licensees who:

(1) Possess and use formula quantities of strategic special nuclear material;

(2) Possess and use special nuclear material of moderate strategic significance;

(3) Possess and use special nuclear material of low strategic significance;

(4) Possess uranium source material and equipment capable of producing enriched uranium; or

(5) Possess and use waste containing special nuclear material at a GROA.

* * * * *

25. In § 74.4, definitions for “accounting”, “custodian”, “high-level radioactive waste”, “item control area”, “item control program”, and “material balance area” are added in alphabetical order to read as follows:

§ 74.4 Definitions.

* * * * *

Accounting means the records (e.g., ledgers, journals, source documents,

etc.) pertaining to the determination of, and current record maintenance of, special nuclear material quantities associated with receipts, shipments, measured discards, transfers into and between material balance areas and/or item control areas, and total material on current inventory.

* * * * *

Custodian means a designated individual who is responsible for the control and movement of all special nuclear material within a specified control area, and maintaining records relative to all special nuclear material transferred into or out of the area and that is currently located within the control area. Control areas are usually designated as material balance areas or item control areas. From the standpoint of appropriate safeguards practice, a single individual should not be a custodian of more than one control area.

* * * * *

High-level radioactive waste or HLW means:

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;

(2) Irradiated reactor fuel; and

(3) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

* * * * *

Item control area (ICA) means an identifiable physical area for the storage and control of special nuclear material items. Control of items moving into or out of an ICA is by item identity and assigned special nuclear material quantity.

Item control program means a system that tracks (i.e., records) the creation, identity, location, and disposition of all special nuclear material items of certain predetermined categories. In addition, item control programs usually provide a periodic verification of item existence and location for static items.

* * * * *

Material balance area (MBA) means an identifiable physical area for the physical and administrative control of special nuclear material such that the quantity of nuclear material being moved into or out of the MBA is a measurement-based assigned value for element and isotope.

* * * * *

26. In § 74.13, paragraph (a) is revised to read as follows:

§ 74.13 Material Status Reports.

(a) Each licensee, including nuclear reactor licensees as defined in §§ 50.21 and 50.22 of this chapter, authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall complete and submit, in computer-readable format, Material Balance Reports concerning special nuclear material that the licensee has received, produced, possessed, transferred, consumed, disposed of, or lost. This prescribed computer-readable report replaces the DOE/NRC Form 742 which has been previously submitted in paper form. The Physical Inventory Listing Report must be submitted with each Material Balance Report. This prescribed computer-readable report replaces the DOE/NRC Form 742C which has been previously submitted in paper form. Each licensee shall prepare and submit the reports described in this paragraph in accordance with instructions (NUREG/BR-0007 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001. Each licensee subject to the requirements of § 74.51 shall compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. All other licensees subject to this requirement shall submit a report within 60 calendar days of the beginning of the physical inventory required by §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), 74.43(c)(6), or 74.73(i)(1). The Commission may permit a licensee to submit the reports at other times for good cause.

* * * * *

27. In § 74.17, a new paragraph (d) is added to read as follows:

§ 74.17 Special nuclear material physical inventory summary report.

* * * * *

(d) DOE shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of each physical inventory required by § 74.73(i). DOE shall report the physical inventory results by facility and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

28. In § 74.19, paragraphs (a) introductory text and (c) are revised to read as follows:

§ 74.19 Recordkeeping.

(a) Licensees subject to the recordkeeping requirements of §§ 74.31, 74.33, 74.43, 74.59, or 74.73 are exempt from the requirements of paragraphs (a)(1) through (a)(4) of this section. Otherwise:

* * * * *

(c) Other than licensees subject to §§ 74.31, 74.33, 74.41, 74.51, or 74.71, each licensee who is authorized to possess special nuclear material, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in its possession under license at intervals not to exceed 12 months. The results of these physical inventories need not be reported to the Commission, but the licensee shall retain the records associated with each physical inventory until the Commission terminates the license that authorized the possession of special nuclear material.

* * * * *

29. Subpart F is redesignated as Subpart G and a new Subpart F is added to read as follows:

Subpart F—Geologic Repository Operations Area

§ 74.71 Nuclear material control and accounting for a geologic repository operations area.

(a) General performance objectives. DOE shall establish, implement, and maintain a Commission-approved material control and accounting (MC&A) program that will achieve the following performance objectives:

(1) Maintain accurate, current, and reliable information on, and confirm the quantities and locations of special nuclear material (SNM) in radioactive waste in DOE's possession at the GROA;

(2) Detect, respond to, and resolve any anomalies indicating a possible loss of SNM, including potential theft or diversion;

(3) Permit rapid determination of whether an actual loss of a significant quantity of SNM has occurred;

(4) Generate and provide, as requested, information to aid in the investigation and recovery of missing SNM in the event of an actual loss, theft, or other misuse; and

(5) Control access to MC&A information that might assist adversaries in possible attempts to carry out a theft or diversion, or to help target

radioactive waste for radiological sabotage.

(b) *System capabilities.* To achieve the general performance objectives in § 74.71(a), the MC&A program must include the capabilities and features described in § 74.73.

(c) *Submittal and implementation dates.* DOE shall submit an MC&A plan describing how the performance objectives of § 74.71(a) will be achieved, and how the system capabilities required by § 74.71(b) will be met. The MC&A plan must be submitted no later than 180 days after the NRC issues a construction authorization for the GROA. The Commission-approved MC&A plan must be implemented upon the Commission's issuance of a license to operate the GROA or by the date specified in a license condition.

§ 74.73 Internal controls, inventory, and records.

(a) *General.* DOE shall establish and maintain the internal control, inventory, and recordkeeping capabilities required in paragraphs (b) through (k) of this section.

(b) *Management structure.* DOE shall:

(1) Establish, document, and maintain a management structure that assures clear overall responsibility for MC&A functions, independence of MC&A functions from operations responsibilities, and separation of key responsibilities; and

(2) Provide for the adequate review, approval, and use of written procedures that are identified in the approved MC&A plan as being critical to the effectiveness of the described program.

(c) *Personnel qualification and training.* DOE shall assure that personnel, who work in key positions where mistakes could degrade the effectiveness of the MC&A system, are trained to maintain a high level of safeguards awareness and are qualified to perform their duties and/or responsibilities.

(d) *Independent assessments.* DOE shall perform and document independent reviews and assessments of the total MC&A program, at intervals not to exceed 24 months, that assess the performance of the program, review its effectiveness, and document management's action on prior assessment recommendations and identified deficiencies.

(e) *Item control program.* DOE shall establish, document, implement, and maintain an item control program that:

(1) Provides current knowledge of all SNM items with respect to unique identity, element and isotope content, and location from receipt to

underground emplacement to retrieval (if necessary);

(2) Assures that the integrity of items is maintained by the tamper-safing of containers; placement in a controlled access area that provides protection at least equivalent to tamper-safing; or sealing such that the unauthorized removal of SNM would be readily apparent.

(3) Maintains and follows procedures for tamper-safing of containers, which include control of access to and distribution of unused seals and records showing the date and time of seal application;

(4) Stipulates the use of the 2-person rule for sealing operations, for affixing tamper-indicating devices, for any handling of bare fuel assemblies, for taking and/or verifying physical inventories or for transfers of SNM.

(5) Designates item control areas (ICA) and ICA custodians.

(f) *Anomaly, detection, and response program.* DOE shall establish, implement, and maintain a program that:

(1) Detects and responds to anomalies indicating a potential loss or misuse of SNM, including the possible theft or diversion of SNM by an internal threat using collusion, stealth, and deceit. The overall design of the detection and response program must include an analysis of conceivable ways and means through which clandestine attempts of theft, diversion, or other misuse might occur; and

(2) Incorporates checks and balances that are sufficient to thwart an attempt to divert SNM and to detect falsification of data and reports that could conceal the theft or diversion of SNM by:

(i) A single individual, including an employee in any position; and

(ii) Collusion between individuals, one or more of whom have authorized access to SNM.

(g) *Quality assurance capabilities.* DOE shall establish, document, implement, and maintain a program to reasonably assure the validity of assigned SNM quantities, including a measurement system and a measurement control program that:

(1) Maintains a level of effectiveness sufficient to satisfy the capabilities required for detection, response, and accounting. To achieve this objective, DOE shall perform engineering analyses and evaluations of the design, installation, preoperational tests, calibration, and operation of all measurement systems to be used for MC&A systems; and

(2) Assures the validity of the assigned SNM content for receipts on a shipment basis by:

(i) Checking unique identification, integrity and intactness of shipments;

(ii) Coordinating with originators regarding the technical bases and assignment of SNM values, the loading of canisters/shipping casks, and tamper-safing/sealing procedures for shipping SNM to the GROA;

(iii) Investigating and resolving any discrepancies that may arise from validity checks on receipts or from off-normal circumstances; and

(iv) Using, as needed, weighing and/or nondestructive assay measurements for verifying SNM content in the resolution of anomalies or other off-normal circumstances from receipt to emplacement.

(h) *Information aid.* To meet the general performance objective in § 74.71(a)(4) DOE shall provide to the NRC and/or other appropriate government agencies information deemed necessary for conducting an investigation of actual (or highly suspected) events pertaining to missing SNM and information relevant to the recovery of missing SNM from theft, diversion, or other loss.

(i) *Inventory.* DOE shall:

(1) Except as required by part 75 of this chapter, perform a facility-wide physical inventory of all possessed SNM to close material balances on an annual basis;

(2) Provide written instructions for conducting physical inventories that detail assignments, responsibilities, preparation for and performance of an inventory, and assure that all items are listed, and no item is listed more than once;

(3) Designate material balance areas (MBA) and MC&A database administrators. MBAs shall be designated for taking physical inventories of specified underground and surface operations; and

(4) Within 60 days after the start of each physical inventory required by paragraph (i)(1) of this section:

(i) Reconcile and adjust the book record, as appropriate, to the results of the physical inventory;

(ii) Investigate and resolve, or report, by an appropriate method listed in § 74.6 to the Director, Office of Nuclear Material Safety and Safeguards, any unresolved inventory difference or discrepancy.

(j) *Measures for formula quantities of strategic SNM.* If DOE receives formula quantities of strategic special nuclear materials at the GROA that are in a form other than as irradiated reactor fuel or high-level radioactive waste, such strategic SNM shall be controlled and accounted for in a manner that meets

the following additional program measures:

- (1) Item monitoring features as specified in § 74.55;
 - (2) Alarm resolution as specified in § 74.57;
 - (3) Quality assurance and accounting capabilities, as appropriate, as specified in § 74.59;
 - (4) Establishment of controlled areas for strategic special nuclear material; and
 - (5) Conduct of a semiannual physical inventory of all strategic special nuclear material.
- (k) *Recordkeeping.* (1) DOE shall:
- (i) Establish records that will demonstrate that the performance objectives of § 74.71(a) and the system capability and feature requirements of § 74.73 have been met, and maintain these records in duplicate in an

auditable form, available for inspection, and retain these records until the Commission terminates the GROA license;

- (ii) Retain material control and accounting procedures until the Commission terminates the GROA license and retain any superseded portion of the procedure for 3 years after the portion is superseded;

- (iii) Maintain adequate safeguards against tampering with and loss of records;

- (iv) Satisfy the requirements of § 60.71 or § 63.71 of this chapter, for records on the receipt, handling, and disposition of radioactive waste at the GROA.

- (2) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if the reproduced copy or microform is

duly authenticated by authorized personnel, and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, or specifications must include all pertinent information such as stamps, initials, and signatures.

Dated at Rockville, Maryland, this 11th day of December 2007.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

67831-68040.....	3
68041-68470.....	4
68471-68742.....	5
68743-69136.....	6
69137-69568.....	7
69569-70218.....	10
70219-70478.....	11
70479-70762.....	12
70763-71054.....	13
71055-71198.....	14
71199-71574.....	17
71575-71742.....	18
71743-72232.....	19
72233-72562.....	20

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

8207.....	68041
8208.....	68469
8209.....	69135
8210.....	70761
8211.....	71197

Executive Orders:

11582 (See 13453).....	70477
13453.....	70477

5 CFR

530.....	67831
575.....	67831
843.....	71743

7 CFR

205.....	69569, 70479
246.....	68966
301.....	69137, 70763, 72233
305.....	70219
354.....	70765
613.....	68743
905.....	68471
923.....	71055
983.....	69139
985.....	71199
1924.....	70220
1944.....	70220
3550.....	70220

Proposed Rules:

51.....	68542
319.....	70237
718.....	71606
915.....	69624
925.....	70811
930.....	70240
944.....	69624, 70811
948.....	70244
1412.....	71606
1427.....	71606

9 CFR

130.....	70765, 71744
156.....	70765

10 CFR

Ch. I.....	68043
19.....	68043, 72233
20.....	68043, 72233
50.....	68043, 71750, 72233

Proposed Rules:

51.....	71083
60.....	72522
63.....	72522
73.....	72522
74.....	72522

12 CFR

3.....	69288
201.....	71202, 71756
202.....	71056

203.....	72234
208.....	69288
220.....	70486
225.....	69288
226.....	71058
325.....	69288
559.....	69288
560.....	69288
563.....	69288
567.....	69288
584.....	72235
620.....	68060

Proposed Rules:

41.....	70944
222.....	70944
334.....	70944
544.....	72264
552.....	72264
571.....	70944
717.....	70944
1750.....	68656

13 CFR

Proposed Rules:

120.....	72264
----------	-------

14 CFR

11.....	68473
13.....	68473
17.....	68473
23.....	69572, 69574, 69577, 69579
26.....	68618, 70486
36.....	68473
39.....	67841, 67843, 67845, 67847, 69572, 69574, 69577, 69579, 69583, 69585, 69587, 69590, 69591, 69593, 69595, 69598, 69600, 69601, 69604, 69606, 69608, 69610, 69612, 69614, 71204, 71206, 71210, 71212, 71214, 71216, 71218
71.....	70767, 70768, 70769, 71060, 71757, 71758, 71759, 71761, 71762, 71764, 71765, 71766, 71767, 71768
91.....	68473
97.....	68062, 70771, 70772
121.....	70486
129.....	70486
139.....	68473
150.....	68473
193.....	68473
404.....	68473
406.....	68473

Proposed Rules:

1.....	68763
23.....	68763, 72265
25.....	68763
39.....	67864, 67866, 67868, 67870, 67873, 67998, 68106, 68108, 68764, 68766, 69628, 69630, 69635, 70247, 70249,

71086, 71089, 71271, 71273, 71275, 71277, 71279, 71281, 71284, 71286, 71288, 71830, 71832, 71834, 72270, 72273	62.....72245 124.....71785 126.....71575 127.....70777	286.....71847	422.....68700 423.....68700 424.....68075 431.....68077 440.....68077 441.....68077 488.....71579
71.....69638, 71606, 71607, 71608	23 CFR 630.....68480	33 CFR 110.....70513 117.....68503, 69144, 70515, 70516, 72250, 72251 161.....70780 165.....68504, 68506, 70780, 72251	Proposed Rules: 1001.....71868
91.....68763 121.....68763 125.....68763 135.....68763 139.....68763	24 CFR 598.....71008	Proposed Rules: 117.....68118, 68548	43 CFR Proposed Rules: 2800.....70376 2880.....70376 2920.....70376
15 CFR 740.....70509 772.....70509 806.....71220	25 CFR 36.....68491 Proposed Rules: 11.....71835	34 CFR 75.....69145	44 CFR 64.....68748, 68750 67.....68768, 68769, 68784, 68795, 68806
16 CFR Proposed Rules: 660.....70944	26 CFR 1.....70779, 71060, 71061, 71787 Proposed Rules: 1.....67878, 71842	36 CFR 7.....70781 Proposed Rules: 7.....72316 223.....72319 1193.....71613 1194.....71613 1281.....72319	Proposed Rules: 67.....68752
17 CFR 230.....71546 239.....71546 240.....69554, 70450 Proposed Rules: 210.....71610 229.....71610 231.....71610 239.....72274 241.....71610	27 CFR Proposed Rules: 4.....71289, 71290 9.....71289, 71290 70.....71290	37 CFR 382.....71795 383.....72253 Proposed Rules: 201.....70529	47 CFR 25.....70807 54.....67858 64.....70808 73.....67859 Proposed Rules: 64.....71099 73.....67880
18 CFR 35.....72239 Proposed Rules: 410.....67875	28 CFR 50.....69143	38 CFR 3.....68507 17.....68070	48 CFR 216.....69158 227.....69159 252.....69159 Proposed Rules: 31.....72325 225.....69176 228.....69177 231.....69176, 69177 252.....69177
19 CFR Proposed Rules: 201.....72280 210.....72280	29 CFR 102.....68502 1910.....71061 2702.....71788 4006.....71222 4007.....71222 4022.....71071 4044.....71071 Proposed Rules: 29.....71020 1910.....71091, 72452 1915.....72452 2550.....70988 2560.....71842 4041.....68542 4042.....68542	39 CFR 121.....72216 122.....72216	49 CFR 192.....70808 385.....71247 395.....71247 564.....68234 571.....68234, 68442 630.....68756 Proposed Rules: 571.....72326
20 CFR 401.....69616 402.....69616 Proposed Rules: 404.....70527	30 CFR 75.....71791 206.....71231 701.....68000 773.....68000 774.....68000 778.....68000 843.....68000 847.....68000 Proposed Rules: 75.....72301 756.....71291 943.....71293 946.....71295	40 CFR 49.....69618 50.....71072 51.....71072 52.....67854, 68072, 68508, 68511, 68515, 69148, 69621, 70804, 71073, 71245, 71576, 72256 81.....68515, 70222 94.....68518 97.....68515, 71576, 72256 131.....70517 174.....68525, 68744 180.....68529, 68534, 68662, 69150, 71077, 71798 271.....70229 300.....68075 Proposed Rules: 9.....69522 50.....7148871579 52.....67878, 68118, 68119, 68551, 69175, 70255, 70540, 70811, 71095, 71297, 72322 60.....69175 62.....70812 63.....70543 81.....70255 94.....69522 271.....70266	50 CFR 17.....70648, 72010 229.....67859, 67861 300.....68093, 68762 648.....68095, 68096, 70235 660.....68097, 69162, 71583 679.....71601, 71802 Proposed Rules: 17.....69034, 70269, 70284, 70716, 71040, 71298 20.....71869 223.....71102 300.....70286 600.....70286 622.....68551 648.....71315 679.....68810, 68833 697.....70286
21 CFR 20.....69108 25.....69108 201.....69108, 71769 202.....69108 207.....69108 210.....68064 211.....68064 225.....69108 226.....69108 500.....69108 510.....68477, 69108 511.....69108 515.....69108 516.....69108 520.....68477 522.....69142 558.....68478, 68479, 69108, 70774, 70776 1300.....67850 1308.....69618 Proposed Rules: 133.....70251 210.....68111, 68113 211.....68111, 68113	31 CFR 351.....67853 353.....67853 359.....67853 360.....67853 363.....67853	41 CFR 302-4.....70234 Proposed Rules: 102-39.....70266	51 CFR 411.....68075
22 CFR 22.....72243	32 CFR 57.....71792 68.....70222 285.....71793 Proposed Rules: 199.....72307		

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 20, 2007**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:
Black stem rust; correction; published 12-20-07

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Michigan; published 12-20-07

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:
Boeing; published 11-15-07
Class D airspace; published 11-2-07
Class E airspace; published 8-10-07
Class E airspace; correction; published 11-2-07
IFR altitudes; published 11-29-07
VOR Federal airways; published 10-10-07

TRANSPORTATION DEPARTMENT**National Highway Traffic Safety Administration**

Motor vehicle safety standards:
Brake hoses; effective date delay; published 12-13-06

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Grapes grown in Southeastern California and imported table grapes; comments due by 12-28-07; published 12-13-07 [FR 07-06049]
Potatoes (Irish) grown in Colorado; comments due by 12-26-07; published 12-11-07 [FR E7-23839]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:
Imported fire ant; comments due by 12-24-07; published 10-25-07 [FR E7-21003]

AGRICULTURE DEPARTMENT**Farm Service Agency**

Special programs:
Dairy Disaster Assistance Payment Program III; comments due by 12-26-07; published 11-26-07 [FR E7-22904]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Endangered and threatened species:
Critical habitat designations—
North Pacific right whale; comments due by 12-28-07; published 10-29-07 [FR 07-05367]

COMMERCE DEPARTMENT Patent and Trademark Office

Trademark cases:
Mark description in trademark applications; comments due by 12-24-07; published 10-25-07 [FR E7-21075]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Petroleum refineries; wastewater treatment systems and storage vessels; requirements
Hearing; comments due by 12-28-07; published 11-8-07 [FR E7-21938]

Air programs:

Ambient air quality standards, national—
Imperial County, CA; nonattainment and reclassification determination; comments due by 12-24-07; published 11-23-07 [FR E7-22868]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fenamidone; comments due by 12-24-07; published 10-24-07 [FR E7-20670]

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Agency information collection activities; proposals,

submissions, and approvals; comments due by 12-28-07; published 10-29-07 [FR 07-05366]

HEALTH AND HUMAN SERVICES DEPARTMENT**Centers for Medicare & Medicaid Services**

Medicaid:
Medicaid Integrity Audit Program; eligible entity and contracting requirements; comments due by 12-24-07; published 11-23-07 [FR E7-22773]
Medicare and Medicaid:
Nurse aide training program; waiver of disapproval; comments due by 12-24-07; published 11-23-07 [FR E7-22629]

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Human drugs:
Sunscreen drug products for over-the-counter human use; proposed amendment of final monograph; comments due by 12-26-07; published 11-28-07 [FR 07-05853]

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Drawbridge operations:
Maryland; comments due by 12-24-07; published 11-8-07 [FR E7-21882]

INTERIOR DEPARTMENT Fish and Wildlife Service

Endangered and threatened species:
Critical habitat designations—
San Diego thornmint; comments due by 12-27-07; published 11-27-07 [FR E7-22971]

INTERIOR DEPARTMENT

Freedom of Information Act; implementation; amendment; comments due by 12-24-07; published 10-25-07 [FR E7-21012]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:
Administrative Law Judge, Appeals Council, and Decision Review Board appeals levels; amendments; comments due by 12-28-07; published 10-29-07 [FR E7-20690]

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 12-26-07; published 11-26-07 [FR E7-22921]

Alpha Aviation Design Ltd.; comments due by 12-27-07; published 11-27-07 [FR E7-23017]

Boeing; comments due by 12-24-07; published 11-7-07 [FR E7-21843]

British Aerospace Aircraft Group; comments due by 12-27-07; published 11-27-07 [FR E7-23025]

Cessna; comments due by 12-26-07; published 10-26-07 [FR E7-21127]

Cessna Aircraft Co.; comments due by 12-24-07; published 10-24-07 [FR E7-20862]

General Electric Co.; comments due by 12-24-07; published 10-25-07 [FR E7-21000]

McDonnell Douglas; comments due by 12-28-07; published 11-13-07 [FR E7-22090]

Rolls-Royce plc; comments due by 12-24-07; published 10-25-07 [FR E7-20999]

Societe de Motorisations Aeronautiques; comments due by 12-28-07; published 11-28-07 [FR E7-22812]

TREASURY DEPARTMENT Internal Revenue Service

Income taxes:
Consolidated returns; intercompany obligations; comments due by 12-27-07; published 9-28-07 [FR E7-19134]

Reportable transactions disclosure requirements; American Jobs Creation Act modifications; comments due by 12-26-07; published 9-26-07 [FR E7-18934]

S Corporation securities; guidance under AJCA of 2004 and GOZA of 2005; comments due by 12-27-07; published 9-28-07 [FR E7-18987]

Tax-exempt bonds; arbitrage guidance; comments due by 12-26-07; published 9-26-07 [FR 07-04734]

LIST OF PUBLIC LAWS

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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. 3688/P.L. 110-138

United States-Peru Trade Promotion Agreement

Implementation Act (Dec. 14, 2007; 121 Stat. 1455)

Last List December 17, 2007

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